PRELIMINARY DRAFT

Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and the Federal Rules of Evidence

Request For Comment

Comments are Sought on Amendments to:

Appellate Rules	2 and 4
Bankruptcy Rules	Restyled Rules Parts III-VI; Rules 3002.1, 3011, and 8003; new Rule 9038; Official Forms 101, 309E1, 309E2, and 417A; and new Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R
Civil Rules	15, 72, and new Rule 87
Criminal Rule	New Rule 62
Evidence Rules	106, 615, and 702

Written Comments Due by
February 16, 2022

THE UNITED STATES COURTS

Prepared by the
Committee on Rules of Practice and Procedure
Judicial Conference of the United States

AUGUST 2021

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

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CHAIR

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M E M O R A N D U M

TO: The Bench, Bar, and Public

FROM: Honorable John D. Bates, Chair
Committee on Rules of Practice and Procedure

DATE: August 6, 2021

RE: Request for Comments on Proposed Amendments to Federal Rules and Forms

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The Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee) has approved for publication for public comment the following proposed amendments to existing rules and forms, as well as several new rules and forms:

- Appellate Rules 2 and 4
- Bankruptcy Restyled Rules Parts III-VI; Rules 3002.1, 3011, and 8003; and new Rule 9038
- Official Bankruptcy Forms 101, 309E1, 309E2, and 417A; and new Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R
- Civil Rules 15, 72, and new Rule 87
- New Criminal Rule 62
- Evidence Rules 106, 615, and 702

The proposals include rules for declared emergencies as directed by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).

The proposals and supporting materials are posted on the Judiciary's website at:

http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment

Opportunity to Submit Written Comments

Comments concerning the proposals, whether favorable, adverse, or otherwise, must be submitted electronically no later than **February 16, 2022**. Please note that comments are part of the official record and publicly available. Instructions for how to submit comments are posted at:

http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment

Opportunity to Appear at Public Hearings

On the following dates, the advisory committees will conduct public hearings on the proposals. All hearings will be conducted virtually via Microsoft Teams.

- Appellate Rules on January 14, 2022 and January 28, 2022;
- Bankruptcy Rules on January 7, 2022 and January 28, 2022;
- Civil Rules on January 6, 2022 and February 4, 2022;
- Criminal Rules on November 8, 2021 and January 11, 2022; and
- Evidence Rules on January 21, 2022.

If you wish to appear and present testimony regarding a proposed amendment or new rule or form, you must notify the office of Rules Committee Staff **at least 30 days before the scheduled hearing** by emailing RulesCommittee_Secretary@ao.uscourts.gov.

Hearings are subject to cancellation due to lack of requests to testify. Notice of any cancellations will be posted at: https://www.uscourts.gov/rules-policies/about-rulemaking-process/open-meetings-and-hearings-rules-committee.

At this time, the Standing Committee has only approved the proposed amendments and new rules and forms for publication and comment. After the public comment period closes, all comments will be carefully considered by the relevant advisory committee as part of its consideration of whether to proceed with a proposal.

Under the Rules Enabling Act, 28 U.S.C. §§ 2072-2077, if any of the proposals being published now are approved, with or without revision, by the relevant advisory committee, the next steps are approval by the Standing Committee and the Judicial Conference, and then adoption by the Supreme Court. If adopted by the Court and transmitted to Congress by May 1, 2023, absent congressional action, the proposals would take effect on December 1, 2023.

If you have questions about the rulemaking process or pending rules amendments, please contact the Rules Committee Staff at 202-502-1820 or visit http://www.uscourts.gov/rules-policies.

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

MEMORANDUM

TO: Committee on Rules of Practice and Procedure

FROM: Catherine T. Struve, Reporter
Committee on Rules of Practice and Procedure

Daniel J. Capra, Reporter
Advisory Committee on Evidence Rules

RE: CARES Act Project Regarding Emergency Rules

DATE: June 1, 2021

This memo summarizes the continuing collaboration of the advisory committees in drafting rules to govern emergencies. It provides an update on the coordinated work of the advisory committees to develop rules for extreme situations that substantially impair the courts' ability to function in compliance with the existing rules of procedure, and to make those rules as uniform as possible. This report recounts the efforts of the advisory committees to adapt their proposals in light of the extremely helpful guidance provided by the Standing Committee at its January 2021 meeting.

As you know, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act, or "CARES Act,"[1] which among other things addresses the use of videoconferences and telephone

[1] Pub. L. No. 116-136, March 27, 2020, 134 Stat 281.

conferences in criminal cases during the period of the current national emergency relating to COVID-19.

In addition to addressing these criminal-procedure issues for purposes of the current emergency, Section 15002 of the CARES Act also assigns a broader project to the Judicial Conference and the Supreme Court for consideration within the Rules Enabling Act framework:

> The Judicial Conference of the United States and the Supreme Court of the United States shall consider rule amendments under chapter 131 of title 28, United States Code (commonly known as the "Rules Enabling Act"), that address emergency measures that may be taken by the Federal courts when the President declares a national emergency under the National Emergencies Act (50 U.S.C. 1601 et seq.).

CARES Act § 15002(b)(6).

As this provision indicates, the scope of the project is not limited to pandemics, but extends to other possible types of emergencies that might affect the courts. The advisory committees have invested hundreds of hours of work on this project. We have now reached the point where the advisory committees on Appellate, Bankruptcy, Civil, and Criminal Rules are seeking the Standing Committee's approval to release proposed emergency rules for public comment. These proposals are on track to take effect in December 2023 (if they are approved at each stage of the Enabling Act process and if Congress takes no contrary action).

This memo provides an overview of the collective work of the advisory committees to date. Each advisory committee is also filing a report to the Standing Committee on issues particular to that committee.[2] Here, we focus on the work that has been done to incorporate the suggestions made by Standing Committee members at the last meeting, and on the continuing efforts to propose rules that are uniform to the extent possible.[3]

I. Who Declares an Emergency?

At the time of the last meeting, the advisory committee proposals diverged on the question of who could declare a rules emergency. Each rule gave authority to the Judicial Conference to do so, but some rules also allowed certain courts and judges to do so as well. The consensus at the Standing Committee meeting was that the authority to declare a rules emergency should be left solely in the hands of the Judicial Conference. Consequently all of the proposed rules now leave authority solely with the Judicial Conference to declare a rules emergency.

[2] Those advisory committee reports are attached to this report.

[3] In our December 2020 memo, we discussed questions that a member of the Appellate Rules Committee had raised concerning the appropriateness of the role that the emergency rules would assign to the Judicial Conference. At the Appellate Rules Committee's spring meeting, that member stated that his concerns had been alleviated by the fact that the Judicial Conference will not be engaged in rulemaking but only in declaring a rules emergency. In light of this, and in light of the full airing this topic received during the Standing Committee's January 2021 meeting, we do not discuss it in this memo.

II. Definition of a Rules Emergency

The basic definition of a rules emergency is uniform in the four sets of rules. A rules emergency is found when:

> extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with these rules.

In addition to the uniform basic definition of "rules emergency" set forth above, the Criminal Rule adds the requirement that "no feasible alternative measures would sufficiently address the impairment within a reasonable time." The other advisory committees found no reason to impose this extra requirement, given the very strict standards set forth in the basic definition of a rules emergency. The consensus at the Standing Committee meeting was that it is appropriate to place this language in the Criminal Rules alone, given the importance of the Criminal Rules that would be affected in a rules emergency, including rules designed to protect constitutional rights. Accordingly, this divergence has been retained.

III. The Less-Detailed Appellate Rule

The emergency Appellate Rule that was reviewed at the last Standing Committee meeting set few limits on the range of Appellate Rules that are subject to suspension in a rules emergency; nor did it state what the substitute rule (if any) would be when a rule is suspended. That version of the emergency Appellate Rule differed, in those respects, from the other three draft emergency rules. The Appellate Rules Committee justified this divergence on the ground that the emergency Appellate Rule proceeds from a different starting point than the other rules. Appellate Rule 2 already allows the court to suspend almost any rule in a particular case. Because the Appellate Rules proceed from the premise that all rules are subject to change in a case, the Appellate Rules Committee contended that it is not much different to authorize a change across a class of cases—at least in a rules emergency.

At the Standing Committee meeting, members appeared to accept the argument that the emergency Appellate Rule could be less detailed and more open-ended. But some members suggested that the Appellate Rule would be improved by including procedural requirements governing a rules declaration. Accordingly, the revised emergency Appellate Rule now submitted to the Standing Committee contains procedural features—concerning the Judicial Conference's declaration of an emergency, the content of the declaration, early termination of a declaration, and additional declarations – that largely track those in the other sets of proposed emergency rules.

IV. Subparagraph (b)(1)(B)

Other than the "no feasible alternative" language in Criminal Rule 62(a), discussed above, there is only one more disuniformity in the first two subdivisions of the Bankruptcy, Civil, and Criminal emergency rules (which we call the "uniformity provisions"). In subparagraph (b)(1)(B), the Bankruptcy, Civil, and Criminal Rules all require the declaration of a rules emergency to specify any limitations on alteration of the rules that are listed (in later subdivisions) as subject to

being changed in a rules emergency. But the language of the Civil Rule differs from the other two. The Civil Rule states that the declaration of emergency must "adopt all of the emergency rules in Rule 87(c) unless it excepts one or more of them." The Bankruptcy and Criminal Rules provide that a declaration of emergency must "state any restrictions on the authority granted in" the relevant subpart(s) of the emergency rule in question.

This difference is not dramatic. These rules end up in the same place—the emergency declaration has to specify which rules subject to change are actually going to be changed. But there is a subtle difference between requiring the declaration to adopt emergency rules subject to specific exception, and automatic applicability subject to a specified limitation. Asking the Judicial Conference to provide two different specifications, one for Civil and the other for Criminal and Bankruptcy, might strike some as unnecessarily complicated, especially given the circumstances under which by definition these declarations will be prepared. The ordinary justification for any difference in this project has been that there is more at stake for the Criminal Rules than for the other rule sets. But in this instance, the Bankruptcy and Criminal Rules are uniform.

V. Termination of Emergency Rules Order: Mandatory or Discretionary?

Each set of rules, including Appellate, provides for termination of an emergency declaration when the rules emergency conditions no longer exist. But there was a dispute about whether the rule should provide that the Judicial Conference must or may enter the termination order. This matter was discussed at the Standing Committee meeting, and referred back to the advisory committees for further discussion. At this time, the advisory committees all agree that the termination order should be discretionary. There are two rationales for that uniform determination: 1) It is problematic to impose an obligation on the Judicial Conference, and it is especially anomalous to require a termination order when the initial declaration is itself discretionary; and 2) Discretion is warranted because in many situations the end of the emergency will likely occur near the built-in termination date of the emergency declaration itself—and the Judicial Conference should have the discretion to simply allow the time to run out.

VI. Drafting for the Possibility that the Judicial Conference May Be Unable to Declare a Rules Emergency

At the January Standing Committee meeting, the Committee discussed a suggestion that the rule should address the possibility that the Judicial Conference might be so affected by the emergency that it would be unable to declare a rules emergency. The question is whether the emergency rules should provide for the possibility of the Judicial Conference being unable to act. At the meeting, most of the members who spoke about the proposal thought such a provision to be unnecessary, but some members thought it worthy of further consideration. Accordingly, further discussions of the issue occurred in spring 2021 with respect to each emergency rule. None of those discussions revealed support for drafting a 'doomsday' provision and, ultimately, each advisory committee approved the emergency rules without one. The rationales for that rejection appeared to be the following: 1) It seems highly unlikely that the Executive Committee of the Judicial Conference would be disabled for an extended period of time from making an emergency declaration; 2) if there were a catastrophe so grave as to incapacitate virtually everyone for a lengthy period of time, there would be much more to worry about than a rules emergency; and 3)

difficult policy and drafting decisions would have to be made about who would decide whether the Executive Committee was unable to act, and what would happen if decisionmakers around the country reached differing views on that question.

VII. "Soft Landing" Provision

The Bankruptcy, Civil, and Criminal Advisory Committees have spent considerable time discussing what should happen when a proceeding that has been conducted under an emergency rule continues after the emergency has terminated. The proposed Criminal Rule 62(c) provides:

> **(c) Continuing a Proceeding After a Termination.** Termination of a declaration for a court ends its authority under (d) and (e). But if a particular proceeding is already underway and resuming compliance with these rules for the rest of the proceeding would not be feasible or would work an injustice, it may be completed with the defendant's consent as if the declaration had not terminated.

The midstream change in criminal cases could cover such important issues as remote testimony and public access to criminal proceedings. In contrast, the midstream change in bankruptcy cases would affect time limits and the midstream change in civil cases would affect methods of service and deadlines for post judgment motions. It would not make sense to try to draft a single, uniform "soft landing" provision to address all of these types of issues. Accordingly, the Bankruptcy and Civil Committees decided to place "soft landing" provisions directly in each of the individual provisions that would operate during a rules emergency—each tailored to the specific interests at stake.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
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WASHINGTON, D.C. 20544

MEMORANDUM

TO: Honorable John Bates, Chair
Committee on Rules of Practice and Procedure

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

RE: Emergency Appellate Rule 2 and Appellate Rule 4

DATE: June 2, 2021

In accordance with the CARES Act, the Advisory Committee established a subcommittee to consider what amendments, if any, would be appropriate to deal with future emergencies. The members of that subcommittee began by reviewing every Federal Rule of Appellate Procedure to evaluate which ones might be appropriate candidates for amendment. The subcommittee ultimately concluded that the best approach for the Appellate Rules was simply an amendment to the existing Federal Rule of Appellate Procedure 2.

Existing Rule 2 provides:

Rule 2. Suspension of Rules

On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these Rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

That is, under current law, a court of appeals is empowered to suspend *any* provision of the Federal Rules of Appellate Procedure in a particular case, except those that govern the time to appeal, the time to seek permission to appeal, and the time to review administrative action. This broad suspension power is nothing new: it has been a part of the Federal Rules of Appellate Procedure from the very beginning of those Rules.

At the January 2021 meeting, the Standing Committee considered a discussion draft that would have amended Rule 2 to

- empower not only the Judicial Conference but also each court of appeals to declare a rules emergency;
- empower the chief circuit judge to act on the court's behalf; and
- permit broader suspension than current Rule 2—reaching all cases during a rules emergency and permitting the suspension of non-statutory time limits to appeal or otherwise seek review.

The Standing Committee seemed comfortable with broadening the suspension authority. However, in large part due to the importance of uniformity, the Standing Committee preferred to vest the power to declare a rules emergency in the Judicial Conference alone.

The Standing Committee also favored the inclusion of a sunset provision and was concerned that the discussion draft did not clearly state what happens once a rule is suspended.

The Advisory Committee incorporated this feedback into a proposal that it now asks for approval to publish for public comment. This proposal vests the power to declare a rules emergency solely in the Judicial Conference. It includes a sunset provision. And it makes explicit, using language from the existing Rule 2, that when a rule is suspended, the court may order proceedings as it directs.

There was no dissent in the Advisory Committee. The member of the Advisory Committee who had previously raised concerns about the authority of the Judicial Conference—concerns that were discussed at the January meeting of the Standing Committee—stated that his prior concerns about authority were largely addressed. Under this proposal, the Judicial Conference simply declares the emergency exists. The court can then fall back on its preexisting power once the rules back off.

Here is the proposal as revised after review by the style consultants and coordination with reporters for other advisory committees to achieve as much uniformity as possible:

Rule 2. Suspension of Rules

(a) **In a Particular Case**. On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

(b) In an Appellate Rules Emergency.

(1). *Conditions for an Emergency.* The Judicial Conference of the United States may declare an Appellate Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with these rules.

(2) *Content.* The declaration must:

(A) designate the circuit or circuits affected; and

(B) be limited to a stated period of no more than 90 days.

(3) *Early Termination.* The Judicial Conference may terminate a declaration for one or more circuits before the termination date.

(4) Additional Declarations. Additional declarations may be made under Rule 2(b).

(5) Proceedings in a Rules Emergency. When a rules emergency is declared, the court may:

(A) suspend in all or part of that circuit any provision of these rules, other than time limits imposed by statute and described in Rule 26(b)(1)-(2); and

(B) order proceedings as it directs.

Committee Note

Flexible application of the Federal Rules of Appellate Procedure, including Rule 2, has enabled the courts of appeals to continue their operations despite the coronavirus pandemic. Future emergencies, however, may pose problems that call for broader authority to suspend provisions of the Federal Rules of Appellate Procedure. For that reason, the amendment adds a new subdivision authorizing broader suspension authority when the Judicial Conference of the United States declares an Appellate Rules emergency. The amendment is designed to add to the authority of courts of appeals; it should not be interpreted to restrict the authority previously exercised by the courts of appeals.

The circumstances warranting the declaration of an Appellate Rules emergency mirror those warranting a declaration of a Civil Rules emergency and a Bankruptcy Rules emergency: extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, that substantially impair the court's ability to perform its functions in compliance with these rules. A declaration must designate the circuit or circuits affected. It must also have a sunset provision so that the declaration is in effect for no more than 90 days unless the Judicial

Conference makes an additional declaration. The Judicial Conference may also terminate the declaration for one or more circuits before the termination date.

When a rules emergency is declared, the court of appeals may suspend in all or part of that circuit any provision of these rules, other than time limits imposed by statute and described in Rule 26(b)(1)-(2). This enables the court of appeals to suspend the time to appeal or seek review set only by a rule, but it does not authorize the court of appeals to suspend jurisdictional time limits imposed by statute. Sometimes when a rule is suspended, there is no need to provide any alternative to the suspended rule. For example, if the requirement of submitting paper copies of briefs is suspended, it may be enough to rely on electronic submissions. However, to deal with situations in which an alternative is required, the amendment empowers the court to "order proceedings as it directs," the same language that existed in Rule 2—now Rule 2(a)—before this amendment.

* * *

The Advisory Committee also seeks approval to publish for public comment a proposed amendment to Appellate Rule 4. This proposed amendment is designed to make Appellate Rule 4 operate smoothly with Emergency Civil Rule 6(b)(2) if that emergency Civil Rule is ever in effect, while not making any change to the operation of Appellate Rule 4 at any other time. Long effort went into trying to craft Emergency Civil Rule 6(b)(2) in a way that did not require any changes to the Appellate Rules, but every attempt ran into considerable complexity, considerable difficulty, or both.

Some background is useful to put the problem—and the proposed solution—in context.

Certain post-judgment motions—for example, a renewed motion for judgment as a matter of law under Civil Rule 50(b) and a motion for a new trial under Civil Rule 59—may be made in the district court shortly after judgment is entered. Recognizing that it makes sense to await the district court's decision on these motions before pursuing an appeal, Appellate Rule 4(a)(4)(A) resets the time to appeal from the judgment so that it does not run until entry of an order disposing of the last such motion.

Appellate Rule 4 gives this resetting effect only to motions that are filed within the time allowed by the Civil Rules. For most of these motions, the Civil Rules require that the motion be filed within 28 days of the judgment. See Civil Rules 50(b) and (d); 52(b); and 59(b), (d), and (e). The time requirements for a Civil Rule 60(b) motion, however, are notably different. It must be filed "within a reasonable time," and for certain Civil Rule 60(b) motions, no more than a year after judgment. See Civil Rule 60(c)(1) ("A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.").

For this reason, Appellate Rule 4 does not give resetting effect to all Civil Rule 60(b) motions that are filed within the time allowed by the Civil Rules, but only to those Civil Rule 60(b) motions that are filed within 28 days of the entry of judgment. That is why most of the motions listed in Appellate Rule 4(a)(4)(A) are governed simply by the general requirement that they be

filed within the time allowed by the Civil Rules, but Appellate Rule 4(a)(4)(A)(vi) adds the requirement that a Civil Rule 60(b) motion has resetting effect only if "filed no later than 28 days after the judgment is entered."

Significantly, Civil Rule 6(b)(2) prohibits the district court from extending the time to act under Rules 50(b) and (d); 52(b); 59(b), (d), and (e); and 60(b). That means that when Appellate Rule 4 requires that a motion be filed within the time allowed by the Civil Rules, the time allowed by those Rules for motions under Rules 50(b) and (d); 52(b); and 59(b), (d), and (e) will be 28 days—matching the 28-day requirement in Appellate Rule 4(a)(4)(A)(vi) applicable to Rule 60(b) motions.

Enter proposed Emergency Civil Rule 6(b)(2). That emergency rule would authorize district courts to grant extensions that they are otherwise prohibited from granting. Under it, district courts would be able to grant extensions to file motions under Civil Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b). For all these motions except Civil Rule 60(b) motions, Appellate Rule 4 would continue to work seamlessly. Appellate Rule 4 requires only that those motions be filed "within the time allowed by" the Civil Rules, and a motion filed within a properly granted extension is filed "within the time allowed by" those rules. An emergency Civil Rule is no less a Civil Rule simply because it is operative only in a Civil Rules emergency.

But if Appellate Rule 4 were not amended, Appellate Rule 4 would not work seamlessly with the Emergency Civil Rule for Rule 60(b) motions because the 28-day requirement in Rule 4(a)(4)(A)(vi) would not correspond to the extended time to file other resetting motions. For this reason, the proposed amendment to Appellate Rule 4 replaces the phrase "if the motion is filed no later than 28 days after the judgment is entered" with the phrase "within the time allowed for filing a motion under Rule 59."

Significantly, this proposed amendment to Appellate Rule 4 is not itself an emergency rule, but instead would be a regular, ordinary part of the Appellate Rules. At all times that no Civil Rules emergency has been declared, the amended Rule 4 would function exactly as it has without the proposed amendment. A Civil Rule 60(b) motion would have resetting effect only if it were filed within the time allowed for filing a motion under Civil Rule 59—which is 28 days.

When a Civil Rules emergency has been declared, however, if a district court grants an extension of time to file a Civil Rule 59 motion and a party files a Civil Rule 60(b) motion, that Civil Rule 60(b) motion has resetting effect so long as it is filed within the extended time set for filing a Civil Rule 59 motion. The Civil Rule 60(b) motion has this resetting effect even if no Civil Rule 59 motion is filed. It does this by replacing the phrase "no later than 28 days after the judgment is entered" in Rule 4(a)(4)(A)(vi) with the phrase "within the time allowed for filing a motion under Rule 59."

Here is the proposed amendment to Rule 4:

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

* * *

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed ~~no later than 28 days after the judgment is entered~~ within the time allowed for filing a motion under Rule 59.

Committee Note

The amendment is designed to make Rule 4 operate smoothly with Emergency Civil Rule 6(b)(2) if that emergency Civil Rule is ever in effect, while not making any change to the operation of Rule 4 at any other time. It does this by replacing the phrase "no later than 28 days after the judgment is entered" in Rule 4(a)(4)(A)(vi) with the phrase "within the time allowed for filing a motion under Rule 59."

Certain post-judgment motions—for example, a renewed motion for judgment as a matter of law under Civil Rule 50(b) and a motion for a new trial under Civil Rule 59—may be made in the district court shortly after judgment is entered. Recognizing that it makes sense to await the district court's decision on these motions before pursuing an appeal, Rule 4(a)(4)(A) resets the

time to appeal from the judgment so that it does not run until entry of an order disposing of the last such motion.

Rule 4 gives this resetting effect only to motions that are filed within the time allowed by the Civil Rules. For most of these motions, the Civil Rules require that the motion be filed within 28 days of the judgment. See Civil Rules 50(b) and (d); 52(b); 59(b), (d), and (e). The time requirements for a Civil Rule 60(b) motion, however, are notably different. It must be filed "within a reasonable time," and for certain Civil Rule 60(b) motions, no more than a year after judgment. For this reason, Rule 4 does not give resetting effect to all Civil Rule 60(b) motions that are filed within the time allowed by the Civil Rules, but only to those Civil Rule 60(b) motions that are filed within 28 days of the entry of judgment. That is why most of the motions listed in Rule 4(a)(4)(A) are governed simply by the general requirement that they be filed within the time allowed by the Civil Rules, but Rule 4(a)(4)(A)(vi) adds the requirement that a Civil Rule 60(b) motion has resetting effect only if "filed no later than 28 days after the judgment is entered."

Significantly, Civil Rule 6(b)(2) prohibits the district court from extending the time to act under Rules 50(b) and (d); 52(b); 59(b), (d), and (e); and 60(b). That means that when Rule 4 requires that a motion be filed within the time allowed by the Civil Rules, the time allowed by those Rules for motions under Rules 50(b) and (d); 52(b); and 59(b), (d), and (e) will be 28 days—matching the 28-day requirement in Rule 4(a)(4)(A)(vi) applicable to Rule 60(b) motions.

However, Emergency Civil Rule 6(b)(2)—which would be operative only if the Judicial Conference of the United States were to declare a Civil Rules emergency under Civil Rule 87—authorizes district courts to grant extensions that they are otherwise prohibited from granting. If that emergency Civil Rule is in effect, district courts may grant extensions to file motions under Civil Rules 50(b) and (d); 52(b); 59(b), (d), and (e); and 60(b). For all these motions except Civil Rule 60(b) motions, Rule 4 works seamlessly. Rule 4 requires only that those motions be filed "within the time allowed by" the Civil Rules, and a motion filed within a properly granted extension is filed "within the time allowed by" those rules. An emergency Civil Rule is no less a Civil Rule simply because it is operative only in a Civil Rules emergency.

Without amendment, Rule 4 would not work seamlessly with the Emergency Civil Rule for Rule 60(b) motions because the 28-day requirement in Rule 4(a)(4)(A)(vi) would not correspond to the extended time to file other resetting motions. For this reason, the amendment replaces the phrase "if the motion is filed no later than 28 days after the judgment is entered" with the phrase "within the time allowed for filing a motion under Rule 59."

At all times that no Civil Rules emergency has been declared, the amended Rule 4 functions exactly as it did prior to the amendment. A Civil Rule 60(b) motion has resetting effect only if it is filed within the time allowed for filing a motion under Civil Rule 59—which is 28 days.

When a Civil Rules emergency has been declared, however, if a district court grants an extension of time to file a Civil Rule 59 motion and a party files a Civil Rule 60(b) motion, that Civil Rule 60(b) motion has resetting effect so long as it is filed within the extended time set for

filing a Civil Rule 59 motion. The Civil Rule 60(b) motion has this resetting effect even if no Civil Rule 59 motion is filed.

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

Rule 2. Suspension of Rules

(a) In a Particular Case. On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

(b) In an Appellate Rules Emergency.

(1) **Conditions for an Emergency.** The Judicial Conference of the United States may declare an Appellate Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court,

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

substantially impair the court's ability to perform its functions in compliance with these rules.

(2) **Content.** The declaration must:

(A) designate the circuit or circuits affected; and

(B) be limited to a stated period of no more than 90 days.

(3) **Early Termination.** The Judicial Conference may terminate a declaration for one or more circuits before the termination date.

(4) **Additional Declarations.** Additional declarations may be made under Rule 2(b).

(5) **Proceedings in a Rules Emergency.** When a rules emergency is declared, the court may:

(A) suspend in all or part of that circuit any provision of these rules, other than time limits imposed by statute and described in Rule 26(b)(1)-(2); and

(B) order proceedings as it directs.

Committee Note

Flexible application of the Federal Rules of Appellate Procedure, including Rule 2, has enabled the courts of appeals to continue their operations despite the coronavirus pandemic. Future emergencies, however, may pose problems that call for broader authority to suspend provisions of the Federal Rules of Appellate Procedure. For that reason, the amendment adds a new subdivision authorizing broader suspension authority when the Judicial Conference of the United States declares an Appellate Rules emergency. The amendment is designed to add to the authority of courts of appeals; it should not be interpreted to restrict the authority previously exercised by the courts of appeals.

The circumstances warranting the declaration of an Appellate Rules emergency mirror those warranting a declaration of a Civil Rules emergency and a Bankruptcy Rules emergency: extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, that substantially impair the court's ability

to perform its functions in compliance with these rules. A declaration must designate the circuit or circuits affected. It must also have a sunset provision so that the declaration is in effect for no more than 90 days unless the Judicial Conference makes an additional declaration. The Judicial Conference may also terminate the declaration for one or more circuits before the termination date.

When a rules emergency is declared, the court of appeals may suspend in all or part of that circuit any provision of these rules, other than time limits imposed by statute and described in Rule 26(b)(1)-(2). This enables the court of appeals to suspend the time to appeal or seek review set only by a rule, but it does not authorize the court of appeals to suspend jurisdictional time limits imposed by statute. Sometimes when a rule is suspended, there is no need to provide any alternative to the suspended rule. For example, if the requirement of submitting paper copies of briefs is suspended, it may be enough to rely on electronic submissions. However, to deal with situations in which an alternative is required, the amendment empowers the court to "order proceedings as it directs," the same language that existed in Rule 2—now Rule 2(a)—before this amendment.

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

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

* * * * *

(4) **Effect of a Motion on a Notice of Appeal.**

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—

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

and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed ~~no later than 28 days after the judgment is entered~~within the time allowed for filing a motion under Rule 59.

* * * * *

Committee Note

The amendment is designed to make Rule 4 operate smoothly with Emergency Civil Rule 6(b)(2) if that emergency Civil Rule is ever in effect, while not making any change to the operation of Rule 4 at any other time. It does this by replacing the phrase "no later than 28 days after the judgment is entered" in Rule 4(a)(4)(A)(vi) with the phrase "within the time allowed for filing a motion under Rule 59."

Certain post-judgment motions—for example, a renewed motion for judgment as a matter of law under Civil Rule 50(b) and a motion for a new trial under Civil Rule 59—may be made in the district court shortly after judgment is entered. Recognizing that it makes sense to await the district court's decision on these motions before pursuing an appeal, Rule 4(a)(4)(A) resets the time to appeal

from the judgment so that it does not run until entry of an order disposing of the last such motion.

Rule 4 gives this resetting effect only to motions that are filed within the time allowed by the Civil Rules. For most of these motions, the Civil Rules require that the motion be filed within 28 days of the judgment. See Civil Rules 50(b) and (d), 52(b), 59(b), (d), and (e). The time requirements for a Civil Rule 60(b) motion, however, are notably different. It must be filed "within a reasonable time," and for certain Civil Rule 60(b) motions, no more than a year after judgment. For this reason, Rule 4 does not give resetting effect to all Civil Rule 60(b) motions that are filed within the time allowed by the Civil Rules, but only to those Civil Rule 60(b) motions that are filed within 28 days of the entry of judgment. That is why most of the motions listed in Rule 4(a)(4)(A) are governed simply by the general requirement that they be filed within the time allowed by the Civil Rules, but Rule 4(a)(4)(A)(vi) adds the requirement that a Civil Rule 60(b) motion has resetting effect only if "filed no later than 28 days after the judgment is entered."

Significantly, Civil Rule 6(b)(2) prohibits the district court from extending the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b). That means that when Rule 4 requires that a motion be filed within the time allowed by the Civil Rules, the time allowed by those Rules for motions under Rules 50(b) and (d), 52(b), 59(b), (d), and (e) will be 28 days—matching the 28-day requirement in Rule 4(a)(4)(A)(vi) applicable to Rule 60(b) motions.

However, Emergency Civil Rule 6(b)(2)—which would be operative only if the Judicial Conference of the United States were to declare a Civil Rules emergency under Civil Rule 87—authorizes district courts to grant extensions that they are otherwise prohibited from granting. If that

emergency Civil Rule is in effect, district courts may grant extensions to file motions under Civil Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b). For all these motions except Civil Rule 60(b) motions, Rule 4 works seamlessly. Rule 4 requires only that those motions be filed "within the time allowed by" the Civil Rules, and a motion filed within a properly granted extension is filed "within the time allowed by" those rules. An emergency Civil Rule is no less a Civil Rule simply because it is operative only in a Civil Rules emergency.

Without amendment, Rule 4 would not work seamlessly with the Emergency Civil Rule for Rule 60(b) motions because the 28-day requirement in Rule 4(a)(4)(A)(vi) would not correspond to the extended time to file other resetting motions. For this reason, the amendment replaces the phrase "if the motion is filed no later than 28 days after the judgment is entered" with the phrase "within the time allowed for filing a motion under Rule 59."

At all times that no Civil Rules emergency has been declared, the amended Rule 4 functions exactly as it did prior to the amendment. A Civil Rule 60(b) motion has resetting effect only if it is filed within the time allowed for filing a motion under Civil Rule 59—which is 28 days.

When a Civil Rules emergency has been declared, however, if a district court grants an extension of time to file a Civil Rule 59 motion and a party files a Civil Rule 60(b) motion, that Civil Rule 60(b) motion has resetting effect so long as it is filed within the extended time set for filing a Civil Rule 59 motion. The Civil Rule 60(b) motion has this resetting effect even if no Civil Rule 59 motion is filed.

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

MEMORANDUM

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

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

RE: New Bankruptcy Rule 9038 (Bankruptcy Rules Emergency)

DATE: May 24, 2021

At the Advisory Committee's spring meeting, members unanimously approved for publication new Rule 9038, which would allow extensions of time limits in the Bankruptcy Rules to be granted if the Judicial Conference declared a Bankruptcy Rules emergency. The draft of the rule that was approved was the result of extensive work by a special Emergency Rule Subcommittee chaired by Judge Melvin Hoffman; consultation among the rules committees' reporters, facilitated by Professor Dan Capra; valuable feedback that the Standing Committee provided at its January 2021 meeting; stylistic suggestions offered by the style consultants; and careful deliberation and discussion by members of the Advisory Committee.

Subdivisions (a) and (b)

Much of the Advisory Committee's discussion of this rule at the April meeting was devoted to an attempt to respond to the Standing Committee's comments and to make subdivisions (a) and (b) of the rule as uniform as possible with the emergency rules being considered by the other

advisory committees. As indicated in Professor Capra's and Professor Struve's memo, the effort to achieve uniformity was largely successful. Most significantly, the Advisory Committee agreed to limit the authority to declare a rules emergency to the Judicial Conference of the United States, thereby bringing the bankruptcy rule into line with the other emergency rules. The Advisory Committee also agreed to make permissive the Judicial Conference's authority to terminate a rules emergency declaration early, and it adhered to its earlier decision not to include a "no feasible alternative" requirement in the definition of a rules emergency.

In two limited respects, Rule 9038(a) and (b) differ from one or more of the other emergency rules. All of the emergency rule drafts presented at the January Standing Committee meeting referred to emergencies in one or more "courts." In the various sets of federal rules, however, "court" usually means the judge presiding over a case. Bankruptcy Rule 9001(4), for example, provides that "court" as used in the rules means "the judicial officer before whom a case or proceeding is pending." That meaning, however, is not what is intended in the emergency rules when they refer to "the court or courts affected" by an emergency.

Following the Standing Committee's discussion of this issue in January, the advisory committees were asked to consider whether "court" should be changed to "district" in the emergency rules. The other committees concluded that there was no need to make that change because in context the meaning of the word "court" is clear. Our Advisory Committee agreed that the use of "court" does not create an ambiguity in the bankruptcy emergency rule. However, to avoid inconsistency with the Rule 9001 definition, it accepted the subcommittee's recommendation to substitute "bankruptcy court" for "court" in Rule 9038.

Professors Capra and Struve also point out that subparagraph (b)(1)(B) in the Bankruptcy and Criminal Rules differs from that subparagraph in the civil rule by requiring the emergency declaration to "state any restrictions on the authority granted," rather than stating—as the Civil Rule does—that a declaration of emergency must "adopt all of the emergency rules in Rule 87(c) unless it excepts one or more of them." Insofar as the bankruptcy emergency rule is concerned, this difference from the civil rule is appropriate because the bankruptcy rule does not create new rules in subdivision (c); it only authorizes deviation from the existing rules' time periods. It would make no sense therefore to require "adoption" of the emergency rules in (c).

Subdivision (c)

Subdivision (c) of the emergency rule is unique to bankruptcy, and there was no attempt to achieve uniformity here. Unlike some of the other emergency rules, Rule 9038 leaves up to the chief and presiding judges the decision whether to deviate from the existing rules once the Judicial Conference has declared a rules emergency. This authorization is not a backdoor attempt to retain in the bankruptcy courts some degree of authority following the decision to allow only the Judicial Conference to declare a rules emergency. Instead, it results from the underlying purpose of the rule and the Advisory Committee's determination of the type of emergency rule that is needed.

Rule 9038 is basically an expansion of existing Bankruptcy Rule 9006(b), which authorizes an individual bankruptcy judge to enlarge time periods for cause. During this pandemic, many

courts have relied on this provision to grant extensions of time. The existing rule, however, does not fully meet the needs of an emergency situation. First, it has some exceptions—time limits that cannot be expanded. One of these is the time limit for holding meetings of creditors, a limitation that either caused problems for courts during the current emergency or was honored in the breach. Also, it probably does not authorize an extension order applicable to all cases in a district. Rule 9038 is intended to fill in these gaps for situations in which the Judicial Conference declares a rules emergency. The chief bankruptcy judge can grant a district-wide extension for any time periods specified in the rules, and individual judges can do the same in specific cases.

The Advisory Committee concluded that this scheme is preferable to one in which the Judicial Conference would specify which rules or deadlines could be altered. There are literally hundreds of time periods in the Bankruptcy Rules, and the Judicial Conference may not be in the best position to identify which ones need extending. Furthermore, even with a nationwide emergency, circumstances may vary from one place to another. To use the same meeting of creditors example, one district might be well positioned to immediately move to remote meetings, while another may encounter a significant delay in making that shift. As a result, the first district may be able to comply with the existing deadline, while the second one will not be able to. Judges at the local level can best assess which time periods need extending.

Except for stylistic changes, subdivision (c) remains essentially the same as it was in January. Subdivisions (c)(1) and (c)(2) grant the authority, during declared Bankruptcy Rules emergencies, to extend or toll deadlines to the chief bankruptcy judge of a district on a district- or division-wide basis or to the presiding judge in specific cases. It also applies to directives to take quick action, such as rule provisions that require action to be taken "promptly," "forthwith," "immediately," or "without delay."

Subdivision (c)(3), which addresses the termination of extensions and tolling, provides a "soft landing" upon the termination of a Bankruptcy Rules emergency. It looks to three possible dates for a time period to expire. An extended or tolled time period will terminate either 30 days after the rules-emergency declaration terminates or when the original time period would have expired, whichever is later—unless the extension or tolling itself expires sooner than 30 days after the declaration's termination. In that case, the extended expiration date will apply.

Subdivision (c)(4) allows fine tuning in individual cases of extensions of time or tollings that have been granted. And subdivision (c)(5) excepts from the authority to extend time periods any time provision imposed by statute. The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, does not authorize the Bankruptcy Rules to supersede conflicting laws. Accordingly, a time limit in a rule that is a restatement of a deadline imposed by statute or an incorporation by reference of such a deadline may not be extended under this rule. However, if a statute merely incorporates by reference a time period imposed by a rule, that period may be extended.

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

Rule 9038. Bankruptcy Rules Emergency

(a) CONDITIONS FOR AN EMERGENCY. The Judicial Conference of the United States may declare a Bankruptcy Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a bankruptcy court, substantially impair the court's ability to perform its functions in compliance with these rules.

(b) DECLARING AN EMERGENCY.

(1) *Content*. The declaration must:

(A) designate the bankruptcy court or courts affected;

(B) state any restrictions on the authority granted in (c); and

[1] New material is underlined in red.

(C) be limited to a stated period of no more than 90 days.

(2) *Early Termination.* The Judicial Conference may terminate a declaration for one or more bankruptcy courts before the termination date.

(3) *Additional Declarations.* The Judicial Conference may issue additional declarations under this rule.

(c) TOLLING AND EXTENDING TIME LIMITS.

(1) *In an Entire District or Division.* When an emergency is in effect for a bankruptcy court, the chief bankruptcy judge may, for all cases and proceedings in the district or in a division:

(A) order the extension or tolling of a Bankruptcy Rule, local rule, or order that requires or allows a court, a clerk, a party in interest, or the United States trustee, by a

specified deadline, to commence a proceeding, file or send a document, hold or conclude a hearing, or take any other action, despite any other Bankruptcy Rule, local rule, or order; or

(B) order that, when a Bankruptcy Rule, local rule, or order requires that an action be taken "promptly," "forthwith," "immediately," or "without delay," it be taken as soon as is practicable or by a date set by the court in a specific case or proceeding.

(2) *In a Specific Case or Proceeding.* When an emergency is in effect for a bankruptcy court, a presiding judge may take the action described in (1) in a specific case or proceeding.

(3) *When an Extension or Tolling Ends.* A period extended or tolled under (1) or (2) terminates on the later of:

(A) the last day of the time period as extended or tolled or 30 days after the emergency declaration terminates, whichever is earlier; or

(B) the last day of the time period originally required, imposed, or allowed by the relevant Bankruptcy Rule, local rule, or order that was extended or tolled.

(4) *Further Extensions or Shortenings.* A presiding judge may lengthen or shorten an extension or tolling in a specific case or proceeding. The judge may do so only for good cause after notice and a hearing on the judge's own motion or on motion of a party in interest or the United States trustee.

(5) *Exception.* A time period imposed by statute may not be extended or tolled.

Committee Note

The rule is new. It provides authority to extend or toll the time limits in these rules during times of major emergencies affecting the bankruptcy courts. The continuing operation of the bankruptcy courts during the COVID-19 pandemic showed that the existing rules are flexible enough to accommodate remote proceedings, service by mail, and electronic transmission of documents. Nevertheless, it appeared that greater flexibility than Rule 9006(b) provides might be needed to allow the extension of certain time periods in specific cases or any extension on a district-wide basis in response to an emergency.

Emergency rule provisions have also been added to the Civil, Criminal, and Appellate Rules. Along with the Bankruptcy Rule, these rules have been made as uniform as possible. But each set of rules serves distinctive purposes, shaped by different origins, traditions, functions, and needs. Different provisions were compelled by these different purposes.

Subdivision (a) specifies the limited circumstances under which the authority conferred by this rule may be exercised. The Judicial Conference of the United States has the exclusive authority to declare a Bankruptcy Rules emergency, and it may do so only under extraordinary circumstances. Those circumstances must relate to public health or safety or affect physical or electronic access to a bankruptcy court. And, importantly, the court's ability to operate in compliance with the Bankruptcy Rules must be substantially impaired.

Under subdivision (b)(1), a Bankruptcy Rules emergency declaration must specify the bankruptcy courts to which it applies because, instead of being nationwide, an

emergency might be limited to one area of the country or even to a particular state. The declaration must also specify a termination date that is no later than 90 days from the declaration's issuance. Under subdivisions (b)(2) and (b)(3), however, that time period may be extended by the issuance of additional declarations or reduced by early termination if circumstances change. The declaration must also specify any limitations placed on the authority granted in subdivision (c) to modify time periods.

Subdivisions (c)(1) and (c)(2) grant the authority, during declared Bankruptcy Rules emergencies, to extend or toll deadlines to the chief bankruptcy judge of a district on a district- or division-wide basis or to the presiding judge in specific cases. Unless limited by the emergency declaration, this authority extends to all time periods in the rules that are not also imposed by statute. It also applies to directives to take quick action, such as rule provisions that require action to be taken "promptly," "forthwith," "immediately," or "without delay."

Subdivision (c)(3), which addresses the termination of extensions and tolling, provides a "soft landing" upon the termination of a Bankruptcy Rules emergency. It looks to three possible dates for a time period to expire. An extended or tolled time period will terminate either 30 days after the rules-emergency declaration terminates or when the original time period would have expired, whichever is later—unless the extension or tolling itself expires sooner than 30 days after the declaration's termination. In that case, the extended expiration date will apply.

Subdivision (c)(4) allows fine tuning in individual cases of extensions of time or tollings that have been granted.

Subdivision (c)(5) excepts from the authority to extend time periods any time provision imposed by statute. The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, does not authorize the Bankruptcy Rules to supersede conflicting laws. Accordingly, a time limit in a rule that is a restatement of a deadline imposed by statute or an incorporation by reference of such a deadline may not be extended under this rule. However, if a statute merely incorporates by reference a time period imposed by a rule, that period may be extended.

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

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EVIDENCE RULES

MEMORANDUM

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

FROM: Hon. Robert M. Dow, Jr., Chair
Advisory Committee on Civil Rules

RE: New Civil Rule 87 (Civil Rules Emergency)

DATE: May 21, 2021

The sustained efforts that brought a great measure of uniformity among all of the proposed rules for rules emergencies are described in the joint section of this Report. This section explains the considerations that require nonuniformity in three aspects of Rule 87.

These three areas of nonuniformity appear in rule text in this order: (1) Rule 87(b)(1)(B), which describes Judicial Conference responsibility to select which of the emergency rules to authorize by a declaration; (2) Emergency Rules 4 and 6(b)(2) themselves; and (3) the provisions for completing action authorized by an order entered under a declaration of a civil rules emergency after the declaration ends. Explaining these aspects of Rule 87 follows a different order because understanding the nature of the emergency rules and the rules for completing authorized action after a declaration ends is necessary to understand the provision for selecting which emergency rules to include in a declaration.

The Emergency Rules. Nonuniformity with other sets of rules is a given in adopting Emergency Civil Rules. The rules actually proposed were identified by reading through all Civil Rules, looking for texts that might raise obstacles to effective procedure in emergency circumstances. Each reporter and some subcommittee members undertook this task. Long initial lists were generated. Careful examination and subcommittee deliberations, however, continually reduced the list to a small set of rules. This process was influenced by reports about widespread success in developing the inherent flexibility of the rules to meet the problems arising from the Covid-19 pandemic. The decision to proceed with Emergency Rules 4 and 6(b)(2), indeed, rested on examination of the rules texts for barriers to effective action, not on reports of actual problems in practice.

Rule 87(c)(1) includes several Emergency Rules 4. Each authorizes a court to order service by a method that is reasonably calculated to give notice. A court order is required, ordinarily resting on a case-specific evaluation of the emergency circumstances; the nature of the case; and the nature of the parties – particularly the defendant, recognizing that some methods of service may be well designed to provide notice to some defendants but not others. It may be, however, that some emergency circumstances might justify a standing order that provides general authority for service by a specified means, such as by commercial carrier with confirmation of delivery. Only some parts of Rule 4 are brought within the Emergency Rules. Rules 4(e), (h)(1), (i), and (j)(2) address service on individuals; corporations, partnerships, and other associations; the United States and its agencies, officers, and employees; and state or local governments. One part of Rule 4(g) is also included, providing for service on a minor or incompetent person in a judicial district of the United States. The omitted parts of Rule 4 all tie to service in a foreign country or service on a foreign state or its subdivision. These situations are pervasively affected by international agreements or the Foreign Sovereign Immunities Act and seemed better left out of the emergency rules.

Rule 87(c)(2) creates Emergency Rule 6(b)(2). Rule 6(b)(2) qualifies the general power in Rule 6(b)(1) to extend a time to act by an impermeable barrier: "A court must not extend the time to act under Rules 50(b), 52(b), 59(b), (d), and (e), and 60(b)." The time to act on post-judgment motions under Rules 50, 52, and 59 is set at 28 days, reflecting the powerful concern for finality that arises once judgment is entered. If the judgment is to be upset by the trial court, it should be done promptly. Whether or not the trial court grants relief, it is important to set or reset appeal time to avoid a lengthy limbo of uncertainty. Rule 60(b) covers motions for relief from judgment on grounds that are not available within the 28-day period for the more regular post-judgment motions, although motions that seek relief available under Rules 52 and 59 – perhaps even Rule 50(b) – are frequently made within 28 days and captioned under Rule 60(b). Rule 60(c)(1) sets the time for Rule 60(b) motions as "a reasonable time – and for reasons (1), (2), and (3) no more than a year after entry of the judgment." (Subdivision (1) covers mistake, inadvertence, surprise, or excusable neglect; (2) covers newly discovered evidence; and (3) covers fraud, misrepresentation, or misconduct.)

The basic purpose of Emergency Rule 6(b)(2) is to substitute "may extend" for "must not extend" the time to act. Emergency circumstances may make it extraordinarily difficult or literally impossible to prepare and file a motion within the prescribed periods. The opportunity to seek relief from the trial court is an important part of a structure that integrates trial courts with the

courts of appeals. Creating authority for the trial judge to preserve the opportunity for post-judgment relief is important for the trial court, the parties, and the court of appeals.

The clear basic purpose of Emergency Rule 6(b)(2) is made complicated, however, by the interdependence of post-judgment relief in the trial court with the rules that set appeal time. The basic framework is provided by Appellate Rule 4(a)(4)(A). A timely motion under Rules 50, 52, and 59 restarts appeal time "for all parties from the entry of the order disposing of the last such remaining motion." A special provision for Rule 60 motions, Rule 4(a)(4)(A)(vi), gives the same effect if the motion "is filed no later than 28 days after the judgment is entered." This provision reflects the prospect that in most circumstances a Rule 60(b) motion will be timely – and for that matter is likely to be needed only – after 28 days from the judgment. In the interest of securing prompt review of the judgment, a Rule 60(b) motion resets appeal time only when it is made in the time authorized for the more common Rule 50, 52, and 59 motions. After that, a timely Rule 60(b) motion supports appeal from the order that grants or denies the motion, but does not support review of the judgment itself.

Integrating Emergency Civil Rule 6(b)(2) with Appellate Rule 4(a)(4)(A) proved a challenging task. Rule 4 is read and applied with great care. The times reflected in Rule 4 are mandatory and jurisdictional. A mistake in calculating appeal time is fatal. Rule 4 has been revised more than once to provide relief from mistakes made by those not intimately familiar with its terms. Many exchanges, and more than a few missteps, were needed to craft the provisions of Emergency Rule 6(b)(2)(B) that integrate the effects of a motion to extend the time to act with Rule 4. The task was made easier by the proposal of the Appellate Rules Committee to amend Rule 4(a)(4)(A)(vi), striking the explicit provision for a Rule 60 motion made within 28 days and substituting "if the motion is filed within the time allowed for filing a motion under Rule 59." But even with that help, Rule 6(b)(2)(B) remains an inseverable whole.

Completing Acts After a Declaration Ends. The differences between the several Emergency Rules 4 and Emergency Rule 6(b)(2) account for a second area of nonuniformity. Earlier Rule 87 drafts included a common subdivision (d) that authorized completion of an act authorized by an order entered under an emergency rule but not completed when the declaration ends. The test was borrowed from the Rule 86(a)(2) provision for applying rule amendments to proceedings pending on the effective date of the amendment "unless the court determines that applying them in a particular action would be infeasible or work an injustice." The analogy never seemed precise. More importantly, further reflection showed that the same standard was not suitable for the methods of serving process as for motions for post-judgment relief. Once a motion is made under Emergency Rule 6(b)(2), it is imperative to maintain the complete system for integrating the motion with appeal time, starting with the provision that resets appeal time to run from an order denying any extension of the time to make a post-judgment motion and on through the rest. That is accomplished by Emergency Rule 6(b)(2)(C). The methods of serving process do not encounter problems similar to the need to integrate with Appellate Rule 4. If a declaration of a rules emergency ends after an order authorizes service by a method or methods not authorized by Civil Rule 4, the circumstances may make it appropriate to allow completion of service under the order, to modify the order while still allowing some specified means not authorized by Rule 4, or to withdraw the order and fall back on the ordinary methods authorized by Rule 4.

Judicial Conference Selection of Emergency Rules. The character of Emergency Rules 4 and 6(b)(2) determines the reasons to depart in Rule 87(b)(1)(B) from the formula used in Criminal Rule 62(b)(1)(B) and Bankruptcy Rule 9038(b)(1)(B): "state any restrictions on the authority granted in [(c)]."

The Emergency Rules 4 provide that a court may order service of process by a method not authorized by the corresponding subdivision of Rule 4. It makes sense to leave the Judicial Conference free to select which categories of defendants are made eligible for service by an order that depends on the particular emergency and, ordinarily, the specific circumstances of a specific case. It does not make sense to impose on the Judicial Conference the responsibility to consider and evaluate the possibility of defining more specific "restrictions" on the methods of service that may be appropriate in specific circumstances. What is appropriate is a choice of which of the Emergency Rules 4 to authorize, not some further limit.

Emergency Rule 6(b)(2) presents an even more compelling need to authorize all of the rule, without any thought of "restrictions." The intricate integration of this rule with Appellate Rule 4(a)(4)(A) cannot be severed by authorizing some parts but not others.

Are These Emergency Civil Rules Necessary? One final caution. Rule 87 is proposed for publication as part of a package with the emergency provisions to be published for the Appellate, Bankruptcy, and Criminal Rules. Much may be learned from public comments and testimony. It may be that additional Emergency Civil Rules should be added, perhaps requiring adjustments in the general provisions. Or it may be that in the end, it will seem better to abandon Rule 87, relying instead on amendments of any Civil Rules that can be revised to adjust for emergency circumstances in ways that reflect the success that most of the Civil Rules have met during the COVID-19 pandemic. Those choices can be made after completion of the publication process.

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

Rule 87. Civil Rules Emergency

(a) Conditions for an Emergency. The Judicial Conference of the United States may declare a Civil Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with these rules.

(b) Declaring an Emergency.

(1) ***Content.*** The declaration must:

(A) designate the court or courts affected;

(B) adopt all the emergency rules in Rule 87(c) unless it excepts one or more of them; and

[1] New material is underlined in red.

(C) be limited to a stated period of no more than 90 days.

(2) ***Early Termination.*** The Judicial Conference may terminate a declaration for one or more courts before the termination date.

(3) ***Additional Declarations.*** The Judicial Conference may issue additional declarations under this rule.

(c) Emergency Rules.

(1) ***Emergency Rules 4(e), (h)(1), (i), and (j)(2), and for serving a minor or incompetent person.*** The court may by order authorize service on a defendant described in Rule 4(e), (h)(1), (i), or (j)(2)—or on a minor or incompetent person in a judicial district of the United States—by a method that is reasonably calculated to give notice. A

method of service may be completed under the order after the declaration ends unless the court, after notice and an opportunity to be heard, modifies or rescinds the order.

(2) *Emergency Rule 6(b)(2).*

(A) *Extension of Time to File Certain Motions.* A court may, by order, apply Rule 6(b)(1)(A) to extend for a period of no more than 30 days after entry of the order the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(B) *Effect on Time to Appeal.* Unless the time to appeal would otherwise be longer:

(i) if the court denies an extension, the time to file an appeal runs for all parties

from the date the order denying the motion to extend is entered;

(ii) if the court grants an extension, a motion authorized by the court and filed within the extended period is, for purposes of Appellate Rule 4(a)(4)(A), filed "within the time allowed by" the Federal Rules of Civil Procedure; and

(iii) if the court grants an extension and no motion authorized by the court is made within the extended period, the time to file an appeal runs for all parties

from the expiration of the extended period.

(C) *Declaration Ends.* An act authorized by an order under this emergency rule may be completed under the order after the emergency declaration ends.

Committee Note

Subdivision (a). This rule addresses the prospect that extraordinary circumstances may so substantially interfere with the ability of the court and parties to act in compliance with a few of these rules as to substantially impair the court's ability to effectively perform its functions under these rules. The responses of the courts and parties to the COVID-19 pandemic provided the immediate occasion for adopting a formal rule authorizing departure from the ordinary constraints of a rule text that substantially impairs a court's ability to perform its functions. At the same time, these responses showed that almost all challenges can be effectively addressed through the general rules provisions. The emergency rules authorized by this rule allow departures only from a narrow range of rules that, in rare and extraordinary circumstances, may raise unreasonably high obstacles to effective performance of judicial functions.

The range of the extraordinary circumstances that might give rise to a rules emergency is wide, in both time and space. An emergency may be local—familiar examples include hurricanes, flooding, explosions, or civil unrest. The circumstance may be more widely regional, or national. The

emergency may be tangible or intangible, including such events as a pandemic or disruption of electronic communications. The concept is pragmatic and functional. The determination of what relates to public health or safety, or what affects physical or electronic access to a court, need not be literal. The ability of the court to perform its functions in compliance with these rules may be affected by the ability of the parties to comply with a rule in a particular emergency. A shutdown of interstate travel in response to an external threat, for example, might constitute a rules emergency even though there is no physical barrier that impedes access to the court or the parties.

Responsibility for declaring a rules emergency is vested exclusively in the Judicial Conference. But a court may, absent a declaration by the Judicial Conference, utilize all measures of discretion and all the flexibility already embedded in the character and structure of the Civil Rules.

A pragmatic and functional determination whether there is a Civil Rules emergency should be carefully limited to problems that cannot be resolved by construing, administering, and employing the flexibility deliberately incorporated in the structure of the Civil Rules. The rules rely extensively on sensible accommodations among the litigants and on wise management by judges when the litigants are unable to resolve particular problems. The effects of an emergency on the ability of the court and the parties to comply with a rule should be determined in light of the flexible responses to particular situations generally available under that rule. And even if a rules emergency is declared, the court and parties should explore the opportunities for flexible use of a rule before turning to rely on an emergency departure. Adoption of this rule, or a declaration of a rules emergency, does not imply any limitation of the courts' ability to respond to emergency

circumstances by wise use of the discretion and opportunities for effective adaptation that inhere in the Civil Rules themselves.

Subdivision (b). A declaration of a rules emergency must designate the court or courts affected by the emergency. An emergency may be so local that only a single court is designated. The declaration adopts all of the emergency rules listed in subdivision (c) unless it excepts one or more of them. An emergency rule supplements the Civil Rule for the period covered by the declaration.

A declaration must be limited to a stated period of no more than 90 days, but the Judicial Conference may terminate a declaration for one or more courts before the end of the stated period. A declaration may be succeeded by a new declaration made under this rule. And additional declarations may be made under this rule before an earlier declaration terminates. An additional declaration may modify an earlier declaration to respond to new emergencies or a better understanding of the original emergency. Changes may be made in the courts affected by the emergency or in the emergency rules adopted by the declaration.

Subdivision (c). Subdivision (c) lists the only Emergency Rules that may be authorized by a declaration of a rules emergency.

Emergency Rules 4. Each of the Emergency Rules 4 authorizes the court to order service by means not otherwise provided in Rule 4 by a method that is appropriate to the circumstances of the emergency declared by the Judicial Conference and that is reasonably calculated to give notice. The nature of some emergencies will make it appropriate to rely on case-specific orders tailored to the particular emergency and the identity of the parties, taking account of

the fundamental role of serving the summons and complaint in providing notice of the action and the opportunity to respond. Other emergencies may make it appropriate for a court to adopt a general practice by entering a standing order that specifies one or possibly more than one means of service appropriate for most cases. Service by a commercial carrier requiring a return receipt might be an example.

The final sentence of Emergency Rule 4 addresses a situation in which a declaration of a civil rules emergency ends after an order for service is entered but before service is completed. Service may be completed under the order unless the court modifies or rescinds the order. A modification that continues to allow a method of service specified by the order but not within Rule 4, or rescission that requires service by a method within Rule 4, may provide for effective service. But it may be better to permit completion of service in compliance with the original order. For example, the summons and complaint may have been delivered to a commercial carrier that has not yet delivered them to the party to be served. Allowing completion and return of confirmation of delivery may be the most efficient course. Allowing completion of a method authorized by the order may be particularly important when a claim is governed by a statute of limitations that requires actual service within a stated period after the action is filed.

Emergency Rule 6(b)(2). Emergency Rule 6(b)(2) supersedes the flat prohibition in Rule 6(b)(2) of any extension of the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b). The court may extend those times under Rule 6(b)(1)(A). Rule 6(b)(1)(A) requires the court to find good cause. Some emergencies may justify a standing order that finds good cause in general terms, but the period allowed by the extension ordinarily will depend on case-specific factors as well.

Rule 6(b)(1)(A) authorizes the court to extend the time to act under Rules 50 (b) and (d), 52(b), 59(b), (d), and (e), and 60(b) only if it acts, or if a request is made, before the original time allowed by those rules expires. For all but Rule 60(b), the time allowed by those rules is 28 days after the entry of judgment. For Rule 60(b), the time allowed is governed by Rule 60(c)(1), which requires that the motion be made within a reasonable time, and, for motions under Rule 60(b)(1), (2), or (3), no more than a year after the entry of judgment. The maximum extension is not more than 30 days after entry of the order granting an extension. If the court acts on its own, extensions for Rule 50, 52, and 59 motions can extend no later than 58 days after the entry of judgment. If an extension is sought by motion, an extension can extend no later than 30 days after entry of the order granting the extension. [An extension of the time to file a Rule 60(b) motion would be superfluous so long as the motion is made within a reasonable time, except for the circumstance in which a rules emergency declaration is in effect and the emergency circumstances make it reasonable to permit a motion beyond the one-year limit for motions under Rule 60(b)(1), (2), or (3).]

Special care must be taken to ensure that the parties understand the effect of an order granting or denying an extension on the time for filing a notice of appeal. Appeal time must be reset to support an orderly determination whether to order an extension and, if an extension is ordered, to make and dispose of any motion authorized by the extension.

Subparagraph 6(b)(2)(B) integrates the emergency rule with Appellate Rule 4(a)(4)(A) for four separate situations.

The first situation is governed by the initial text: "Unless the time to appeal would otherwise be longer." One example that illustrates this situation would be a motion by the plaintiff for a new trial within the time allowed by Rule 59, followed by a timely motion by the defendant for an extension of time to file a renewed motion for judgment as a matter of law under Rule 50(b). The court denies the motion for an extension without yet ruling on the plaintiff's motion. The time to appeal after denial of the plaintiff's motion is longer for all parties than the time after denial of the defendant's motion for an extension.

Item (B)(i) resets appeal time to run for all parties from the date of entry of an order denying a motion to extend. [The court may need some time to make a careful decision on the motion, although the time constraints imposed on post-judgment motions reflect the concerns that conduce to deciding as promptly as the emergency circumstances make possible.]

Items (B)(ii) and (iii) reset appeal time after the court grants an extended period to file a post-judgment motion. Appellate Rule 4(a)(4)(A) is incorporated, giving the authorized motion the effect of a motion filed "within the time allowed by" the Federal Rules of Civil Procedure. If more than one authorized motion is filed, appeal time is reset to run from the order "disposing of the last such remaining motion." If no authorized motion is made, appeal time runs from the expiration of the extended period.

These provisions for resetting appeal time are supported for the special timing provisions for Rule 60(b) motions by a parallel amendment of Appellate Rule 4(a)(4)(A)(vi) that resets appeal time on a timely motion "for relief under Rule 60 if the motion is filed within the time allowed for filing a motion under Rule 59." This

Rule 4 provision, as amended, will assure that a Rule 60(b) motion resets appeal time for review of the final judgment only if it is filed within the 28 days ordinarily allowed for post-judgment motions under Rule 59 or any extended period for filing a Rule 59 motion that a court might authorize under Emergency Rule 6(b)(2). A timely Rule 60(b) motion filed after that period, whether it is timely under Rule 60(c)(1) or under an extension ordered under Emergency Rule 6(b)(2), supports an appeal from disposition of the Rule 60(b) motion, but does not support an appeal from the [original] final judgment.

Emergency Rule 6(b)(2)(C) addresses a situation in which a declaration of a Civil Rules emergency ends after an order is entered, whether the order grants or denies an extension. This rule preserves the integration of Emergency Rule 6(b)(2) with the appeal time provisions of Appellate Rule 4(a)(4)(A). An act authorized by the order, which may be either a motion or an appeal, may be completed under the order. If the order denies a timely motion for an extension, the time to appeal runs from the order. If an extension is granted, a motion may be filed within the extended period. Appeal time starts to run from the order that disposes of the last remaining authorized motion. If no authorized motion is filed within the extended period, appeal time starts to run on expiration of the extended period. Any other approach would sacrifice opportunities for post-judgment relief or appeal that could have been preserved if no emergency rule motion had been made.

Emergency rules provisions were added to the Appellate, Bankruptcy, Civil, and Criminal Rules in the wake of the COVID-19 pandemic. They were made as uniform as possible. But each set of rules serves distinctive purposes, shaped by different origins, traditions, functions,

and needs. Different provisions were compelled by these different purposes.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
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MEMORANDUM

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

FROM: Hon. Raymond M. Kethledge, Chair
Advisory Committee on Criminal Rules

RE: New Criminal Rule 62 (Criminal Rules Emergency)

DATE: June 1, 2021 (revised June 22, 2021)[1]

This report presents the Advisory Committee's draft emergency rule—Rule 62. As noted in the Advisory Committee's December 2020 report to the Standing Committee, the draft reflects input from the bench and bar, including comments solicited from all chief judges, as well as feedback from judges and attorneys from districts hard hit by hurricanes or the pandemic at a day-long miniconference held last summer. Several principles have guided the Advisory Committee's work, namely: (1) the rules protect constitutional and statutory rights and other interests, and should not be set aside lightly;[2] (2) any new rule for emergencies must address the range of

[1] Revised to incorporate changes to the committee note that were made by the Committee on Rules of Practice and Procedure (Standing Committee) at its June 22, 2021 meeting. The Standing Committee also made minor wording changes to the text of proposed Rules 62(e)(3) and 62(e)(3)(B).

[2] Indeed, one member has consistently dissented from the conclusion that the Advisory Committee should draft an emergency rule at all, because among other reasons it would inevitably tend to normalize exceptions to the critical safeguards provided by the Criminal Rules.

circumstances that might arise; (3) consideration of the relevant provisions of the CARES Act but is not based on them; and (4) the rule should be developed in consultation with people involved in these issues on the ground.

The Advisory Committee presented a draft of Rule 62 to the Standing Committee at its last meeting. Since then, the Advisory Committee continued to revise the draft, in part to respond to input from members of the Standing Committee and others. At its May 11 meeting, the Advisory Committee approved the draft rule and note, with the understanding that language in the committee note for the last paragraph of the rule would be circulated to the Advisory Committee for approval by email. The proposal included with this report reflects the changes approved unanimously by email on May 25 along with style changes.[3] Additional changes suggested after the meeting are bracketed for consideration by the Standing Committee.

After a brief review of the uniform provisions of all of the proposed emergency rules, this report focuses on subdivisions (c), (d), and (e), which are unique to the draft emergency rule for criminal proceedings.

I. Subdivisions (a) and (b): The Uniform Provisions

With guidance from Professor Capra and assistance from the style consultants, the reporters of the various advisory committees have coordinated the language among their committees' proposed rules to make them uniform when it made sense to do so. Subdivisions (a) and (b) of the proposed Rule 62 contain these uniform provisions.[4]

As discussed at the last Standing Committee, however, the proposed Criminal Rule contains a second provision that the other rules do not. That provision is (a)(2), which now requires a determination that "no feasible alternative measures would sufficiently address the impairment within a reasonable time." This provision ensures that the emergency provisions in subdivisions (d) and (e) would be invoked only as a last resort, given the critical interests protected by the existing rules of criminal procedure.

The current language of (a)(2) incorporates a suggestion made at the last Standing Committee meeting. There a member suggested that the Advisory Committee revise (a)(2) to require that any feasible alternative could "sufficiently address" rather than "eliminate" the impairment creating an emergency. The Advisory Committee agreed with that suggestion.

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[3] Following the Advisory Committee meeting, several minor corrections involving grammar, punctuation, and capitalization were made to the committee note as well.

[4] No one noticed until after the Advisory Committee's meeting that the inclusion of the phrase "from the date of the declaration" in (b)(1)(C) as approved by the Advisory Committee was not part of the uniform language the other advisory committees had adopted. After the meeting, Professor Capra pointed out that the phrase did not appear in the other rules and that the Judicial Conference should determine when the 90-day period begins. Because it was clear that the Advisory Committee had intended this provision to be uniform, the chair and the reporters agreed that the inconsistent phrase should be deleted from the version presented to the Standing Committee.

The committee note for paragraph (a)(2) explains:

> [P]aragraph (a)(2) requires that even if the Judicial Conference determines the extraordinary circumstances defined in (a)(1), it cannot declare a Criminal Rules emergency unless it also determines that no feasible alternative measures would sufficiently address the impairment and allow the affected court to perform its functions in compliance with the rules within a reasonable time. For example, in the districts devastated by hurricanes Katrina and Maria, the ability of courts to function in compliance with the rules was substantially impaired for extensive periods of time. But there would have been no Criminal Rules emergency under this rule because those districts were able to remedy that impairment and function effectively in compliance with the rules by moving proceedings to other districts under 28 U.S.C. § 141. Another example might be a situation in which the judges in a district are unable to carry out their duties as a result of an emergency that renders them unavailable, but courthouses remain safe. The unavailability of judges would substantially impair that court's ability to function in compliance with the rules, but temporary assignment of judges from other districts under 28 U.S.C. § 292(b) and (d) would eliminate that impairment.

II. Subdivision (c): Effect of Termination

Subdivision (c) provides a narrow exception for certain proceedings commenced under a declaration of emergency but not yet completed when the declaration terminates. If the court finds that it cannot complete such a proceeding in compliance with the rules, or that resuming compliance with the rules would work an injustice, the court may, with the defendant's consent, complete the proceeding using procedures authorized by the emergency rule. The rule recognizes the need for some flexibility during the transition period, while also recognizing the importance of returning promptly to compliance with the rules.

Since the Standing Committee's last meeting, the Advisory Committee has made several changes to this provision, which was then subdivision (e). The style consultants as well as others were uncertain whether the term "these rules" in this provision referred to the preceding parts of Rule 62, all the rules of criminal procedure other than Rule 62, or both. To clarify that "these rules" means rules other than Rule 62, as in (a), the Advisory Committee approved two changes in the text and added a new paragraph to the committee note. First, the provision was moved up from its former location at the end of the rule, to become subdivision (c), nearer to the other reference to "these rules" in subdivision (a). The Advisory Committee thought this positioning would make readers less likely to interpret "these rules" to refer to the provisions in (d) and (e). Second, the Advisory Committee replaced the words "complying with these rules" with "resuming compliance with these rules." Finally, the Advisory Committee added a clarifying paragraph at the beginning of the note, which reads:

> This rule defines the conditions for a Criminal Rules emergency that would support a declaration authorizing a court to depart from one or more of the other Federal Rules of Criminal Procedure. Rule 62 refers to the other, non-emergency rules—currently Rules 1-61—as "these rules." This committee note uses "these

rules" or "the rules" to refer to the non-emergency rules, and uses "this rule" or "this emergency rule" to refer to new Rule 62.

The other change to the text was the addition of "with the defendant's consent." An Advisory Committee member was concerned about finishing a proceeding with emergency procedures after a declaration has ended, without the defendant's consent. The Advisory Committee agreed that, if resuming full compliance with the rules is not yet feasible for a particular proceeding despite the termination of a declaration, the court should not be permitted to continue with emergency procedures without the defendant's consent. The Advisory Committee thought this situation would seldom arise: most proceedings covered by the emergency provisions are likely to be relatively short, courts can anticipate the expiration of declarations and schedule accordingly, and defendants are unlikely to withhold consent to finishing a proceeding after a declaration has ended with emergency procedures the defendant consented to earlier. But if a defendant did insist on resuming compliance with normal procedures, the court should be able to resume those procedures relatively quickly if indeed the emergency no longer substantially impairs the court's ability to function under the existing rules. Thus, on balance, the Advisory Committee concluded that the defendant's interests in the protections provided by the rules are more important than the costs of any delay needed to resume compliance with the rules.

Finally, the Advisory Committee addressed concerns that the consent requirement would allow a defendant to halt a trial in which more than six alternates had been impaneled under (d)(3) while the declaration was in force. The Advisory Committee concluded that the consent requirement would not permit this outcome: the "proceeding" authorized by (d)(3) is simply the impanelment of additional alternates, which itself would have been completed before the declaration terminated. To clarify this point further, the Advisory Committee added the second sentence of the portion of the committee note discussing subdivision (c).

The committee note explains:

> **Subdivision (c).** In general, the termination of a declaration of emergency ends all authority to depart from the other Federal Rules of Criminal Procedure. It does not terminate, however, the court's authority to complete an ongoing trial with alternate jurors who have been impaneled under (d)(3).[5] In addition, subdivision (c) carves out a narrow exception for certain proceedings commenced under a declaration of emergency but not completed before the declaration terminates. If it would not be feasible to conclude a proceeding commenced before a declaration terminates with procedures that comply with the rules, or if resuming compliance with the rules would work an injustice, the court may complete that proceeding using procedures authorized by this emergency rule, but only if the defendant consents to the use of emergency procedures after the declaration ends. Subdivision (c) recognizes the need for some accommodation and flexibility during the transition period, but also the importance of returning promptly to the rules to protect the defendant's rights and other interests.

[5] After "(d)(3)," the Standing Committee added the following clause: "because the proceeding authorized by (d)(3) is the completed impanelment."

III. Subdivisions (d) and (e): Authority to Depart from the Rules

After considering comments from the Standing Committee during its last meeting, the Advisory Committee voted to remove from Rule 62 provisions in the earlier draft that would have authorized a court in certain circumstances to issue a summons instead of a warrant, and to conduct a bench trial without the government's consent.

A. Paragraph (d)(1): Public Access

This part of the rule addresses the courts' obligation to provide alternative access to public proceedings when emergency conditions substantially impair in-person attendance. For example, even if conditions would allow participants to attend in person, the rule requires that alternative access be provided if capacity limits necessary to protect health and safety would exclude in-person attendance by the public. The Advisory Committee accepted the suggestion of a member of the Standing Committee to change the condition triggering a duty to provide alternative access from "preclusion" of in-person public attendance to "substantial impairment" of such attendance. Even when emergency conditions do not entirely "preclude" the public from attending a proceeding, a failure to provide reasonably available alternative access to criminal proceedings for members of the public could risk violating the First and Sixth Amendment rights to public access.

In response to a separate concern by several members that alternative access should be contemporaneous when possible, the Advisory Committee also added "contemporaneous if feasible" at the end of this provision. Although the Advisory Committee declined to detail how such alternative access must be provided, options for providing contemporaneous alternative access were added to the committee note. Finally, ", including victims," was added after "the public" in the committee note to emphasize the importance of providing victims access to public proceedings in criminal cases.

As revised, the committee note states:

> **Paragraph (d)(1)** addresses the courts' obligation to provide alternative access when emergency conditions have substantially impaired in-person attendance by the public at public proceedings. The term "public proceeding" was intended to capture proceedings that the rules require to be conducted "in open court," proceedings to which a victim must be provided access, and proceedings that must be open to the public under the First and Sixth Amendments. The rule creates a duty to provide the public, including victims, with "reasonable alternative access," notwithstanding Rule 53's ban on the "broadcasting of judicial proceedings."[6]
>
> The duty arises only when the substantial impairment of in-person access by the public is caused by emergency conditions. The rule does not apply when

[6] After "proceedings," the Standing Committee added the following sentence: "Under appropriate circumstances, the reasonable alternative could be audio access to a video proceeding."

> reasons other than emergency conditions restrict access. The duty arises not only when emergency conditions substantially impair the attendance of anyone, but also when conditions would allow participants but not the public to attend, as when capacity must be restricted to prevent contagion.
>
> Alternative access must be contemporaneous when feasible. For example, if public health conditions limit courtroom capacity, contemporaneous transmission to an overflow courthouse space ordinarily could be provided. In a proceeding conducted by videoconference, a court could provide access to the audio transmission if access to the video transmission is not feasible.[7]

B. Paragraph (d)(2): Written Consents, Waivers, and Signatures of the Defendant

This provision was prompted by the difficulty of complying with signature requirements when emergency conditions limit a defendant's ability to sign. The Advisory Committee made one change to this provision, namely to replace "these rules" with "any rule, including this rule." This change clarifies that (d)(2) applies not only to the existing rules, but also to Rule 62 (specifically, to the requirement of a written request under (e)(3)(B)).

The Advisory Committee considered but declined to change the requirement that if, the defendant cannot consent on the record, counsel providing consent for the defendant must file an affidavit. There was some support to allow something less formal than an affidavit, such as a letter. But the Advisory Committee concluded that a declaration—which is less burdensome for counsel to produce—is already permitted by 28 U.S.C. § 1746 whenever an affidavit is required. The Advisory Committee also favored keeping the requirement of an affidavit (or declaration) because a letter would not consistently be filed as part of the record. Making the defendant's consent clear in the record was essential.

Several members supported a policy that the court should have a colloquy with defendant on the issue of consent, both to ensure true consent and a complete record. But the Advisory Committee thought the subject of a colloquy was more appropriate for the committee note than the rule text. As amended, the note now provides:

> **Paragraph (d)(2)** recognizes that emergency conditions may disrupt compliance with a rule that requires the defendant's signature, written consent, or written waiver. If emergency situations limit the defendant's ability to sign, (d)(2) provides an alternative, allowing defense counsel to sign if the defendant consents. To ensure that there is a record of the defendant's consent to this procedure, the amendment provides two options: (1) defense counsel may sign for the defendant if the defendant consents on the record, or, (2) without the defendant's consent on the record, defense counsel must file an affidavit attesting to the defendant's consent to the procedure. The defendant's oral agreement on the record alone will not substitute for the defendant's signature. The written document signed by

[7] This sentence was deleted by the Standing Committee.

counsel on behalf of the defendant provides important additional evidence of the defendant's consent.

The court may sign for a pro se defendant, if that defendant consents on the record. There is no provision for the court to sign for a counseled defendant, even if the defendant provides consent on the record. The Committee concluded that rules requiring the defendant's signature, written consent or written waiver protect important rights, and permitting the judge to bypass defense counsel and sign once the defendant agrees could result in a defendant perceiving pressure from the judge to sign. Requiring a writing from defense counsel is an essential protection when the defendant's own signature is not reasonably available because of emergency conditions.

It is generally helpful for the court to conduct a colloquy with the defendant to ensure that defense counsel consulted with the defendant with regard to the substance and import of the pleading or document being signed, and that the consent to allow counsel to sign was knowing and voluntary.

C. Paragraph (d)(3): Alternate Jurors

This provision authorizes a court to empanel more than six alternate jurors, which could be particularly useful under circumstances, such as a pandemic, that increase the probability that original jurors would be unable to complete the trial. Indeed, during the meeting, several members related how alternate jurors have been used for trials conducted during the pandemic. There were no changes to this provision.

The committee note states:

Paragraph (d)(3) allows the court to impanel more than six alternate jurors, creating an emergency exception to the limit imposed by Rule 24(c)(1). This flexibility may be particularly useful for a long trial conducted under emergency conditions—such as a pandemic—that increase the likelihood that jurors will be unable to complete the trial. Because it is not possible to anticipate all of the situations in which this authority might be employed, the amendment leaves to the discretion of the district court whether to impanel more alternates, and if so, how many. The same uncertainty about emergency conditions that supports flexibility in the rule for the provision of additional alternates also supports avoiding mandates for additional peremptory challenges when more than six alternates are provided. Nonetheless, if more than six alternates are impaneled and emergency conditions allow, the court should consider permitting each party one or more additional peremptory challenges, consistent with the policy in Rule 24(c)(4).

D. Paragraph (d)(4): Rule 35 Deadlines

This provision is unchanged from the earlier Rule 62. Rule 45(b)(2) bars extensions for motions to correct or reduce a sentence under Rule 35. The Advisory Committee concluded that

courts should have limited authority to extend the Rule 35 deadlines "if emergency conditions provide good cause." Paragraph (d)(4) permits these extensions only as "reasonably necessary." The Advisory Committee concluded there was no need to state the obvious point that, in making a determination of good cause, courts should consider emergency situations. This point was added to the draft committee note.

The Department of Justice requested that the following sentence be added to the committee note: "Nothing in this provision is intended to expand the authority to correct a sentence, which is intended to be very narrow and to extend only to those cases in which an obvious error or mistake has occurred in the sentence." The Advisory Committee approved a modified version that did not include the last clause, which is already part of the committee note following Rule 35. The Advisory Committee also changed the end of the sentence to read "authority to correct or reduce a sentence under Rule 35."

The committee note reads:

> **Paragraph (d)(4)** provides an emergency exception to Rule 45(b)(2), which prohibits the court from extending the time to take action under Rule 35 "except as stated in that rule." When emergency conditions provide good cause for extending the time to take action under Rule 35, the amendment allows the court to extend the time for taking action "as reasonably necessary." The amendment allows the court to extend the 14-day period for correcting a clear error in the sentence under Rule 35(a) and the one-year period for government motions for sentence reductions based on substantial assistance under Rule 35(b)(1). Nothing in this provision is intended to expand the authority to correct or reduce a sentence under Rule 35. This emergency rule does not address the extension of other time limits because Rule 45(b)(1) already provides the necessary flexibility for courts to consider emergency circumstances. It allows the court to extend the time for taking other actions on its own or on a party's motion for good cause shown.

E. Subdivision (e): Videoconferencing and Teleconferencing

1. Introduction

Subdivision (e) provides authority to use virtual conferencing technology when emergency conditions limit the physical presence of participants at criminal proceedings. The Advisory Committee concluded that, given the critical interests served by holding proceedings in-court, any authority to substitute virtual for physical presence must extend no further than necessary.

The Advisory Committee's draft rule incorporates lessons learned during recent experience with virtual proceedings. The Advisory Committee considered input from its members, reports on court operations from various sources, local orders, suggestions solicited from chief judges around the country by Judge Jim Dever, chair of the Rule 62 Subcommittee, and the valuable insights of practitioners who attended the miniconference last summer. As a result, the proposed rule differs from the CARES Act in several respects. Like the CARES Act, subdivision (e) is arranged by type

of proceeding. Proceedings with the fewest restrictions on the use of conferencing technology appear first, followed by proceedings with more stringent prerequisites, again like the CARES Act. The draft rule separates proceedings into three groups, each with a different set of requirements. (This differs from the CARES Act, which provides separate requirements for only two groups of proceedings—the first consisting of an enumerated list of pre- and post-trial proceedings, and the other limited to plea and sentencing proceedings under Rules 11 and 32.)

The first paragraph addresses videoconferencing for proceedings that courts may already conduct by videoconference with the defendant's consent under existing Rules 5, 10, 40, and 43(b)(2): initial appearances, arraignments, and certain misdemeanor proceedings. The second paragraph regulates proceedings that are defined not by an enumerated list, but instead by the more inclusive specification that the proceeding be one at which the defendant has a right to be present (other than proceedings addressed in the first and third sections, and trial). The third paragraph addresses pleas and sentencings, where use of conferencing is most restricted, as under the CARES Act. Paragraph (e)(4) addresses a court's authority to use teleconferencing generally.

The committee note introducing subdivision (e) states:

> **Subdivision (e)** provides authority for a court to use videoconferencing or teleconferencing under specified circumstances after the declaration of a Criminal Rules emergency. The term "videoconferencing" is used throughout, rather than the term "video teleconferencing" (which appears elsewhere in the rules), to more clearly distinguish conferencing with visual images from "teleconferencing" with audio only. The first three paragraphs in (e) describe a court's authority to use videoconferencing, depending upon the type of proceeding, while the last describes a court's authority to use teleconferencing when videoconferencing is not reasonably available. The defendant's consent to the use of conferencing technology is required for all proceedings addressed by subdivision (e).
>
> Subdivision (e) applies to the use of videoconferencing and teleconferencing for the proceedings defined in paragraphs (1) through (3), for all or part of the proceeding, by one or more participants. But it does not regulate the use of video and teleconferencing technology for all possible proceedings in a criminal case. It does not speak to or prohibit the use of videoconferencing or teleconferencing for proceedings, such as scheduling conferences, at which the defendant has no right to be present. Instead, it addresses three groups of proceedings: (1) proceedings for which the rules already authorize videoconferencing; (2) certain other proceedings at which a defendant has the right to be present, excluding felony trials; and (3) felony pleas and sentencings. The new rule does not address the use of technology to maintain communication with a defendant who has been removed from a proceeding for misconduct.

2. Paragraph (e)(1): Videoconferencing for Proceedings Under Rules 5, 10, 40, and 43(b)(2)

This provision clarifies that the new rule does not change the court's existing authority to use videoconferencing for these proceedings, with one exception. Namely, when emergency conditions significantly impair the defendant's opportunity to consult confidentially with counsel, the court must ensure that the defendant will have that opportunity before and during videoconference proceedings under Rules 5, 10, 40, and 43(b)(2).

The committee note explains:

> **Paragraph (e)(1)** addresses first appearances, arraignments, and certain misdemeanor proceedings under Rules 5, 10, 40, and 43(b)(2), where the rules already provide for videoconferencing if the defendant consents. *See* Rules 5(f), 10(c), 40(d), and 43(b)(2) (written consent). This paragraph was included to eliminate any confusion about the interaction between existing videoconferencing authority and this rule. It clarifies that this rule does not change the court's existing authority to use videoconferencing for these proceedings, except that it requires the court to address emergency conditions that significantly impair the defendant's opportunity to consult with counsel. In that situation, the court must ensure that the defendant will have an adequate opportunity for confidential consultation before and during videoconference proceedings under Rules 5, 10, 40, and 43(b)(2). Paragraphs (e)(2) through (4) apply this requirement to all emergency video and teleconferencing authority granted by the rule after a declaration.
>
> The requirement is based upon experience during the COVID-19 pandemic, when conditions dramatically limited the ability of counsel to meet or even speak with clients. The Committee believed it was essential to include this prerequisite for conferencing under Rules 5, 10, 40, and 43(b)(2), as well as conferencing authorized only during a declaration by paragraphs (e)(2), (3), and (4), in order to safeguard the defendant's constitutional right to counsel. The rule does not specify any particular means of providing an adequate opportunity for private communication.

3. Paragraph (e)(2): Videoconferencing for Certain Proceedings at Which the Defendant has a Right to be Present

Paragraph (e)(2) addresses videoconferencing authority for proceedings "at which a defendant has a right to be present," other than trial and the proceedings under (e)(1) and (3). The draft note adds that this right to presence might be based on the Constitution, statute, or rule, and lists a few examples: revocations of release under Rule 32.1, preliminary hearings under Rule 5.1, and waivers of indictment under Rule 7(b).[8]

[8] The rule leaves it to courts to decide whether the defendant has a right to be present at certain proceedings if and when such issues arise. The Advisory Committee had three reasons for using the defendant's right to be present to define the second category of proceedings. First, the primary concern raised by conferencing technology was its impact on the defendant's right to be physically present. There

During a Criminal Rules emergency, an affected court may use videoconferencing for these proceedings only if three criteria are met. First, subparagraph (e)(2)(A) restricts videoconferencing authority to districts in which the chief judge has found that emergency conditions "substantially impair a court's ability to hold" proceedings in person within a reasonable time. Second, the court must find the defendant will have an adequate opportunity for confidential consultation with counsel before and during the proceeding. Third, the defendant must consent after consulting with counsel. The only substantive change to this part of the rule since the Standing Committee last saw it is that "substantially impair" replaced "preclude."

The committee note states:

> **Paragraph (e)(2)** addresses videoconferencing authority for proceedings "at which a defendant has a right to be present" under the Constitution, statute, or rule, excluding felony trials and proceedings addressed in either (e)(1) or (e)(3). Such proceedings include, for example, revocations of release under Rule 32.1, preliminary hearings under Rule 5.1, and waivers of indictment under Rule 7(b). During a declaration, an affected court may use videoconferencing for these proceedings, but only if the three circumstances are met.
>
> First, subparagraph (e)(2)(A) restricts videoconferencing authority to affected districts in which the chief judge (or alternate under 28 U.S.C. § 136(e)) has found that emergency conditions substantially impair a court's ability to hold proceedings in person within a reasonable time. Recognizing that important policy concerns animate existing limitations in Rule 43 on virtual proceedings, even with the defendant's consent, this district-wide finding is not an invitation to substitute virtual conferencing for in-person proceedings without regard to conditions in a particular division, courthouse, or case. If a proceeding can be conducted safely in-person within a reasonable time, a court should hold it in person.
>
> Second, subparagraph (e)(2)(B) conditions videoconferencing upon the court's finding that the defendant will have an adequate opportunity to consult confidentially with counsel before and during the proceeding. If emergency conditions prevent the defendant's presence, and videoconferencing is employed as a substitute, counsel will not have the usual physical proximity to the defendant during the proceeding and may not have ordinary access to the defendant before and after the proceeding.
>
> Third, subparagraph (e)(2)(C) requires that the defendant consent to videoconferencing after consulting with counsel. Insisting on consultation with

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was no need to address the use of conferencing technology at proceedings such as scheduling conferences, where the defendant had no right to be present in the first place. Second, this definition should provide guidance on the use of conferencing technology during certain proceedings that were not included in the enumerated list in the CARES Act, such as suppression hearings. Third, any attempt to enumerate the proceedings in which a defendant has a right to be present would have been complicated, because the constitutional analysis of that right might depend upon the circumstances of a particular proceeding. Thus, it made more sense to define this middle category by referencing the right to presence itself.

counsel before consent assures that the defendant will be informed of the potential disadvantages and risks of virtual proceedings. It also provides some protection against potential pressure to consent, from the government or the judge.

The Committee declined to provide authority in this rule to conduct felony trials without the physical presence of the defendant, even if the defendant wishes to appear at trial by videoconference during an emergency declaration. And this rule does not address the use of technology to maintain communication with a defendant who has been removed from a proceeding for misconduct. Nor does it address if or when trial participants other than the defendant may appear by videoconferencing.

4. Paragraph (e)(3): Videoconferencing for Pleas and Sentencings

Like the CARES Act, this rule imposes more restrictions on the use of videoconferencing at pleas and sentencings than on its use at other proceedings. The chief judge of the district (or alternate under 28 U.S.C. § 136(e)) must make a district-wide finding that emergency conditions substantially impair a court's ability to hold felony pleas and sentencings in person in that district. In addition, the defendant must affirmatively request—in writing—videoconferencing for a plea or sentencing proceeding. And the court must find "that further delay in that particular case would cause serious harm to the interests of justice." This requirement is quite similar to the finding required by the CARES Act, which requires that "the district judge in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice." Anecdotal accounts suggest that under this language district courts are generally limiting the use of videoconferencing in pleas or sentences to the types of cases suggested in the committee note.

Since the last Standing Committee review, the Advisory Committee approved multiple refinements to this provision, none of them particularly controversial. To ensure that both (2)(A) and (B) are met for videoconferencing a plea or sentence, "and (B)" was added. The parenthetical on chief judge succession was deleted as in (e)(2). The term "substantially impair" took the place of "preclude." And "within a reasonable time" was added to be consistent with the standard in (2)(A). The Advisory Committee also added to the note some language about ensuring the defendant's consent was knowing and voluntary.

The committee note now reads:

Paragraph (e)(3) addresses the use of videoconferencing for a third set of proceedings: felony pleas and sentencings under Rules 11 and 32. The physical presence of the defendant together in the courtroom with the judge and counsel is a critical part of any plea or sentencing proceeding. Other than trial itself, in no other context does the communication between the judge and the defendant consistently carry such profound consequences. The importance of defendant's physical presence at plea and sentence is reflected in Rules 11 and 32. The Committee's intent was to carve out emergency authority to substitute virtual presence for physical presence at a felony plea or sentence only as a last resort, in

cases where the defendant would likely be harmed by further delay. Accordingly, the prerequisites for using videoconferencing for a felony plea or sentence include three circumstances in addition to those required for the use of videoconferencing under (e)(2).

Subparagraph (e)(3)(A) requires that the chief judge of the district (or alternate under 28 U.S.C. § 136(e)) make a district-wide finding that emergency conditions substantially impair a court's ability to hold felony pleas and sentencings in person in that district within a reasonable time. This finding serves as assurance that videoconferencing may be necessary and that individual judges cannot on their own authorize virtual pleas and sentencings when in-person proceedings might be manageable with patience or adaptation. Although the finding serves as assurance that videoconferencing might be necessary in the district, as under (e)(2), individual courts within the district may not conduct virtual plea and sentencing proceedings in individual cases unless they find the remaining criteria of (e)(3) and (4) are satisfied.

Subparagraph (e)(3)(B) states that the defendant must request in writing that the proceeding be conducted by videoconferencing, after consultation with counsel. The substitution of "request" for "consent" was deliberate, as an additional protection against undue pressure to waive physical presence. This requirement of writing is, like other requirements of writing in the rules, subject to the emergency provisions in (d)(2), unless the relevant emergency declaration excludes the authority in (d)(2). To ensure that the defendant consulted with counsel with regard to this decision, and that the defendant's consent was knowing and voluntary, the court may need to conduct a colloquy with the defendant before accepting the written request.

Subparagraph (e)(3)(C) requires that before a court may conduct a plea or sentencing proceeding by videoconference, it must find that the proceeding in that particular case cannot be further delayed without serious harm to the interests of justice. Examples may include some pleas and sentencings that would allow transfer to a facility preferred by the defense, or result in immediate release, home confinement, probation, or a sentence shorter than the time expected before conditions would allow in-person proceedings. A judge might also conclude that under certain emergency conditions, delaying certain guilty pleas under Rule 11(c)(1)(C), even those calling for longer sentences, may result in serious harm to the interests of justice.

5. Paragraph (e)(4): Teleconferencing by One or More Participants

Paragraph (e)(4) regulates the use of teleconferencing for proceedings that a court could conduct by videoconference. The Advisory Committee concluded that the rule should carefully limit a court's authority to allow audio-only participation, given the patent superiority of video proceedings. The four requirements for the use of teleconferencing reflect this policy. Those requirements are generally the same as those in the version of the draft rule reviewed by the

Standing Committee at its last meeting, namely: fulfillment of the requirements for *video*conferencing for the proceeding; a finding regarding the unavailability of videoconferencing; some assurance that the defendant and defense counsel will have an adequate opportunity to consult confidentially; and the defendant's consent. But the Advisory Committee made several changes in response to questions raised by Standing Committee members, the style consultants, and other readers.

a. Scope: Audio-Only for One or All

The Advisory Committee revised the text of the rule and the note to clarify the provision's scope. The Advisory Committee agreed that the conditions for teleconferencing should apply not only when a court decides in advance that everyone will participate by phone, but also when one or more participants do so in proceeding otherwise conducted by videoconference. Frequently during the pandemic, at least one participant in a proceeding held by videoconference would be unable to either connect or continue by video, and would have to resort to audio-only participation. The Advisory Committee concluded that the protections in (e)(4) were essential for this situation as well as those where all participants will participate by telephone.

To that end, the Advisory Committee revised both the text and the note. In introducing the enumerated requirements, it added "A court may conduct a proceeding, in whole or in part, by teleconferencing if . . . ." The introductory section of the note includes the policy that underlies the provisions on teleconferencing: "Videoconferencing is always a better option than an audio-only conference because it allows participants to see as well as hear each other. To ensure that participants communicate through audio alone only when videoconferencing is not feasible, (e)(4) sets out four prerequisites."

The Advisory Committee also revised, as noted below, the requirement in (e)(4)(B)(i) that videoconferencing for the proceeding not be reasonably available "for any person who would participate by teleconference."

A third change was made after the Advisory Committee meeting, responding to the style consultants' review of the draft rule text. They pointed out that the caption of (e)(4) might not fully describe its contents, as it could be read as applying only to proceedings conducted entirely by phone, as opposed to proceedings where only some participants are audio-only. To clarify this point, the caption of (e)(4) was changed from "Teleconferencing" to "Teleconferencing by One or More Participants." The style consultants approved this change.

An addition to the committee note on this point is also bracketed for consideration by the Standing Committee on lines 562-67, in the paragraph introducing (e)(4). The suggested addition explains the "in whole or in part" language, and emphasizes that the provision regulates individual audio-only participation in videoconferences as well as proceedings conducted by phone from start to finish. It reads: "Because the rule applies to teleconferencing 'in whole or in part,' it mandates these prerequisites whenever the entire proceeding is held by teleconference from start to finish, or when one or more participants in the proceeding are connected by audio only, for part or all of a proceeding." Although this addition drafted in response to the expressed by the style consultants

and has never been reviewed by Advisory Committee members, the reporters and the chairs of both the Advisory Committee and the Rule 62 Subcommittee believe it would be helpful.

The word "participate" is important in all of these additions. The Advisory Committee intended to limit the scope of the provision to those who "participate" in the proceeding in some way, and to clarify that observers and others who are not "participating" in the proceeding may connect by audio-only without the judge having to satisfy the requirements in (e)(4). Indeed, the earlier inclusion in Rule 62 of paragraph (d)(1) recognizes the constitutional mandate to provide observers access to public proceedings, and the Advisory Committee anticipated that this access might be provided as audio-only connection to a videoconference. The Advisory Committee chose not to attempt to define who is a participant in these proceedings, concluding that the word is self-explanatory as used here. The word would clearly include the judge, any defendant, the parties' attorneys, and any witnesses. But it would not include observers or court personnel who may be on the call but do not speak on the record.

Finally, the reporters and chair have included the bracketed language on lines 402-05 as a possible addition to the committee note introducing the videoconferencing provisions. After the Advisory Committee concluded its review of the draft rule and note, the reporters and chair recognized that, although the Advisory Committee had added language clarifying that the teleconferencing requirements apply whenever one or more person participates by audio-only, for all or part of the proceeding, no similar language appeared in the videoconferencing provisions. This might suggest that the Advisory Committee did not intend the videoconferencing provisions to apply to only part of a proceeding or less than all of its participants. If the Standing Committee agrees with that concern, one option to remove any ambiguity for those who will review the videoconferencing provisions during the comment period would be to add the bracketed language to the note.

b. Prerequisites for Teleconferencing: (e)(4)(A)—Cumulative to Videoconferencing Requirements

The first prerequisite for teleconferencing—that the requirements for videoconference for the particular proceeding must have been met—was a point lost on some readers of earlier versions. Several readers did not realize that the requirements for videoconferencing for pleas and sentencings applied, for example, when a felony plea or sentencing proceeding involved teleconferencing. To clarify this point, the language about requirements for videoconferencing was placed in its own separate subparagraph (A).

The Advisory Committee also added the language "any rule, including" before "this rule" to recognize that not only Rule 62(e)(1) through (3), but also Rules 5, 10, 40, and 43(b)(2) imposed requirements for videoconferencing that must be met before teleconferencing is authorized. The subcommittee had assumed that, by addressing these proceedings in (e)(1), readers of the rule would know that the requirements in Rules 5, 10, 40, and 43(b)(2) were incorporated into the term "this rule." The Advisory Committee disagreed with that assumption. A reference to "this rule" in (e)(4) would not, in the view of many members, incorporate the requirements for videoconferencing imposed by rules other than Rule 62. After debating how best to make this clear, the Advisory Committee decided not to enumerate Rules 5, 10, 40, and 43(b)(2) in the text

of (e)(4)(A). Instead the Advisory Committee employed a generic reference "any rule, including this rule[,]" which replicated the language used earlier in (d)(2). This approach also avoids the need to amend the rule later if additional requirements for videoconferencing are added to any of the existing rules. For the same reason, the Advisory Committee considered and rejected a suggestion to list Rules 5, 10, 40, and 43(b)(2) in the note. A further addition to the committee note focused on the example of a proceeding under Rule 43(b)(2), which is the only rule among those addressed by (e)(1) that has a requirement for videoconferencing other than defendant's consent.

Finally, following the Advisory Committee meeting, Judge Bates raised a concern that the language "any rule" does not literally mean any rule, because different rules have different requirements for videoconferencing. For example, Rule 5 requires only the defendant's consent, but Rule 43(b)(2) requires that the proceeding involve a misdemeanor punishable by fine or by imprisonment for not more than one year, or both, and that the defendant consent in writing. Judge Bates suggested that the Advisory Committee meant only an "applicable" rule. To clarify this point, "applicable" appears in brackets as an addition for the Standing Committee consideration. The style consultants reviewed and did not object to this addition and the reporters, the subcommittee chair, and the Advisory Committee chair all agree it is a helpful change.

The committee note for (e)(4)(A) includes further explanation:

> [A]ll of the conditions for the use of videoconferencing for the proceeding must be met before a court may conduct a proceeding, in whole or in part, by audio-only. For example, videoconferencing for a sentencing under Rule 32 requires compliance with (e)(3)(A), (B), and (C). No part of a felony sentencing proceeding may be held by teleconference, nor may any person participate in such a proceeding by audio only, unless those videoconferencing requirements have been met. Likewise, for a misdemeanor proceeding, teleconferencing requires compliance with (e)(1) and Rule 43(b)(2).

c. Prerequisites for Teleconferencing: (e)(4)(B)(i)—Videoconferencing Unavailable

The second of the four prerequisites for teleconferencing is a finding by the judge that "videoconferencing is not reasonably available for any person who would participate by teleconference."

The "not reasonably available" standard was suggested by a member of the Standing Committee. The Advisory Committee agreed and substituted it for "not available within a reasonable time." It provides flexibility and has proven workable in some districts during the pandemic.

To clarify the application of the provision in situations where not all participants are by phone, the Advisory Committee added a requirement that the court find that videoconferencing for the proceeding "is not reasonably available <u>for any person who would participate by teleconference</u>[.]" This was the subject of considerable discussion. As noted earlier, the language

in the draft was intended to provide guidance and flexibility for substituting audio for video access at any stage or by any participant, while at the same time mandating a finding of video unavailability for any participants who would be audio-only. Various simpler alternatives (e.g., "for any participant," "for all participants," "for one or more participants") were rejected. Those alternatives did not focus the finding of unavailability on any person(s) who are unable to connect by video and would participate by phone instead. Members were also concerned that one person's inability to connect by video should not mean that everyone should participate by telephone. The Advisory Committee was committed to the principle that teleconferencing was a far inferior option that should be used only to the extent necessary. But it also did not want to suggest that teleconferencing for some participants would be authorized only when *everyone* cannot use video.

The note further explains:

> [Item] (e)(4)(B)(i) requires the court to find that videoconferencing for all or part of the proceeding is not reasonably available before allowing participation by audio only. Because it focuses on what is "reasonably available," this requirement is flexible. It is intended to allow courts to use audio only connections when necessary, but not otherwise. For example, it precludes the use of teleconferencing alone if videoconferencing—though generally limited—is available for all participants in a particular proceeding. But it permits the use of teleconferencing in other circumstances. For example, if only an audio connection with a defendant were feasible because of security concerns at the facility where the defendant is housed, a court could find that videoconferencing for that defendant in the particular proceeding is not reasonably available. Or, if the video connection fails for one or more participants during a proceeding started by videoconference and audio is the only option for completing that proceeding expeditiously, this rule permits the affected participants to use audio technology to finish the proceeding.

d. Prerequisites for Teleconferencing: (e)(4)(B)(ii)—Finding of Adequate Opportunity for Confidential Consultation

Item (e)(4)(B)(ii) requires the judge to find that the defendant will have an adequate opportunity to consult confidentially with counsel before and during a proceeding involving teleconferencing. The Advisory Committee recognized that, even though (e)(4)(A) requires a finding that confidential consultation would have been possible if the proceeding had been conducted by videoconference, additional accommodations might be necessary to assure confidential consultation for a telephone conference. For example, when the video fails and the only telephone line available to the defendant or defense counsel is the line required for teleconferencing, the court must take additional steps to provide the opportunity for confidential consultation. This was a major concern of the judges and practitioners who discussed their experiences at the miniconference.

The version approved by the Advisory Committee at the meeting did not include the words "an adequate" before "opportunity." Instead of "have an adequate opportunity to consult," the version the Advisory Committee approved read "have the opportunity to consult." This change

appears to have been an unintentional error. No one at the meeting noticed or mentioned, much less discussed, the inconsistency with other portions of the rule that required "an adequate opportunity" to consult counsel. There was some discussion about simplifying (e)(4) generally, and a specific discussion about simplifying the subparagraph (C) on consent that followed, but a review of the meeting by the reporters revealed that no one noticed the change that had been made here. There is no basis for phrasing this point differently here than elsewhere.[9] We have not revisited this issue with the full Advisory Committee, so the words "an adequate" are in brackets in the draft presented for Standing Committee's consideration.

The committee note reads:

> [Item] (e)(4)(B)(ii) provides that the court must find the defendant will have an adequate opportunity to consult confidentially with counsel before and during the teleconferenced proceeding. Opportunities for confidential consultation may be more limited with teleconferencing than they are with videoconferencing as when a defendant or a defense attorney has only one telephone line to use to call into the conference, and there are no "break out rooms" for private conversations like those videoconferencing platforms provide. This situation may arise not only when a proceeding is held entirely by phone, but also when, in the midst of a videoconference, video communication fails for either the defendant or defense counsel. Attorney or client may have to call into the conference using the devices they had previously been using for confidential communication. Experiences like these prompted this requirement that the court specifically find that an alternative opportunity for confidential consultation is in place before permitting teleconferencing in whole or in part.

e. Prerequisites for Teleconferencing: (e)(4)C)—Consent by the Defendant

The last requirement for permitting teleconferencing by one or more participants is the defendant's consent. The Advisory Committee concluded that prior consent or written request for *video*conferencing does not necessarily suffice as consent for *tele*conferencing. It discussed several examples of situations where a defendant might very well consent to videoconference but not to a proceeding in which at least some participants must appear by audio only. These examples included situations when the defendant has no video connection but others do, when the judge's video fails in a sentencing, and when defense counsel's video is unavailable during a plea proceeding. The Advisory Committee also considered alternatives for modifying this provision so that it did not require that the court insist on consultation with counsel before accepting the defendant's consent when the need for reverting to audio-only arose in the midst of a videoconference (for example, providing for "the opportunity" to consult instead). Ultimately, the

[9] Moreover, because the reporters had not yet realized that "an adequate" had been deleted, they included these words in the version purporting to be what the Advisory Committee adopted at the meeting, which they circulated to the Advisory Committee along with the note changes to (e)(4). No one responding raised this issue.

Advisory Committee decided to remove the words "after consultation with counsel" from this particular provision.

The committee note explains:

> Finally, recognizing the differences between videoconferencing and teleconferencing, subparagraph (e)(4)(C) provides that the defendant must consent to teleconferencing for the proceeding, even if the defendant previously requested or consented to videoconferencing. A defendant who is willing to be sentenced with a videoconference connection with the judge may balk, understandably, at being sentenced over the phone. Subparagraph (e)(4)(C) does not require that consent to teleconferencing be given only after consultation with counsel. By requiring only "consent," it recognizes that the defendant would have already met the consent requirements for videoconferencing for that proceeding, and it allows the court more flexibility to address varied situations. To give one example, if the video but not audio feed drops for the defendant or another participant near the very end of a videoconference, and the judge asks the defendant, "do you want to talk to your lawyer about finishing this now without the video?," an answer "No, I'm ok, we can finish now" would be sufficient consent under (e)(4)(C).

IV. 2254 and 2255 Rules

After consulting experienced petitioners' counsel, states' attorneys, and the Department of Justice, and reviewing research by the reporters and the Rules Law Clerk, the Rule 62 Subcommittee recommended that an emergency rule was not needed for the rules used in Section 2254 and Section 2255 proceedings. At its May meeting, the Advisory Committee agreed unanimously with the subcommittee's recommendation.

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

Rule 62. Criminal Rules Emergency

(a) Conditions for an Emergency. The Judicial Conference of the United States may declare a Criminal Rules emergency if it determines that:

(1) extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with these rules; and

(2) no feasible alternative measures would sufficiently address the impairment within a reasonable time.

(b) Declaring an Emergency.

(1) ***Content.*** The declaration must:

(A) designate the court or courts affected;

[1] New material is underlined in red.

(B) state any restrictions on the authority granted in (d) and (e); and

(C) be limited to a stated period of no more than 90 days.

(2) ***Early Termination.*** The Judicial Conference may terminate a declaration for one or more courts before the termination date.

(3) ***Additional Declarations.*** The Judicial Conference may issue additional declarations under this rule.

(c) Continuing a Proceeding After a Termination. Termination of a declaration for a court ends its authority under (d) and (e). But if a particular proceeding is already underway and resuming compliance with these rules for the rest of the proceeding would not be feasible or would work an injustice, it may be completed with the defendant's consent as if the declaration had not terminated.

(d) Authorized Departures from These Rules After a Declaration.

(1) ***Public Access to a Proceeding.*** If emergency conditions substantially impair the public's in-person attendance at a public proceeding, the court must provide reasonable alternative access, contemporaneous if feasible.

(2) ***Signing or Consenting for a Defendant.*** If any rule, including this rule, requires a defendant's signature, written consent, or written waiver—and emergency conditions limit a defendant's ability to sign—defense counsel may sign for the defendant if the defendant consents on the record. Otherwise, defense counsel must file an affidavit attesting to the defendant's consent. If the defendant is pro se, the court may sign for the

defendant if the defendant consents on the record.

(3) ***Alternate Jurors.*** A court may impanel more than 6 alternate jurors.

(4) ***Correcting or Reducing a Sentence.*** Despite Rule 45(b)(2), if emergency conditions provide good cause, a court may extend the time to take action under Rule 35 as reasonably necessary.

(e) Authorized Use of Videoconferencing and Teleconferencing After a Declaration.

(1) ***Videoconferencing for Proceedings Under Rules 5, 10, 40, and 43(b)(2).*** This rule does not modify a court's authority to use videoconferencing for a proceeding under Rules 5, 10, 40, or 43(b)(2), except that if emergency conditions substantially

impair the defendant's opportunity to consult with counsel, the court must ensure that the defendant will have an adequate opportunity to do so confidentially before and during those proceedings.

(2) *Videoconferencing for Certain Proceedings at Which the Defendant Has a Right to Be Present.* Except for felony trials and as otherwise provided under (e)(1) and (3), for a proceeding at which a defendant has a right to be present, a court may use videoconferencing if:

(A) the district's chief judge finds that emergency conditions substantially impair a court's ability to hold in-person

proceedings in the district within a reasonable time;

(B) the court finds that the defendant will have an adequate opportunity to consult confidentially with counsel before and during the proceeding; and

(C) the defendant consents after consulting with counsel.

(3) *Videoconferencing for Felony Pleas and Sentencings.* For a felony proceeding under Rule 11 or 32, a court may use videoconferencing only if, in addition to the requirement in (2)(B):

(A) the district's chief judge finds that emergency conditions

substantially impair a court's ability to hold in-person felony pleas and sentencings in the district within a reasonable time;

(B) the defendant, after consulting with counsel, requests in a writing signed by the defendant that the proceeding be conducted by videoconferencing; and

(C) the court finds that further delay in that particular case would cause serious harm to the interests of justice.

(4) ***Teleconferencing by One or More Participants.*** A court may conduct a

proceeding, in whole or in part, by teleconferencing if:

(A) the requirements under any applicable rule, including this rule, for conducting the proceeding by videoconferencing have been met;

(B) the court finds that:

(i) videoconferencing is not reasonably available for any person who would participate by teleconference; and

(ii) the defendant will have an adequate opportunity to consult

confidentially with counsel before and during the proceeding if held by teleconference; and

(C) the defendant consents.

Committee Note

Subdivision (a). This rule defines the conditions for a Criminal Rules emergency that would support a declaration authorizing a court to depart from one or more of the other Federal Rules of Criminal Procedure. Rule 62 refers to the other, non-emergency rules—currently Rules 1-61—as "these rules." This committee note uses "these rules" or "the rules" to refer to the non-emergency rules, and uses "this rule" or "this emergency rule" to refer to new Rule 62.

The rules have been promulgated under the Rules Enabling Act and carefully designed to protect constitutional and statutory rights and other interests. Any authority to depart from the rules must be strictly limited. Compliance with the rules cannot be cast aside because of cost or convenience, or without consideration of alternatives that would permit compliance to continue. Subdivision (a) narrowly restricts the conditions that would permit a declaration granting emergency authority to depart from the rules and defines who may make that declaration.

First, subdivision (a) specifies that the power to declare a rules emergency rests solely with the Judicial

Conference of the United States, the governing body of the judicial branch. To find that a rules emergency exists, the Judicial Conference will need information about the ability of affected courts to comply with the rules, as well as the existence of reasonable alternatives to continue court functions in compliance with the rules. The judicial council of a circuit, for example, may be able to provide helpful information it has received from judges within the circuit regarding local conditions and available resources.

Paragraph (a)(1) requires that before declaring a Criminal Rules emergency, the Judicial Conference must determine that circumstances are extraordinary and that they relate to public health or safety or affect physical or electronic access to a court. These requirements are intended to prohibit the use of this emergency rule to respond to other challenges, such as those arising from staffing or budget issues. Second, those extraordinary circumstances must substantially impair the ability of a court to perform its functions in compliance with the rules.

In addition, paragraph (a)(2) requires that even if the Judicial Conference determines the extraordinary circumstances defined in (a)(1), it cannot declare a Criminal Rules emergency unless it also determines that no feasible alternative measures would sufficiently address the impairment and allow the affected court to perform its functions in compliance with the rules within a reasonable time. For example, in the districts devastated by hurricanes Katrina and Maria, the ability of courts to function in compliance with the rules was substantially impaired for extensive periods of time. But there would have been no Criminal Rules emergency under this rule because those districts were able to remedy that impairment and function effectively in compliance with the rules by moving proceedings to other districts under 28 U.S.C. § 141.

Another example might be a situation in which the judges in a district are unable to carry out their duties as a result of an emergency that renders them unavailable, but courthouses remain safe. The unavailability of judges would substantially impair that court's ability to function in compliance with the rules, but temporary assignment of judges from other districts under 28 U.S.C. § 292(b) and (d) would eliminate that impairment.

Subdivision (a) also recognizes that emergency circumstances may affect only one or a small number of courts—familiar examples include hurricanes, floods, explosions, or terroristic threats—or may have widespread impact, such as a pandemic or a regional disruption of electronic communications. This rule provides a uniform procedure that is sufficiently flexible to accommodate different types of emergency conditions with local, regional, or nationwide impact.

Paragraph (b)(1). Paragraph (b)(1) specifies what must be included in a declaration of a Criminal Rules emergency. Subparagraph (A) requires that each declaration of a Criminal Rules emergency designate the court or courts affected by the Criminal Rules emergency as defined in subdivision (a). Some emergencies may affect all courts, some will be local or regional. The declaration must be no broader than the Criminal Rules emergency. That is, every court identified in a declaration must be one in which extraordinary circumstances that relate to public health or safety or that affect physical or electronic access to the court are substantially impairing its ability to perform its functions in compliance with these rules, and in which compliance with the rules cannot be achieved within a reasonable time by alternative measures. A court may not exercise authority under (d) and (e) unless the Judicial Conference includes the court in its declaration, and then only in a manner consistent

with that declaration, including any limits imposed under (b)(1)(B).

Subparagraph (b)(1)(B) provides that the Judicial Conference's declaration of a Criminal Rules emergency must state any restrictions on the authority granted by subdivisions (d) and (e) to depart from the rules. For example, if the emergency arises from a disruption in electronic communications, there may be no reason to authorize videoconferencing for proceedings in which the rules require in-person appearance. But (b)(1)(B) does not allow a declaration to expand departures from the rules beyond those authorized by subdivisions (d) and (e).

Under (b)(1)(C), each declaration must state when it will terminate, which may not exceed 90 days from the date of the declaration. This sunset clause is included to ensure that these extraordinary deviations from the rules last no longer than necessary.

Paragraph (b)(2). If emergency conditions end before the termination date of the declaration for some or all courts included in that declaration, (b)(2) provides that the Judicial Conference may terminate the declaration for the courts no longer affected. This provision also ensures that any authority to depart from the rules lasts no longer than necessary.

Paragraph (b)(3) recognizes that the conditions that justified the declaration of a Criminal Rules emergency may continue beyond the term of the declaration. The conditions may also change, shifting in nature or affecting more districts. An example might be a flood that leads to a contagious disease outbreak. Rather than provide for extensions, renewals, or modifications of an initial declaration, paragraph (b)(3) gives the Judicial Conference

the authority to respond to such situations by issuing additional declarations. Each additional declaration must meet the requirements of subdivision (a), and must include the contents required by (b)(1).

Subdivision (c). In general, the termination of a declaration of emergency ends all authority to depart from the other Federal Rules of Criminal Procedure. It does not terminate, however, the court's authority to complete an ongoing trial with alternate jurors who have been impaneled under (d)(3), because the proceeding authorized by (d)(3) is the completed impanelment. In addition, subdivision (c) carves out a narrow exception for certain proceedings commenced under a declaration of emergency but not completed before the declaration terminates. If it would not be feasible to conclude a proceeding commenced before a declaration terminates with procedures that comply with the rules, or if resuming compliance with the rules would work an injustice, the court may complete that proceeding using procedures authorized by this emergency rule, but only if the defendant consents to the use of emergency procedures after the declaration ends. Subdivision (c) recognizes the need for some accommodation and flexibility during the transition period, but also the importance of returning promptly to the rules to protect the defendant's rights and other interests.

Subdivisions (d) and (e) describe the authority to depart from the rules after a declaration.

Paragraph (d)(1) addresses the courts' obligation to provide alternative access when emergency conditions have substantially impaired in-person attendance by the public at public proceedings. The term "public proceeding" was intended to capture proceedings that the rules require to be conducted "in open court," proceedings to which a victim must be provided access, and proceedings that must be open

to the public under the First and Sixth Amendments. The rule creates a duty to provide the public, including victims, with "reasonable alternative access," notwithstanding Rule 53's ban on the "broadcasting of judicial proceedings." Under appropriate circumstances, the reasonable alternative could be audio access to a video proceeding.

The duty arises only when the substantial impairment of in-person access by the public is caused by emergency conditions. The rule does not apply when reasons other than emergency conditions restrict access. The duty arises not only when emergency conditions substantially impair the attendance of anyone, but also when conditions would allow participants but not the public to attend, as when capacity must be restricted to prevent contagion.

Alternative access must be contemporaneous when feasible. For example, if public health conditions limit courtroom capacity, contemporaneous transmission to an overflow courthouse space ordinarily could be provided.

Paragraph (d)(2) recognizes that emergency conditions may disrupt compliance with a rule that requires the defendant's signature, written consent, or written waiver. If emergency situations limit the defendant's ability to sign, (d)(2) provides an alternative, allowing defense counsel to sign if the defendant consents. To ensure that there is a record of the defendant's consent to this procedure, the amendment provides two options: (1) defense counsel may sign for the defendant if the defendant consents on the record, or, (2) without the defendant's consent on the record, defense counsel must file an affidavit attesting to the defendant's consent to the procedure. The defendant's oral agreement on the record alone will not substitute for the defendant's signature. The written document signed by

counsel on behalf of the defendant provides important additional evidence of the defendant's consent.

The court may sign for a pro se defendant, if that defendant consents on the record. There is no provision for the court to sign for a counseled defendant, even if the defendant provides consent on the record. The Committee concluded that rules requiring the defendant's signature, written consent or written waiver protect important rights, and permitting the judge to bypass defense counsel and sign once the defendant agrees could result in a defendant perceiving pressure from the judge to sign. Requiring a writing from defense counsel is an essential protection when the defendant's own signature is not reasonably available because of emergency conditions.

It is generally helpful for the court to conduct a colloquy with the defendant to ensure that defense counsel consulted with the defendant with regard to the substance and import of the pleading or document being signed, and that the consent to allow counsel to sign was knowing and voluntary.

Paragraph (d)(3) allows the court to impanel more than six alternate jurors, creating an emergency exception to the limit imposed by Rule 24(c)(1). This flexibility may be particularly useful for a long trial conducted under emergency conditions—such as a pandemic—that increase the likelihood that jurors will be unable to complete the trial. Because it is not possible to anticipate all of the situations in which this authority might be employed, the amendment leaves to the discretion of the district court whether to impanel more alternates, and if so, how many. The same uncertainty about emergency conditions that supports flexibility in the rule for the provision of additional alternates also supports avoiding mandates for additional

peremptory challenges when more than six alternates are provided. Nonetheless, if more than six alternates are impaneled and emergency conditions allow, the court should consider permitting each party one or more additional peremptory challenges, consistent with the policy in Rule 24(c)(4).

Paragraph (d)(4) provides an emergency exception to Rule 45(b)(2), which prohibits the court from extending the time to take action under Rule 35 "except as stated in that rule." When emergency conditions provide good cause for extending the time to take action under Rule 35, the amendment allows the court to extend the time for taking action "as reasonably necessary." The amendment allows the court to extend the 14-day period for correcting a clear error in the sentence under Rule 35(a) and the one-year period for government motions for sentence reductions based on substantial assistance under Rule 35(b)(1). Nothing in this provision is intended to expand the authority to correct or reduce a sentence under Rule 35. This emergency rule does not address the extension of other time limits because Rule 45(b)(1) already provides the necessary flexibility for courts to consider emergency circumstances. It allows the court to extend the time for taking other actions on its own or on a party's motion for good cause shown.

Subdivision (e) provides authority for a court to use videoconferencing or teleconferencing under specified circumstances after the declaration of a Criminal Rules emergency. The term "videoconferencing" is used throughout, rather than the term "video teleconferencing" (which appears elsewhere in the rules), to more clearly distinguish conferencing with visual images from "teleconferencing" with audio only. The first three paragraphs in (e) describe a court's authority to use videoconferencing, depending upon the type of proceeding,

while the last describes a court's authority to use teleconferencing when videoconferencing is not reasonably available. The defendant's consent to the use of conferencing technology is required for all proceedings addressed by subdivision (e).

Subdivision (e) applies to the use of videoconferencing and teleconferencing for the proceedings defined in paragraphs (1) through (3), for all or part of the proceeding, by one or more participants. But it does not regulate the use of video and teleconferencing technology for all possible proceedings in a criminal case. It does not speak to or prohibit the use of videoconferencing or teleconferencing for proceedings, such as scheduling conferences, at which the defendant has no right to be present. Instead, it addresses three groups of proceedings: (1) proceedings for which the rules already authorize videoconferencing; (2) certain other proceedings at which a defendant has the right to be present, excluding felony trials; and (3) felony pleas and sentencings. The new rule does not address the use of technology to maintain communication with a defendant who has been removed from a proceeding for misconduct.

Paragraph (e)(1) addresses first appearances, arraignments, and certain misdemeanor proceedings under Rules 5, 10, 40, and 43(b)(2), where the rules already provide for videoconferencing if the defendant consents. *See* Rules 5(f), 10(c), 40(d), and 43(b)(2) (written consent). This paragraph was included to eliminate any confusion about the interaction between existing videoconferencing authority and this rule. It clarifies that this rule does not change the court's existing authority to use videoconferencing for these proceedings, except that it requires the court to address emergency conditions that significantly impair the defendant's opportunity to consult with counsel. In that

situation, the court must ensure that the defendant will have an adequate opportunity for confidential consultation before and during videoconference proceedings under Rules 5, 10, 40, and 43(b)(2). Paragraphs (e)(2) through (4) apply this requirement to all emergency video and teleconferencing authority granted by the rule after a declaration.

The requirement is based upon experience during the COVID-19 pandemic, when conditions dramatically limited the ability of counsel to meet or even speak with clients. The Committee believed it was essential to include this prerequisite for conferencing under Rules 5, 10, 40, and 43(b)(2), as well as conferencing authorized only during a declaration by paragraphs (e)(2), (3), and (4), in order to safeguard the defendant's constitutional right to counsel. The rule does not specify any particular means of providing an adequate opportunity for private communication.

Paragraph (e)(2) addresses videoconferencing authority for proceedings "at which a defendant has a right to be present" under the Constitution, statute, or rule, excluding felony trials and proceedings addressed in either (e)(1) or (e)(3). Such proceedings include, for example, revocations of release under Rule 32.1, preliminary hearings under Rule 5.1, and waivers of indictment under Rule 7(b). During a declaration, an affected court may use videoconferencing for these proceedings, but only if the three circumstances are met.

First, subparagraph (e)(2)(A) restricts videoconferencing authority to affected districts in which the chief judge (or alternate under 28 U.S.C. § 136(e)) has found that emergency conditions substantially impair a court's ability to hold proceedings in person within a reasonable time. Recognizing that important policy concerns animate existing limitations in Rule 43 on virtual proceedings, even

with the defendant's consent, this district-wide finding is not an invitation to substitute virtual conferencing for in-person proceedings without regard to conditions in a particular division, courthouse, or case. If a proceeding can be conducted safely in-person within a reasonable time, a court should hold it in person.

Second, subparagraph (e)(2)(B) conditions videoconferencing upon the court's finding that the defendant will have an adequate opportunity to consult confidentially with counsel before and during the proceeding. If emergency conditions prevent the defendant's presence, and videoconferencing is employed as a substitute, counsel will not have the usual physical proximity to the defendant during the proceeding and may not have ordinary access to the defendant before and after the proceeding.

Third, subparagraph (e)(2)(C) requires that the defendant consent to videoconferencing after consulting with counsel. Insisting on consultation with counsel before consent assures that the defendant will be informed of the potential disadvantages and risks of virtual proceedings. It also provides some protection against potential pressure to consent, from the government or the judge.

The Committee declined to provide authority in this rule to conduct felony trials without the physical presence of the defendant, even if the defendant wishes to appear at trial by videoconference during an emergency declaration. And this rule does not address the use of technology to maintain communication with a defendant who has been removed from a proceeding for misconduct. Nor does it address if or when trial participants other than the defendant may appear by videoconferencing.

Paragraph (e)(3) addresses the use of videoconferencing for a third set of proceedings: felony pleas and sentencings under Rules 11 and 32. The physical presence of the defendant together in the courtroom with the judge and counsel is a critical part of any plea or sentencing proceeding. Other than trial itself, in no other context does the communication between the judge and the defendant consistently carry such profound consequences. The importance of defendant's physical presence at plea and sentence is reflected in Rules 11 and 32. The Committee's intent was to carve out emergency authority to substitute virtual presence for physical presence at a felony plea or sentence only as a last resort, in cases where the defendant would likely be harmed by further delay. Accordingly, the prerequisites for using videoconferencing for a felony plea or sentence include three circumstances in addition to those required for the use of videoconferencing under (e)(2).

Subparagraph (e)(3)(A) requires that the chief judge of the district (or alternate under 28 U.S.C. § 136(e)) make a district-wide finding that emergency conditions substantially impair a court's ability to hold felony pleas and sentencings in person in that district within a reasonable time. This finding serves as assurance that videoconferencing may be necessary and that individual judges cannot on their own authorize virtual pleas and sentencings when in-person proceedings might be manageable with patience or adaptation. Although the finding serves as assurance that videoconferencing might be necessary in the district, as under (e)(2), individual courts within the district may not conduct virtual plea and sentencing proceedings in individual cases unless they find the remaining criteria of (e)(3) and (4) are satisfied.

Subparagraph (e)(3)(B) states that the defendant must request in writing that the proceeding be conducted by

videoconferencing, after consultation with counsel. The substitution of "request" for "consent" was deliberate, as an additional protection against undue pressure to waive physical presence. This requirement of writing is, like other requirements of writing in the rules, subject to the emergency provisions in (d)(2), unless the relevant emergency declaration excludes the authority in (d)(2). To ensure that the defendant consulted with counsel with regard to this decision, and that the defendant's consent was knowing and voluntary, the court may need to conduct a colloquy with the defendant before accepting the written request.

Subparagraph (e)(3)(C) requires that before a court may conduct a plea or sentencing proceeding by videoconference, it must find that the proceeding in that particular case cannot be further delayed without serious harm to the interests of justice. Examples may include some pleas and sentencings that would allow transfer to a facility preferred by the defense, or result in immediate release, home confinement, probation, or a sentence shorter than the time expected before conditions would allow in-person proceedings. A judge might also conclude that under certain emergency conditions, delaying certain guilty pleas under Rule 11(c)(1)(C), even those calling for longer sentences, may result in serious harm to the interests of justice.

Paragraph (e)(4) details conditions for the use of teleconferencing to conduct proceedings for which videoconferencing is authorized. Videoconferencing is always a better option than an audio-only conference because it allows participants to see as well as hear each other. To ensure that participants communicate through audio alone only when videoconferencing is not feasible, (e)(4) sets out four prerequisites. Because the rule applies to teleconferencing "in whole or in part," it mandates these

prerequisites whenever the entire proceeding is held by teleconference from start to finish, or when one or more participants in the proceeding are connected by audio only, for part or all of a proceeding.

The first prerequisite, in (e)(4)(A), is that all of the conditions for the use of videoconferencing for the proceeding must be met before a court may conduct a proceeding, in whole or in part, by audio-only. For example, videoconferencing for a sentencing under Rule 32 requires compliance with (e)(3)(A), (B), and (C). No part of a felony sentencing proceeding may be held by teleconference, nor may any person participate in such a proceeding by audio only, unless those videoconferencing requirements have been met. Likewise, for a misdemeanor proceeding, teleconferencing requires compliance with (e)(1) and Rule 43(b)(2).

Second, (e)(4)(B)(i) requires the court to find that videoconferencing for all or part of the proceeding is not reasonably available before allowing participation by audio only. Because it focuses on what is "reasonably available," this requirement is flexible. It is intended to allow courts to use audio only connections when necessary, but not otherwise. For example, it precludes the use of teleconferencing alone if videoconferencing—though generally limited—is available for all participants in a particular proceeding. But it permits the use of teleconferencing in other circumstances. For example, if only an audio connection with a defendant were feasible because of security concerns at the facility where the defendant is housed, a court could find that videoconferencing for that defendant in the particular proceeding is not reasonably available. Or, if the video connection fails for one or more participants during a proceeding started by videoconference and audio is the only

option for completing that proceeding expeditiously, this rule permits the affected participants to use audio technology to finish the proceeding.

Third, (e)(4)(B)(ii) provides that the court must find that the defendant will have an adequate opportunity to consult confidentially with counsel before and during the teleconferenced proceeding. Opportunities for confidential consultation may be more limited with teleconferencing than they are with videoconferencing as when a defendant or a defense attorney has only one telephone line to use to call into the conference, and there are no "breakout rooms" for private conversations like those videoconferencing platforms provide. This situation may arise not only when a proceeding is held entirely by phone, but also when, in the midst of a videoconference, video communication fails for either the defendant or defense counsel. An attorney or client may have to call into the conference using the devices they had previously been using for confidential communication. Experiences like these prompted this requirement that the court specifically find that an alternative opportunity for confidential consultation is in place before permitting teleconferencing in whole or in part.

Finally, recognizing the differences between videoconferencing and teleconferencing, subparagraph (e)(4)(C) provides that the defendant must consent to teleconferencing for the proceeding, even if the defendant previously requested or consented to videoconferencing. A defendant who is willing to be sentenced with a videoconference connection with the judge may balk, understandably, at being sentenced over the phone. Subparagraph (e)(4)(C) does not require that consent to teleconferencing be given only after consultation with counsel. By requiring only "consent," it recognizes that the defendant would have already met the consent requirements

for videoconferencing for that proceeding, and it allows the court more flexibility to address varied situations. To give one example, if the video but not audio feed drops for the defendant or another participant near the very end of a videoconference, and the judge asks the defendant, "do you want to talk to your lawyer about finishing this now without the video?," an answer "No, I'm ok, we can finish now" would be sufficient consent under (e)(4)(C).

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

MEMORANDUM

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

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

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: December 7, 2020

I. Introduction

The Advisory Committee on Bankruptcy Rules met by videoconference on September 22, 2020. The draft minutes of that meeting are attached.

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The Advisory Committee also voted to seek publication for comment of amendments to Rule 3011 (Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases); Rule 8003 (Appeal as of Right—How Taken; Docketing the Appeal); and Official Form 417A (Notice of Appeal and Statement of Election).

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

* * * * *

B. Items for Publication

- Rule 3011;
- Rule 8003; and
- Official Form 417A.

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II. Action Items

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B. Items for Publication

The Advisory Committee recommends that the following rule and form amendments be published for public comment in August 2021. The rules and the Official Form in this group appear in Bankruptcy Appendix B.

Action Item 2. Rule 3011 (Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases). The proposed amendments, which were suggested by the Committee on Administration of the Bankruptcy System ("the Bankruptcy Committee"), redesignate the current text of the rule as paragraph (a), and add a new paragraph (b) that requires the clerk of court to provide searchable access on the court's website to data about funds deposited pursuant to § 347 of the Bankruptcy Code (Unclaimed Property). The Bankruptcy Committee's suggestion is consistent with its past efforts to reduce the balance of unclaimed funds and limit the potential statutory liability imposed on clerks of court for their record-keeping and disbursement of unclaimed funds.

The Advisory Committee decided to include an additional sentence that permits a court to limit access to information in the unclaimed funds database with respect to a specific case for cause shown. The clerk of the court that hosts the unclaimed funds locator indicated that some courts do not post information on unclaimed funds that are subject to a sealing order. A second category of cases in which a limitation on access might be appropriate is that of very old cases (apparently there are some over 50 years old) that lack good information about the underlying claims.

Action Item 3. Rule 8003 (Appeal as of Right—How Taken; Docketing the Appeal). The proposed amendments revise Rule 8003(a) in several respects to conform to pending amendments to FRAP 3, which clarify that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment or appealable order. The Advisory Committee has generally tried to keep the Part VIII Bankruptcy Rules parallel to the Appellate Rules so that procedures are consistent throughout two stages of a bankruptcy appeal.

Rule 8003(a)(3)(B) would be amended to avoid the misconception that it is necessary or appropriate to identify every order or decree of the bankruptcy court that the appellant may wish

to challenge on appeal. It requires the attachment of "the judgment—or the appealable order or decree—from which the appeal is taken," and the phrase "or part thereof" is deleted.

Subdivision (a)(4) calls attention to the merger principle, and (a)(5) would clarify that a notice of appeal that identifies only the order disposing of a post-judgment motion is not limited to that order, but instead brings the final judgment before the appellate court for review.

Subdivision (a)(6) would be added to enable deliberate limitations of the notice of appeal. It allows an appellant to identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, however, specific identifications would not limit the scope of the notice of appeal.

Finally, subdivision (a)(7) would be added to provide that an appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into the judgment, order, or decree from which the appeal is taken. In this situation, a court should act as if the notice had properly identified the judgment or appealable order or decree.

Action Item 4. Official Form 417A (Notice of Appeal and Statement of Election). Parts 2 and 3 of the form would be amended to conform to the wording of the proposed amendments to Rule 8003 that were just discussed. This change would parallel pending amendments to Appellate Form 1. If approved, parts 2 and 3 of Official Form 417A would read as follows:

Part 2: Identify the subject of this appeal

1. Describe the judgment~~,~~ ~~—~~or the appealable order~~,~~ or decree~~—~~from which the appeal is taken ~~appealed from~~: _____

2. State the date on which the judgment~~,~~ ~~—~~or the appealable order~~,~~ or decree~~—~~was entered:

_____

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment~~,~~ ~~—~~or the appealable order~~,~~ or decree~~—~~from which the appeal is taken ~~appealed from~~ and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

* * * * *

The Advisory Committee chose not to propose dividing the notice of appeal form into two forms, as is proposed for Appellate Form 1. The purpose underlying the proposed FRAP and appellate form amendments is to eliminate confusion and possible traps in drafting a notice of appeal. In comparison to civil appeals, bankruptcy appeals from orders deemed to be final are common. The Advisory Committee was concerned that having separate notice-of-appeal forms for judgments and for appealable orders and decrees would increase, rather than decrease, confusion. Appellants might select the wrong form, and appellate courts would have to decide if

there is any consequence of doing so. Because the Supreme Court has said that filing a notice of appeal is "generally speaking, a simple, nonsubstantive act," *Garza v. Idaho*, 139 S. Ct. 738, 745-46 (2019), it seemed unlikely to the Advisory Committee that appeals would be dismissed for filing the wrong, but a similar, form. Rather than creating two forms when it may not matter which one is filed, the Advisory Committee proposes keeping one form for all appeals as of right.

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

MEMORANDUM

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

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

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 24, 2021

I. Introduction

The Advisory Committee on Bankruptcy Rules met by videoconference on April 8, 2021. The draft minutes of that meeting are attached.

At the meeting, the Advisory Committee gave its final approval to rule and form amendments that were published for comment last August. * * * * * The Advisory Committee also voted to seek publication for comment of (1) amendments to Parts III, IV, V, and VI of the Bankruptcy Rules—the next installment of the restyling project; (2) new Rule 9038 (Bankruptcy Rules Emergency); (3) amendments to Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence); (4) five new Official Forms proposed to implement the Rule 3002.1 amendments; and (5) amendments to three existing Official Forms.

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

* * * * *

B. Items for Publication

- Restyled Parts III, IV, V, and VI;
- Rule 3002.1;
- Official Form 101;
- Official Forms 309E1 and 309E2; and
- New Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, 410C13-10R.

A discussion of Rule 9038, which is proposed for publication, is included elsewhere in the agenda book, along with a memorandum from Professors Capra and Struve.

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II. Action Items

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B. Items for Publication

The Advisory Committee recommends that the following rule and form amendments be published for public comment in August 2021. The rules and forms in this group appear in Bankruptcy Appendix B.

Action Item 8. Restyled Parts III, IV, V, and VI. The Advisory Committee seeks publication of the restyled versions of the rules in Parts III, IV, V and VI of the Federal Rules of Bankruptcy Procedure, which reflect many hours of work by the style consultants, the reporters, and the Restyling Subcommittee. The Advisory Committee expects to present the final three parts of the restyled Bankruptcy Rules for publication next year.

Action Item 9. Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence). In response to suggestions submitted by the National Association of Chapter Thirteen Trustees (18-BK-G) and the American Bankruptcy Institute's Commission on Consumer Bankruptcy (18-BK-H), the Advisory Committee is proposing significant amendments to Rule 3002.1. The amendments are intended to encourage a greater degree of compliance with the rule's provisions and to provide a more straight-forward and familiar procedure for determining the status of a mortgage claim at the end of a chapter 13 case. The amended rule would also provide for a new midcase assessment of the mortgage claim's status in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred. Stylistic changes are made throughout the rule.

Subdivision (b) would be amended to add provisions about the effective date of late payment-change notices and to provide more detailed provisions about notice of payment changes for home equity lines of credit ("HELOCs"). Subdivision (b)(2) would provide that late notices

of a payment increase do not go into effect until the required notice period (at least 21 days) expires. There would be no delay, however, in the effective date of an untimely notice of a payment decrease. Under proposed subdivision (b)(3), a HELOC claimant would only need to file annual payment-change notices—including a reconciliation figure (net overpayment or underpayment for the past year)—unless the payment change in a single month was for more than $10. This provision would also ensure at least 21 days' notice before a payment change took effect.

Proposed subdivision (f) is new. It would provide the procedure for a midcase assessment of the status of the mortgage, which would allow the debtor to be informed of any deficiencies in payment while there was still time in the chapter 13 case to become current before the case was closed.

As under the existing rule, there is an assessment of the status of the mortgage at the end of a chapter 13 case—when the debtor has completed all payments under the plan. The procedure would be changed, however, from a notice to a motion procedure that would result in a binding order, and time periods for the trustee and claim holder to act would be lengthened.

Subdivision (*i*) would be amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule.

Action Item 10. Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy). The Advisory Committee received suggestions from two different bankruptcy judges suggesting that consumer debtors are confused by Form 101, Part 1, line 4, which asks the debtor to list "any business names and Employer Identification Numbers you have used in the last 8 years." Both judges reported that consumer debtors are listing the names of limited liability companies or corporations through which the debtors have conducted business in the past 8 years, not realizing that the question seeks only names that the debtor individually has used during that period. Because the debtors list those LLC and corporate names, those names appear as names of additional debtors on the notice of bankruptcy on the applicable version of Form 309, even though those LLCs and corporations have not filed for bankruptcy protection.

The proposed amendment to Official Form 101 eliminates the portion of line 4 that asks for any business names the debtor has used in the last 8 years, and instead asks for additional similar information in Question 2, which is consistent with the treatment of that information in Official Forms 105, 201, and 205. There is also new language in the margin of Official Form 101, Part 1, Question 2, directing the debtor NOT to insert the names of LLCs, corporations, or partnerships that are not filing for bankruptcy.

Action Item 11. Official Forms 309E1 (Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors)) and 309E2 (Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors under Subchapter V)). Bankruptcy Judge Timothy W. Dore of the W.D. Wash. suggested that the language in line 7 of Official Form 309E1 (line 8 in Official Form 309E2) is not clear about when the deadline is for objecting to discharge, as opposed to seeking to have a debt excepted from discharge. The Advisory Committee recommends revisions to those lines to clarify the information provided. The Advisory Committee also decided to change

the line that says "the court will send you notice of that date later" to add the words "or its designee" after the words "the court" because often the court itself does not send this notice.

Action Item 12. New Official Forms 410C13-1N (Trustee's Midcase Notice of the Status of the Mortgage Claim), 410C13-1R (Response to Trustee's Midcase Notice of the Status of the Mortgage Claim), 410C13-10C (Motion to Determine the Status of the Mortgage Claim (conduit)), 410C13-10NC (Motion to Determine the Status of the Mortgage Claim (nonconduit)), 410C13-10R (Response to Trustee's Motion to Determine the Status of the Mortgage Claim). The proposed amendments to Rule 3002.1, which are discussed at Agenda Item 9, call for the use of new Official Forms. Subdivisions (f) and (g) of the amended rule require the notice, motion, and responses that a chapter 13 trustee and a holder of a mortgage claim must file to conform to the appropriate Official Forms. The Advisory Committee therefore proposes new forms for this purpose.

The first form—Official Form 410C13-1N—is to be used by a trustee to provide the notice required by Rule 3002.1(f)(1). This notice is filed midway through a chapter 13 case (18-24 months after the petition was filed), and it requires the trustee to report on the status of payments to cure any prepetition arrearages and, if the trustee makes the ongoing postpetition mortgage payments, the amount and date of the next payment.

Within 21 days after service of the trustee's notice, the holder of the mortgage claim must file a response using the second form—Official Form 410C13-1R. *See* Rule 3002.1(f)(2). The claim holder must indicate whether it agrees with the trustee's statements about the cure of any prepetition arrearage, and it must also provide information about the status of ongoing postpetition mortgage payments.

The third and fourth forms—Official Forms 410C13-10C and 410C13-10NC —implement Rule 3002.1(g)(1). One is used if the trustee made the ongoing postpetition mortgage payments (as a conduit), and the other is used if those payments were made by the debtor directly to the holder of the mortgage claim (nonconduit). This motion is filed at the end of a chapter 13 case when the debtor has completed all plan payments, and it seeks a court order determining the status of the mortgage claim.

As required by Rule 3002.1(g)(2), the holder of the mortgage claim must respond to the trustee's motion within 28 days after service, using the final form—Official Form 410C13-10R. The claim holder must indicate whether it agrees with the trustee's statements about the cure of any arrearages and the payment of any postpetition fees, expenses, and charges. It must also provide information about the status of ongoing postpetition mortgage payments.

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

Rule 3002.1. Chapter 13 ~~— Notice Relating to~~ Claims ~~Secured~~ Secured by a Security Interest in the Debtor's Principal Residence

(a) IN GENERAL. This rule applies in a chapter 13 case to a claim~~s~~ ~~(1)~~ that ~~are~~ is secured by a security interest in the debtor's principal residence~~,~~ and ~~(2)~~ for which the plan ~~provides that either~~ requires the trustee or debtor ~~will~~ to make contractual ~~installment~~ payments. Unless the court orders otherwise, the ~~notice~~ requirements of this rule cease ~~to apply~~ when an order terminating or annulling the automatic stay related to that residence becomes effective ~~with respect to the residence that secures the claim~~.

(b) NOTICE OF A PAYMENT CHANGE~~S~~; EFFECT OF AN UNTIMELY NOTICE; HOME-EQUITY LINE OF CREDIT; OBJECTION.

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

(1) *Notice by the Claim Holder*. The claim holder ~~of the claim~~ shall file ~~and serve on the debtor, debtor's counsel, and the trustee~~ a notice of any change in the payment amount~~,~~ — including any change ~~that results~~ resulting from an interest-rate or escrow-account adjustment~~, no later than 21 days before a payment in the new amount is due. If the claim arises from a home-equity line of credit, this requirement may be modified by court order~~. At least 21 days before the new payment is due, the notice must be filed and served on:

- the debtor;
- the debtor's attorney; and
- the trustee.

(2) *Effect of an Untimely Notice.* If the claim holder does not timely file and serve the notice required by (b)(1), the effective date of the new payment is as follows:

(A) when the notice concerns a payment increase, on the first payment due date that is at least 21 days after the untimely notice was filed and served, or

(B) when the notice concerns a payment decrease, on the date stated in the untimely notice.

(3) *Notice of a Change in a Home-Equity Line of Credit.*

(A) *Deadline.* If the claim arises from a home-equity line of credit, the notice of a payment change shall be filed and served within one year after the bankruptcy petition was filed and then at least annually.

(B) *Contents of the Annual Notice.* The annual notice shall:

(1) state the payment amount due for the month when the notice is filed; and

(2) include a reconciliation amount to account for any overpayment or underpayment during the prior year.

(C) *Amount of the Next Payment.* The first payment due after the effective date of the annual notice shall be increased or decreased by the reconciliation amount.

(D) *Effective Date.* The new payment amount stated in the annual notice (disregarding the reconciliation amount) shall be effective on the first payment due date that is at least 21 days after the annual notice is filed and served and shall remain

effective until a new notice becomes effective.

(E) *Payment Changes Greater Than $10.* If the monthly payment increases or decreases by more than $10 in any month, the claim holder shall file and serve (in addition to the annual notice) a notice under (b)(1) for that month.

(~~2~~4) *Party in Interest's Objection*. A party in interest who objects to ~~the~~ a payment change may file a motion to determine whether the change is required to maintain payments ~~in accordance with~~ under § 1322(b)(5) of the Code. ~~If~~ Unless the court orders otherwise, if no motion is filed ~~by~~ before the day the new ~~amount~~ payment is due, the change goes into effect~~,~~ immediately ~~unless the court orders otherwise~~.

(c) ~~NOTICE OF~~ FEES, EXPENSES, AND CHARGES INCURRED AFTER THE CASE WAS FILED; NOTICE BY THE CLAIM HOLDER. The claim holder ~~of the claim~~ shall file ~~and serve on the debtor, debtor's counsel, and the trustee~~ a notice itemizing all fees, expenses, ~~or~~ and charges ~~(1)~~ that ~~were~~ the claim holder has incurred ~~in connection with the claim~~ or imposed after the ~~bankruptcy~~ case was filed~~, and (2)~~ that the claim holder asserts are recoverable against the debtor or ~~against~~ the debtor's principal residence. ~~The notice shall be served within~~ Within 180 days after ~~the date on which~~ the fees, expenses, or charges are incurred or imposed, the notice shall be served on:

- the debtor;
- the debtor's attorney; and
- the trustee.

(d) ~~FORM AND CONTENT~~ FILING NOTICE AS A SUPPLEMENT TO A PROOF OF CLAIM. A notice ~~filed and served~~ under ~~subdivision~~ (b) or (c) ~~of this rule~~ shall

be ~~prepared as prescribed by the appropriate Official Form, and~~ filed as a supplement to ~~the holder's~~ a proof of claim and be prepared using the appropriate Official Form. The notice is not subject to Rule 3001(f).

(e) ~~DETERMINATION OF~~ DETERMINING FEES, EXPENSES, OR CHARGES. On ~~motion of~~ a party in ~~interest~~ interest's motion ~~filed within one year after service of a notice under subdivision (c) of this rule~~, the court shall, after notice and a hearing, determine whether ~~payment of~~ paying any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments ~~in accordance with~~ under § 1322(b)(5) of the Code. The motion shall be filed within one year after the notice under (c) was served, unless the party has requested and the court orders a shorter period.

~~(f) NOTICE OF FINAL CURE PAYMENT. Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder~~

~~of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.~~

(f) TRUSTEE'S MIDCASE NOTICE OF THE STATUS OF A MORTGAGE CLAIM.

(1) *Timing; Content and Service.* Between 18 and 24 months after the bankruptcy petition was filed, the trustee shall file a notice about the status of any mortgage claim. The notice shall be prepared using the appropriate Official Form and be served on:

- the debtor;

- the debtor's attorney; and
- the claim holder.

(2) *Response; Motion to Compel a Response; Objection to the Response; Court Determination.*

(A) *Deadline; Content and Service.* The claim holder shall file a response to the trustee's notice within 21 days after it is served. The response shall be prepared using the appropriate Official Form and be served on:

- the debtor;
- debtor's counsel; and
- the trustee.

(B) *Motion for an Order Compelling a Response.* If the claim holder does not timely file a response, a party in interest may move for an order compelling one.

(C) *Objection.* A party in interest may file an objection to the claim holder's response.

(D) *Court Determination.* If a party in interest objects to the response, the court shall, after notice and a hearing, determine the status of the mortgage claim and enter an appropriate order.

~~(g) RESPONSE TO NOTICE OF FINAL CURE PAYMENT. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the~~

~~statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).~~

(g) TRUSTEE'S END-OF-CASE MOTION TO DETERMINE THE STATUS OF A MORTGAGE CLAIM.

(1) *Timing; Content and Service.* Within 45 days after the debtor completes all payments under a chapter 13 plan, the trustee shall file a motion to determine the status of a mortgage claim, including whether any prepetition arrearage has been cured. The motion shall be prepared using the appropriate Official Form and be served on:

- the claim holder;
- the debtor; and
- debtor's counsel.

(2) *Response; Motion to Compel a Response; Objection to the Response.*

(A) *Deadline; Content and Service.* The claim holder shall file a

response to the motion within 28 days after service of the motion. The response shall be prepared using the appropriate Official Form and be served on:

- the debtor;
- debtor's counsel; and
- the trustee.

(B) *Motion for an Order Compelling a Response.* If the claim holder does not timely file a response, a party in interest may move for an order compelling one.

(C) *Objection.* Within 14 days after service of a response, a party in interest may file an objection to the response.

~~(h) DETERMINATION OF FINAL CURE AND PAYMENT. On motion of the debtor or trustee filed within 21 days after service of the statement under~~

~~subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.~~

(h) ORDER DETERMINING THE STATUS OF A MORTGAGE CLAIM.

(1) *No Response.* If the claim holder fails to comply with an order under (g)(2)(B) to respond to the trustee's motion, the court may enter an order determining that:

(A) as of the date of the motion, the debtor is current on all payments that the plan requires to be paid to the claim holder—including all escrow amounts; and

(B) all postpetition legal fees, expenses, and charges incurred or imposed by the claim holder have been satisfied in full.

(2) *No Objection.* If the claim holder timely responds and no objection is filed, the court may, by order, determine that the amounts stated in the claim holder's response reflect the status of the claim as of the date the response was filed.

(3) *Contested Motion.* If an objection is filed, the court shall, after notice and a hearing, determine the status of the mortgage claim and issue an appropriate order.

(4) *Contents of the Order.*

(A) *Issued Under (h)(2) or (h)(3).* An order issued under (h)(2) or (h)(3) shall include the following information, current as of the date of the claim holder's response or such other date that the court may determine:

(i) the principal balance owed;

(ii) the date that the debtor's next payment is due;

(iii) the amount of the next payment—separately identifying the amount due for principal, interest, mortgage insurance, taxes, and other escrow amounts, as applicable;

(iv) the amounts held in any escrow, suspense, unapplied-funds, or similar account; and

(v) the amount of any fees, expenses or charges properly noticed under (c) that remain unpaid.

(B) *Issued Under (h)(1).* An order issued under (h)(1) may include any of the information described in (A) and may address the treatment of any payment that

becomes delinquent before the court grants the debtor a discharge.

(i) CLAIM HOLDER'S FAILURE TO ~~NOTIFY~~ GIVE NOTICE OR RESPOND. If the ~~holder of a~~ claim holder fails to provide any information ~~as~~ required by ~~subdivision (b), (c), or (g) of~~ this rule, the court may, after notice and a hearing, ~~take either or both~~ do one or more of the following ~~actions~~:

(1) preclude the holder from presenting the omitted information~~,~~ in any form~~,~~ as evidence in any contested matter or adversary proceeding in the case~~;~~—unless the court determines that the failure was substantially justified or is harmless; ~~or~~

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure; and

(3) take any other action authorized by this rule.

Committee Note

The rule is amended to encourage a greater degree of compliance with its provisions and to provide a more straight-forward and familiar procedure for determining the status of a mortgage claim at the end of a chapter 13 case. It also provides for a new midcase assessment of the mortgage claim's status in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred.

Subdivision (a), which describes the rule's applicability, remains largely unchanged. However, the word "installment" in the phrase "contractual installment payment" was deleted here and throughout the rule in order to clarify the rule's applicability to reverse mortgages, which are not paid in installments.

In addition to stylistic changes, subdivision (b) is amended to add provisions about the effective date of late payment change notices and to provide more detailed provisions about notice of payment changes for home-equity lines of credit ("HELOCs"). Subdivision (b)(2) now provides that late notices of a payment increase do not go into effect until the required notice period (at least 21 days) expires. There is no delay, however, in the effective date of an untimely notice of a payment decrease.

The treatment of HELOCs presents a special issue under this rule because the amount owed changes frequently, often in small amounts. Requiring a notice for each change can be overly burdensome. Under new subdivision (b)(3), a HELOC claimant only needs to file annual payment change notices—including a reconciliation figure (net overpayment or underpayment for the past year)—unless the payment change in a single month is for more than $10. This

provision also ensures at least 21 days' notice before a payment change takes effect.

Only stylistic changes are made to subdivisions (c) and (d). Stylistic changes are also made to subdivision (e). In addition, the court is given authority, upon motion of a party in interest, to shorten the time for seeking a determination of the fees, expenses, or charges owed. Such a shortening, for example, might be appropriate in the later stages of a chapter 13 case.

Subdivision (f) is new. It provides the procedure for a midcase assessment of the status of the mortgage, which allows the debtor to be informed of any deficiencies in payment while there is still time in the chapter 13 case to become current before the case is closed. The procedure begins with the trustee providing notice of the status of the mortgage. An Official Form has been adopted for this purpose. The mortgage claim holder then has to respond, again using an Official Form to provide the required information. If the claim holder fails to respond, a party in interest may seek an order compelling a response. A party in interest may also object to the claim holder's response. If an objection is made, the court determines the status of the mortgage claim.

As under the former rule, there is an assessment of the status of the mortgage at the end of a chapter 13 case—when the debtor has completed all payments under the plan. The procedure is changed, however, from a notice to a motion procedure that results in a binding order, and time periods for the trustee and claim holder to act have been lengthened.

Under subdivision (g), the trustee begins the procedure by filing—within 45 days after the last plan

payment is made—a motion to determine the status of the mortgage. An Official Form has been adopted for this purpose. The claim holder then must respond within 28 days after service of the motion, again using an Official Form to provide the required information. If the claim holder fails to respond, a party in interest may seek an order compelling a response. A party in interest may also object to the response.

This process ends with a court order detailing the status of the mortgage (subdivision (h)). If the claim holder fails to respond to an order compelling a response, the court may enter an order stating that the debtor is current on the mortgage. If there is a response and no objection to it is made, the order may accept as accurate the amounts stated in the response. If there is both a response and an objection, the court must determine the status of the mortgage. Subdivision (h)(4) specifies the contents of the order.

Subdivision (*i*) has been amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule. Stylistic changes have also been made to the subdivision.

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

Rule 3011. Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases

(a) The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.

(b) The clerk must provide searchable access on the court's website to the funds deposited under § 347(a). The court may, for cause, limit access to information in the data base for a specific case.

Committee Note

Rule 3011 is amended to require the clerk to provide searchable access (as by providing a link to the U.S. Bankruptcy Unclaimed Funds Locator) on the court's website to unclaimed funds deposited pursuant to § 347(a). The court may limit information in the data base with respect to a specific case for cause shown, including, for example, if such access risks disclosing the identity of claimants whose

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

privacy should be protected, or if the information about the unclaimed funds is so old as to be unreliable.

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

Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal

(a) FILING THE NOTICE OF APPEAL.

* * * * *

(3) *Contents.* The notice of appeal must:

(A) conform substantially to the appropriate Official Form;

(B) be accompanied by the judgment~~,~~ —or the appealable order~~,~~ or decree~~,~~ —from which the appeal is taken ~~or the part of it, being appealed~~; and

(C) be accompanied by the prescribed fee.

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

(4) *Merger.* The notice of appeal encompasses all orders that, for purposes of appeal, merge into the identified judgment or appealable order or decree. It is not necessary to identify those orders in the notice of appeal.

(5) *Final Judgment.* The notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Rule 7058, if the notice identifies:

(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 8002(b)(1).

(6) *Limited Appeal.* An appellant may identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, specific identifications do not limit the scope of the notice of appeal.

(7) *Impermissible Ground for Dismissal.* An appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into that judgment or appealable order or decree.

~~(4)~~ (8) *Additional Copies.* * * * * *

Committee Note

Subdivision (a) is amended to conform to recent amendments to Fed. R. App. P. 3(c), which clarified that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment or appealable order or decree. These amendments reflect that a notice of appeal is supposed to be a simple document that provides notice that a party is appealing and invokes the jurisdiction of the appellate court. It therefore must state who is appealing, what is being appealed, and to what court the appeal is being taken. It is the role of the briefs, not the notice of appeal, to focus the issues on appeal.

Subdivision (a)(3)(B) is amended in an effort to avoid the misconception that it is necessary or appropriate to identify each and every order of the bankruptcy court that the appellant may wish to challenge on appeal. It requires the attachment of "the judgment—or the appealable order or decree—from which the appeal is taken"—and the phrase "or part thereof" is deleted. In most cases, because of the merger principle, it is appropriate to identify and attach only the judgment or the appealable order or decree from which the appeal as of right is taken.

Subdivision (a)(4) now calls attention to the merger principle. The general merger rule can be stated simply: an appeal from a final judgment or appealable order or decree permits review of all rulings that led up to the judgment, order, or decree. Because this general rule is subject to some exceptions and complications, the amendment does not attempt to codify the merger principle but instead leaves its details to case law. The amendment does not change the principle established in *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202-03 (1988), that "a decision on the merits

is a 'final decision' . . . whether or not there remains for adjudication a request for attorney's fees attributable to the case."

Sometimes a party who is aggrieved by a final judgment will make a motion in the bankruptcy court instead of immediately filing a notice of appeal. Rule 8002(b)(1) permits a party who makes certain motions to await disposition of those motions before appealing. But some courts treat a notice of appeal that identifies only the order disposing of such a motion as limited to that order, rather than bringing the final judgment before the appellate court for review. To reduce the unintended loss of appellate rights in this situation, subdivision (a)(5) is added. This amendment does not alter the requirement of Rule 8002(b)(3) (requiring a notice of appeal or an amended notice of appeal if a party intends to challenge an order disposing of certain motions).

Subdivision (a)(6) is added to enable deliberate limitations of the notice of appeal. It allows an appellant to identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, however, specific identifications do not limit the scope of the notice of appeal.

On occasion, a party may file a notice of appeal after a judgment or appealable order or decree but identify only a previously nonappealable order that merged into that judgment or appealable order or decree. To deal with this situation, subdivision (a)(7) is added to provide that an appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into the

judgment, order, or decree from which the appeal is taken. In this situation, a court should act as if the notice had properly identified the judgment or appealable order or decree. In determining whether a notice of appeal was filed after the entry of judgment, Rule 8002(a)(2) and (b)(2) apply.

Bankruptcy Rules Restyling

3000 Series

Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

[The Committee Note to Rule 1001 is included here for reference for purposes of publication. It will not be included in the final rule.

Committee Note to Rule 1001

The Bankruptcy Rules are the fifth set of national procedural rules to be restyled. The restyled Rules of Appellate Procedure took effect in 1998. The restyled Rules of Criminal Procedure took effect in 2002. The restyled Rules of Civil Procedure took effect in 2007. The restyled Rules of Evidence took effect in 2011. The restyled Bankruptcy Rules apply the same general drafting guidelines and principles used in restyling the Appellate, Criminal, Civil and Evidence Rules.

General Guidelines. Guidance in drafting, usage, and style was provided by Bryan Garner, Guidelines for Drafting and Editing Court Rules, Administrative Office of the United States Courts (1996) and Bryan Garner, Dictionary of Modern Legal Usage (2d ed. 1995). See also Joseph Kimble, Guiding Principles for Restyling the Civil Rules, in Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure, at page x (Feb. 2005) (available at https://www.michbar.org/file/barjournal/article/documents/pdf4article909.pdf and https://www.michbar.org/file/barjournal/article/documents/pdf4article921.pdf); Joseph Kimble, Lessons in Drafting from the New Federal Rules of Civil Procedure, 12 Scribes J. Legal Writing 25 (2008-2009).

Formatting Changes. Many of the changes in the restyled Bankruptcy Rules result from using format to achieve clearer presentations. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. "Hanging indents" are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed.

Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words. The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. The restyled rules also minimize the use of inherently ambiguous words. The restyled rules minimize the use of redundant "intensifiers." These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. The

absence of intensifiers in the restyled rules does not change their substantive meaning. The restyled rules also remove words and concepts that are outdated or redundant.

Rule Numbers. The restyled rules keep the same numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity.
No Substantive Change. The style changes to the rules are intended to make no changes in substantive meaning. The Committee made special efforts to reject any purported style improvement that might result in a substantive change in the application of a rule. The Committee also declined to modify "sacred phrases"— those that have become so familiar in practice that to alter them would be unduly disruptive to practice and expectations. An example in the Bankruptcy Rules would be "meeting of creditors."

Legislative Rules. In those cases in which Congress enacted a rule by statute, in particular Rule 2002(n) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 357), Rule 3001(g) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 361) and Rule 7004(h) (Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106), the Committee has not restyled the rule.]

ORIGINAL	REVISION
PART III—CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS	**PART III. CLAIMS; PLANS; DISTRIBUTIONS TO CREDITORS AND EQUITY SECURITY HOLDERS**
Rule 3001. Proof of Claim	**Rule 3001. Proof of Claim**
(a) FORM AND CONTENT. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.	**(a) Definition and Form.** A proof of claim isa written statement of a creditor's claim. It must substantially conform to Form 410.
(b) WHO MAY EXECUTE. A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.	**(b) Who May Sign a Proof of Claim.** Only a creditor or the creditor's agent may sign a proof of claim—except as provided in Rules 3004 and 3005.
(c) SUPPORTING INFORMATION. (1) *Claim Based on a Writing.* Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. (2) *Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply.* In a case in which the debtor is an individual: (A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim. (B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the	**(c) Required Supporting Information.** (1) ***Claim or Interest Based on a Writing.*** If a claim or an interest in the debtor's property securing the claim is based on a writing, the creditor must file a copy with the proof of claim—except for a claim based on a consumer-credit agreement under (4). If the writing has been lost or destroyed, a statement explaining the loss or destruction must be filed with the claim. ***(2) Additional Information in an Individual Debtor's Case.*** If the debtor is an individual, the creditor must file with the proof of claim: (A) an itemized statement of the principal amount and any interest, fees, expenses, or other charges incurred before the petition was filed; (B) for any claimed security interest in the debtor's property, the amount needed to cure any default as of the date the petition was filed; and

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petition shall be filed with the proof of claim. (C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim. (D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions: (i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure. *(3) Claim Based on an Open-End or Revolving Consumer Credit Agreement.* (A) When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor's real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account: (i) the name of the entity from whom the creditor	(C) for any claimed security interest in the debtor's principal residence: (i) Form 410A; and (ii) if there is an escrow account connected with the claim, an escrow-account statement, prepared as of the date the petition was filed, that is consistent in form with applicable nonbankruptcy law. (3) ***Sanctions in an Individual-Debtor Case.*** In a case with an individual debtor, if a claim holder fails to provide any information required by (c)(1) and (2), the court may, after notice and a hearing, take one or both of these actions: (A) preclude the holder from presenting the information in any form as evidence in any contested matter or adversary proceeding in the case—unless the court determines that the failure is substantially justified or is harmless; and (B) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure. ***(4) Claim Based on an Open-End or Revolving Consumer-Credit Agreement.*** (A) *Required Statement.* Except when the claim is secured by an interest in the debtor's real property, a proof of claim for a claim based on an open-end or revolving consumer-credit agreement must be accompanied by a statement that

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purchased the account; (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account; (iii) the date of an account holder's last transaction; (iv) the date of the last payment on the account; and (v) the date on which the account was charged to profit and loss. (B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.	shows the following information about the credit account: (i) the name of the entity from whom the creditor purchased the account; (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account; (iii) the date of that last transaction; (iv) the date of the last payment on the account; and (v) the date that the account was charged to profit and loss. (B) *Copy to a Party in Interest.* On a party in interest's written request, the creditor must send a copy of the document described in (c)(1) to that party in interest within 30 days after the request is sent.
(d) EVIDENCE OF PERFECTION OF SECURITY INTEREST. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.	**(d) Claim Based on a Security Interest in the Debtor's Property.** If a creditor claims a security interest in the debtor's property, the proof of claim must be accompanied by evidence that the security interest has been perfected.
(e) TRANSFERRED CLAIM. (1) *Transfer of Claim Other Than for Security Before Proof Filed.* If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee. (2) *Transfer of Claim Other than for Security after Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after	**(e) Transferred Claim.** (1) ***Claim Transferred Before a Proof of Claim Is Filed.*** Unless the transfer was made for security, if a claim was transferred before a proof of claim was filed, only the transferee or an indenture trustee may file a proof of claim.

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the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor. (3) *Transfer of Claim for Security Before Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate. *(4) Transfer of Claim for Security*	*(2) Claim Transferred After a Proof of Claim Was Filed.* (A) *Filing Evidence of the Transfer.* Unless the transfer was made for security, the transferee of a claim that was transferred after a proof of claim was filed must file evidence of the transfer—except for a claim based on a publicly traded note, bond, or debenture. (B) *Notice of the Filing and the Time for Objecting.* The clerk must immediately notify the alleged transferor, by mail, that evidence of the transfer has been filed and that the alleged transferor has 21 days after the notice is mailed to file an objection. The court may extend the time to file it. (C) *Hearing on an Objection; Substituting the Transferee.* If, on timely objection by the alleged transferor and after notice and a hearing, the court finds that the claim was transferred other than for security, the court must substitute the transferee for the transferor. If the alleged transferor does not file a timely objection, the court must substitute the transferee for the transferor. *(3) Claim Transferred for Security Before a Proof of Claim is Filed.* (A) *Right to File a Proof of Claim.* If a claim (except one based on a publicly traded note, bond, or debenture) was transferred for security before the proof of claim was filed, either the transferor or transferee (or both) may file a proof of claim for the full amount. The proof of claim must include a

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after Proof Filed. If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate. (5) *Service of Objection or Motion; Notice of Hearing.* A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing.	statement setting forth the terms of the transfer. (B) *Notice of a Right to Join in a Proof of Claim; Consolidating Proofs.* If either the transferor or transferee files a proof of claim, the clerk must, by mail, immediately notify the other of the right to join in the claim. If both file proofs of the same claim, the claims must be consolidated. (C) *Failure to File an Agreement About the Rights of the Transferor and Transferee.* On a party in interest's motion and after notice and a hearing, the court must issue appropriate orders regarding the rights of the transferor and transferee if either one fails to file an agreement on voting the claim, receiving dividends on it, or participating in the estate's administration. ***(4) Claim Transferred for Security After a Proof of Claim Has Been Filed.*** (A) *Filing Evidence of the Transfer.* If a claim (except one based on a publicly traded note, bond, or debenture) was transferred for security after a proof of claim was filed, the transferee must file a statement that sets forth the terms of the transfer. (B) *Notice of the Filing and the Time for Objecting.* The clerk must immediately notify the alleged transferor, by mail, that evidence of the transfer has been filed and that the alleged transferor has 21 days after the notice is mailed to file an objection. The court may extend the time to file it (C) *Hearing on an Objection.* If the alleged transferor files a timely objection,

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	the court must, after notice and a hearing, determine whether the transfer was for security. (D) *Failure to File an Agreement About the Rights of the Transferor and Transferee.* On a party in interest's motion and after notice and a hearing, the court must issue appropriate orders regarding the rights of the transferor and transferee if either one fails to file an agreement on voting the claim, receiving dividends on it, or participating in the estate's administration. (5) ***Serving an Objection or Motion; Notice of a Hearing.*** At least 30 days before a hearing, a copy of any objection filed under (2) or (4) or any motion filed under (3) or (4) must be mailed or delivered to either the transferor or transferee as appropriate, together with notice of the hearing.
(f) EVIDENTIARY EFFECT. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.	**(f) Proof of Claim as Prima Facie Evidence of a Claim and Its Amount.** A proof of claim signed and filed in accordance with these rules is prima facie evidence of the validity and amount of the claim.
(g)[1] To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.	**(g) Proving the Ownership and Quantity of Grain.** To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

[1] So in original. Subsec. (g) adopted without a catchline.

Committee Note

The language of most provisions in Rule 3001 have been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. Rule 3001(g) has not been restyled (except to add a title) because it was enacted by Congress, P.L. 98-353, 98 Stat. 361, Sec. 354 (1984). The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, provides no authority to modify statutory language.

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Rule 3002. Filing Proof of Claim or Interest	**Rule 3002. Filing a Proof of Claim or Interest**
(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.	**(a) Need to File.** Unless Rule 1019(c), 3003, 3004, or 3005 provides otherwise, every creditor or equity security holder must file a proof of claim or interest for the claim or interest to be allowed. A lien that secures a claim is not void solely because an entity failed to file a proof of claim.
(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.	**(b) Where to File.** The proof of claim or interest must be filed in the district where the case is pending and in accordance with Rule 5005.
(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. But in all these cases, the following exceptions apply: (1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under § 1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return. The court may, for cause, enlarge the time for a governmental unit to file a proof of	**(c) Time to File.** In a voluntary Chapter 7 case or in a Chapter 12 or 13 case, the proof of claim is timely if it is filed within 70 days after the order for relief or entry of an order converting the case to Chapter 12 or 13. In an involuntary Chapter 7 case, a proof of claim is timely filed if it is filed within 90 days after the order for relief is entered. These exceptions apply in all cases: **(1)** *Governmental Unit.* A governmental unit's proof of claim is timely if it is filed within 180 days after the order for relief. But a proof of claim resulting from a tax return filed under § 1308 is timely if it is filed within 180 days after the order for relief or within 60 days after the tax return is filed. On motion filed by a governmental unit before the time expires and for cause, the court may extend the time to file a proof of claim. **(2)** *Infant or Incompetent Person.* In the interests of justice, the court may extend the time for an infant or incompetent person—or a representative of either—to file a

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claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim. (2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either. (3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed. (4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct. (5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed. (6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted	proof of claim, but only if the extension will not unduly delay case administration. **(3)** ***Unsecured Claim That Arises from a Judgment.*** An unsecured claim that arises in favor of an entity or becomes allowable because of a judgment may be filed within 30 days after the judgment becomes final if it is to recover money or property from that entity or denies or avoids the entity's interest in property. The claim must not be allowed if the judgment imposes a liability that is not satisfied—or a duty that is not performed—within the 30 days or any additional time set by the court. **(4)** ***Claim Arising from a Rejected Executory Contract or Unexpired Lease.*** A proof of claim for a claim that arises from a rejected executory contract or an unexpired lease may be filed within the time set by the court. **(5)** ***Notice That Assets May Be Available to Pay a Dividend.*** The clerk must, by mail, give at least 90 days' notice to creditors that a dividend payment appears possible and that proofs of claim must be filed by the date set forth in the notice if: (A) a notice of insufficient assets to pay a dividend had been given under Rule 2002(e); and (B) the trustee later notifies the court that a dividend appears possible. ***(6) Claim Secured by a Security Interest in the Debtor's Principal Residence.*** A proof of a claim secured by a security interest in the debtor's principal residence is timely filed if: (A) the proof of claim and attachments required by Rule 3001(c)(2)(C) are

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if the court finds that: (A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or (B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address. (7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if: (A) the proof of claim, together with the attachments required by Rule 3001(c)(2)(C), is filed not later than 70 days after the order for relief is entered; and (B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.	filed within 70 days after the order for relief; and (B) the attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim within 120 days after the order for relief. **(7)** *Extending the Time to File.* On a creditor's motion filed before or after the time to file a proof of claim has expired, the court may extend the time to file by no more than 60 days from the date of its order. The motion may be granted if the court finds that: (A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file because the debtor failed to timely file the list of creditors and their names and addresses as required by Rule 1007(a); or (B) the notice was mailed to the creditor at a foreign address and was insufficient to give the creditor a reasonable time to file.

Committee Note

The language of Rule 3002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence	**Rule 3002.1. Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case**
(a) IN GENERAL. This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.	**(a) In General.** This rule applies in a Chapter 13 case to a claim that is secured by a security interest in the debtor's principal residence and for which the plan requires the trustee or debtor to make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease when an order terminating or annulling the automatic stay related to that residence becomes effective.
(b) NOTICE OF PAYMENT CHANGES; OBJECTION. (1) *Notice.* The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest-rate or escrow-account adjustment, no later than 21 days before a payment in the new amount is due. If the claim arises from a home-equity line of credit, this requirement may be modified by court order. (2) *Objection.* A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments in accordance with § 1322(b)(5) of the Code. If no motion is filed by the day before the new amount is due, the change goes into effect, unless the court orders otherwise.	**(b) Notice of a Payment Change.** **(1)** ***Notice by the Claim Holder.*** The claim holder must file a notice of any change in the amount of an installment payment—including any change resulting from an interest-rate or escrow-account adjustment. At least 21 days before the new payment is due, the notice must be filed and served on: • the debtor; • the debtor's attorney; and • the trustee. If the claim arises from a home-equity line of credit, the court may modify this requirement. **(2)** ***Party in Interest's Objection.*** A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments under § 1322(b)(5). Unless the court orders otherwise, if no motion is filed by the

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	day before the new payment is due, the change goes into effect.
(c) NOTICE OF FEES, EXPENSES, AND CHARGES. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.	**(c) Fees, Expenses, and Charges Incurred After the Case Was Filed; Notice by the Claim Holder.** The claim holder must file a notice itemizing all fees, expenses, and charges incurred after the case was filed that the holder asserts are recoverable against the debtor or the debtor's principal residence. Within 180 days after the fees, expenses, or charges were incurred, the notice must be served on: • the debtor; • the debtor's attorney; and • the trustee.
(d) FORM AND CONTENT. A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).	**(d) Filing Notice as a Supplement to a Proof of Claim.** A notice under (b) or (c) must be filed as a supplement to the proof of claim using Form 410S-1 or 410S-2, respectively. The notice is not subject to Rule 3001(f).
(e) DETERMINATION OF FEES, EXPENSES, OR CHARGES. On motion of a party in interest filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.	**(e) Determining Fees, Expenses, or Charges.** On a party in interest's motion filed within one year after the notice in (c) was served, the court must, after notice and a hearing, determine whether paying any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments under § 1322(b)(5).
(f) NOTICE OF FINAL CURE PAYMENT. Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on	**(f) Notice of the Final Cure Payment.** **(1)** *Contents of a Notice.* Within 30 days after the debtor completes all

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the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.	payments under a Chapter 13 plan, the trustee must file a notice: (A) stating that the debtor has paid in full the amount required to cure any default on the claim; and (B) informing the claim holder of its obligation to file and serve a response under (g). **(2)** *Serving the Notice.* The notice must be served on: • the claim holder; • the debtor; and • the debtor's attorney. **(3)** *The Debtor's Right to File*. The debtor may file and serve the notice if: (A) the trustee fails to do so; and (B) the debtor contends that the final cure payment has been made and all plan payments have been completed.
(g) RESPONSE TO NOTICE OF FINAL CURE PAYMENT. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of	**(g) Response to a Notice of the Final Cure Payment.** **(1)** *Required Statement.* Within 21 days after the notice under (f) is served, the claim holder must file and serve a statement that: (A) indicates whether: (i) the claim holder agrees that the debtor has paid in full the amount required to cure any default on the claim; and (ii) the debtor is otherwise current on all payments under § 1322(b)(5); and (B) itemizes the required cure or postpetition amounts, if any, that

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claim and is not subject to Rule 3001(f).	the claim holder contends remain unpaid as of the statement's date. **(2)** *Persons to be Served.* The holder must serve the statement on: • the debtor; • the debtor's attorney; and • the trustee. **(3)** *Statement to be a Supplement.* The statement must be filed as a supplement to the proof of claim and is not subject to Rule 3001(f).
(h) DETERMINATION OF FINAL CURE AND PAYMENT. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.	**(h) Determining the Final Cure Payment.** On the debtor's or trustee's motion filed within 21 days after the statement under (g) is served, the court must, after notice and a hearing, determine whether the debtor has cured the default and made all required postpetition payments.
(i) FAILURE TO NOTIFY. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions: (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.	**(i) Failure to Give Notice.** If the claim holder fails to provide any information required by (b), (c), or (g), the court may, after notice and a hearing, take one or both of these actions: (1) preclude the holder from presenting the omitted information in any form as evidence in a contested matter or adversary proceeding in the case—unless the failure was substantially justified or is harmless; and (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Committee Note

The language of Rule 3002.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases	**Rule 3003. Chapter 9 or 11— Filing a Proof of Claim or Equity Interest**
(a) APPLICABILITY OF RULE. This rule applies in chapter 9 and 11 cases.	**(a) Scope.** This rule applies only in a Chapter 9 or 11 case.
(b) SCHEDULE OF LIABILITIES AND LIST OF EQUITY SECURITY HOLDERS. (1) *Schedule of Liabilities.* The schedule of liabilities filed pursuant to § 521(l) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule. (2) *List of Equity Security Holders.* The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.	**(b) Scheduled Liabilities and Listed Equity Security Holders as Prima Facie Evidence of Validity and Amount.** **(1)** ***Creditor's Claim.*** An entry on the schedule of liabilities filed under § 521(a)(1)(B)(i) is prima facie evidence of the validity and the amount of a creditor's claim—except for a claim shown as disputed, contingent, or unliquidated. Filing a proof of claim is unnecessary except as provided in (c)(2). **(2)** ***Interest of an Equity Security Holder.*** An entry on the list of equity security holders filed under Rule 1007(a)(3) is prima facie evidence of the validity and the amount of the equity interest. Filing a proof of the interest is unnecessary except as provided in (c)(2).
(c) FILING PROOF OF CLAIM. (1) Who May File. Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule. (2) Who Must File. Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be	**(c) Filing a Proof of Claim.** **(1)** ***Who May File a Proof of Claim.*** A creditor or indenture trustee may file a proof of claim. **(2)** ***Who Must File a Proof of Claim or Interest.*** A creditor or equity security holder whose claim or interest is not scheduled—-or is shown as disputed, contingent, or unliquidated—-must file a proof of claim or interest. A creditor who fails to do so will not be treated as a creditor for that claim for voting and distribution.

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treated as a creditor with respect to such claim for the purposes of voting and distribution. (3) Time for Filing. The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6). (4) Effect of Filing Claim or Interest. A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(a)(1) of the Code. (5) Filing by Indenture Trustee. An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.	**(3)** *Time to File.* The court must set the time to file a proof of claim or interest and may, for cause, extend the time. If the time has expired, the proof of claim or interest may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (3), (4), and (7). **(4)** *Proof of Claim by an Indenture Trustee.* An indenture trustee may file a proof of claim on behalf of all known or unknown holders of securities issued under the trust instrument under which it is trustee. **(5)** *Effect of Filing a Proof of Claim or Interest.* A proof of claim or interest signed and filed under (c) supersedes any scheduling under § 521(a)(1) of the claim or interest.
(d) PROOF OF RIGHT TO RECORD STATUS. For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. An objection to the statement may be filed by any party in interest.	**(d) Treating a Nonrecord Holder of a Security as the Record Holder.** For the purpose of Rules 3017, 3018, and 3021 and receiving notices, an entity that is not a record holder of a security may file a statement setting forth facts that entitle the entity to be treated as the record holder. A party in interest may file an objection to the statement.

Committee Note

The language of Rule 3003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3004. Filing of Claims by Debtor or Trustee	**Rule 3004. Proof of Claim Filed by the Debtor or Trustee for a Creditor**
If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee.	**(a) Filing by the Debtor or Trustee**. If a creditor does not file a proof of claim within the time prescribed by Rule 3002(c) or Rule 3003(c), the debtor or trustee may do so within 30 days after the creditor's time to file expires. **(b) Notice by the Clerk.** The clerk must promptly give notice of the filing to: • the creditor; • the debtor; and • the trustee.

Committee Note

The language of Rule 3004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor	**Rule 3005. Filing a Proof of Claim or Accepting or Rejecting a Plan by a Surety, Endorser, Guarantor, or Other Codebtor**
(a) FILING OF CLAIM. If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), any entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or Rule 3003(c) whichever is applicable. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution.	**(a) In General.** If a creditor fails to file a proof of claim within the time prescribed by Rule 3002(c) or Rule 3003(c), it may be filed by an entity that, along with the debtor, is or may be liable to the creditor or has given security for the creditor's debt. The entity must do so within 30 days after the creditor's time to file expires. A distribution on such a claim may be made only on satisfactory proof that the original debt will be diminished by the distribution.
(b) FILING OF ACCEPTANCE OR REJECTION; SUBSTITUTION OF CREDITOR. An entity which has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in the entity's own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice prior to confirmation of a plan of the creditor's intention to act in the creditor's own behalf, the creditor shall be substituted for the obligor with respect to that claim.	**(b) Accepting or Rejecting a Plan in a Creditor's Name.** An entity that has filed a proof of claim on behalf of a creditor under (a) may accept or reject a plan in the creditor's name. If the creditor's name is unknown, the entity may do so in its own name. But the creditor must be substituted for the entity on that claim if the creditor: (1) files a proof of claim within the time permitted by Rule 3003(c); or (2) files notice, before the plan is confirmed, of an intent to act in the creditor's own behalf.

Committee Note

The language of Rule 3005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3006. Withdrawal of Claim; Effect on Acceptance or Rejection of Plan	**Rule 3006. Withdrawing a Proof of Claim; Effect on a Plan**
A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to § 705(a) or appointed pursuant to § 1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.	**(a) Notice of Withdrawal; Limitations.** A creditor may withdraw a proof of claim by filing a notice of withdrawal. But unless the court orders otherwise after notice and a hearing, a creditor may not withdraw a proof of claim if: (A) an objection to it has been filed; (B) a complaint has been filed against the creditor in an adversary proceeding; or (C) the creditor has accepted or rejected the plan or has participated significantly in the case. **(b)** ***Notice of the Hearing; Order Permitting Withdrawal.*** Notice of the hearing must be served on: • the trustee or debtor in possession; and • any creditors' committee elected under § 705(a) or appointed under § 1102. The court's order permitting a creditor to withdraw a proof of claim must contain any terms and conditions the court deems proper. **(c) Effect of Withdrawing a Proof of Claim.** Unless the court orders otherwise, an authorized withdrawal constitutes withdrawal of any related acceptance or rejection of a plan.

Committee Note

The language of Rule 3006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
`Rule 3007. Objections to Claims	**Rule 3007. Objecting to a Claim**
(a) TIME AND MANNER OF SERVICE. (1) *Time of Service.* An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing. *(2) Manner of Service.* (A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and (i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or (ii) if the objection is to a claim of an insured depository institution, in the manner provided by Rule 7004(h). (B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.	**(a) Time and Manner of Serving the Objection.** **(1)** ***Time to Serve.*** An objection to a claim and a notice of the objection must be filed and served at least 30 days before a scheduled hearing on the objection or any deadline for the claim holder to request a hearing. ***(2) Whom to Serve; Manner of Service.*** (A) *Serving the Claim Holder.* The notice—using Form 420B—and objection must be served by mail on the person the claim holder most recently designated to receive notices on the claim holder's original or latest amended proof of claim, at the address so indicated. If the objection is to a claim of: (i) the United States or one of its officers or agencies, service must be made as if it were a summons and complaint under Rule 7004(b)(4) or (5); or (ii) an insured depository institution, service must be made under Rule 7004(h). (B) *Serving Others.* The notice and objection must also be served, by mail (or other permitted means), on: • the debtor or debtor in possession; • the trustee; and • if applicable, the entity that filed the proof of claim under Rule 3005.

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(b) DEMAND FOR RELIEF REQUIRING AN ADVERSARY PROCEEDING. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.	**(b) Demanding Relief Under Rule 7001 Not Permitted.** In objecting to a claim, a party in interest must not include a demand for a type of relief specified in Rule 7001 but may include the objection in an adversary proceeding.
(c) LIMITATION ON JOINDER OF CLAIMS OBJECTIONS. Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.	**(c) Limit on Omnibus Objections.** Unless the court orders otherwise or (d) permits, objections to more than one claim may not be joined in a single objection.
(d) OMNIBUS OBJECTION. Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because: (1) they duplicate other claims; (2) they have been filed in the wrong case; (3) they have been amended by subsequently filed proofs of claim; (4) they were not timely filed; (5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance; (7) they are interests, rather than claims; or	**(d) Omnibus Objection.** Subject to (e), objections to more than one claim may be joined in a single objection if: (1) all the claims were filed by the same entity; or (2) the objections are based solely on grounds that the claims should be disallowed, in whole or in part, because they: (A) duplicate other claims; (B) were filed in the wrong case; (C) have been amended by later proofs of claim; (D) were not timely filed; (E) have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (F) were presented in a form that does not comply with applicable rules and the objection states that because of the noncompliance the objector is unable to determine a claim's validity; (G) are interests, not claims; or

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(8) they assert priority in an amount that exceeds the maximum amount under § 507 of the Code.	(H) assert a priority in an amount that exceeds the maximum amount allowable under § 507.
(e) REQUIREMENTS FOR OMNIBUS OBJECTION. An omnibus objection shall: (1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection; (2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claims; (3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds; (4) state in the title the identity of the objector and the grounds for the objections; (5) be numbered consecutively with other omnibus objections filed by the same objector; and (6) contain objections to no more than 100 claims.	**(e) Required Content of an Omnibus Objection.** An omnibus objection must: (1) state in a conspicuous place that claim holders can find their names and claims in the objection; (2) list the claim holders alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claim holders by category of claims; (3) state for each claim the grounds for the objection and provide a cross-reference to the pages where pertinent information about the grounds appears; (4) state in the title the objector's identity and the grounds for the objections; (5) be numbered consecutively with other omnibus objections filed by the same objector; and (6) contain objections to no more than 100 claims.
(f) FINALITY OF OBJECTION. The finality of any order regarding a claim objection included in an omnibus objection shall be determined as though the claim had been subject to an individual objection.	**(f) Finality of an Order When Objections Are Joined.** When objections are joined, the finality of an order regarding any claim must be determined as though it had been subject to an individual objection.

Committee Note

The language of Rule 3007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3008. Reconsideration of Claims	**Rule 3008. Reconsidering an Order Allowing or Disallowing a Claim**
A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.	A party in interest may move to reconsider an order allowing or disallowing a claim. After notice and a hearing, the court must issue an appropriate order.

Committee Note

The language of Rule 3008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3009. Declaration and Payment of Dividends in a Chapter 7 Liquidation Case	**Rule 3009. Chapter 7—Paying Dividends**
In a chapter 7 case, dividends to creditors shall be paid as promptly as practicable. Dividend checks shall be made payable to and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another entity to receive dividends has been executed and filed in accordance with Rule 9010. In that event, dividend checks shall be made payable to the creditor and to the other entity and shall be mailed to the other entity.	In a Chapter 7 case, dividends to creditors on claims that have been allowed must be paid as soon as practicable. A dividend check must be made payable to and mailed to the creditor. But if a power of attorney authorizing another entity to receive payment has been filed under Rule 9010, the check must be: (a) made payable to both the creditor and the other entity; and (b) mailed to the other entity.

Committee Note

The language of Rule 3009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3010. Small Dividends and Payments in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases	**Rule 3010. Chapter 7, 12, or 13— Limits on Small Dividends and Payments**
(a) CHAPTER 7 CASES. In a chapter 7 case no dividend in an amount less than $5 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Any dividend not distributed to a creditor shall be treated in the same manner as unclaimed funds as provided in § 347 of the Code.	**(a) Chapter 7.** In a Chapter 7 case, the trustee must not distribute to a creditor any dividend less than $5 unless authorized to do so by local rule or court order. A dividend not distributed must be treated in the same manner as unclaimed funds under § 347.
(b) CHAPTER 12 AND CHAPTER 13 CASES. In a chapter 12 or chapter 13 case no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment.	**(b) Chapter 12 or 13.** In a Chapter 12 or 13 case, the trustee must not distribute to a creditor any payment less than $15 unless authorized to do so by local rule or court order. Distribution must be made when accumulated funds total $15 or more. Any remaining funds must be distributed with the final payment.

Committee Note

The language of Rule 3010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3011. Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases	**Rule 3011. Chapter 7, 12, or 13—Listing Unclaimed Funds**
The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.	The trustee must: (a) file a list of the known names and addresses of entities entitled to payment from any remaining property of the estate that is paid into court under § 347(a); and (b) include the amount due each entity.

Committee Note

The language of Rule 3011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3012. Determining the Amount of Secured and Priority Claims	**Rule 3012. Determining the Amount of a Secured or Priority Claim**
(a) DETERMINATION OF AMOUNT OF CLAIM. On request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine: (1) the amount of a secured claim under § 506(a) of the Code; or (2) the amount of a claim entitled to priority under § 507 of the Code.	**(a) In General.** On a party in interest's request, after notice and a hearing, the court may determine the amount of a secured claim under § 506(a) or the amount of a priority claim under § 507. The notice must be served on: • the claim holder; and • any other entity the court designates.
(b) REQUEST FOR DETERMINATION; HOW MADE. Except as provided in subdivision (c), a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004. A request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.	**(b) Determining the Amount of a Claim.** **(1)** ***Secured Claim.*** Except as provided in (c), a request to determine the amount of a secured claim may be made by motion, in an objection to a claim, or in a plan filed in a Chapter 12 or 13 case. If the request is included in a plan, a copy of the plan must be served on the claim holder and any other entity the court designates as if it were a summons and complaint under Rule 7004. **(2)** ***Priority Claim.*** A request to determine the amount of a priority claim may be made only by motion after the claim is filed or in an objection to the claim.
(c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.	**(c) Governmental Unit's Secured Claim.** A request to determine the amount of a governmental unit's secured claim may be made only by motion—or in an objection to a claim—filed after: (A) the governmental unit has filed the proof of claim; or (B) the time to file it under Rule 3002(c)(1) has expired.

Committee Note

The language of Rule 3012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3013. Classification of Claims and Interests	**Rule 3013. Determining Classes of Creditors and Equity Security Holders**
For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§ 1122, 1222(b)(1), and 1322(b)(1) of the Code.	For purposes of a plan and its acceptance, the court may, on motion after notice and a hearing, determine classes of creditors and equity security holders under §§ 1122, 1222(b)(1), and 1322(b)(1). The notice must be served as the court directs.

Committee Note

The language of Rule 3013 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3014. Chapter 9 or 11—Secured Creditors' Election to Apply § 1111(b)**
An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.	**(a) Time for an Election**. In a Chapter 9 or 11 case, before a hearing on the disclosure statement concludes, a class of secured creditors may elect to apply § 1111(b)(2). If the disclosure statement is conditionally approved under Rule 3017.1 and a final hearing on it is not held, the election must be made within the time provided in Rule 3017.1(a)(2). In either situation, the court may set another time for the election. **(b) Signed Writing; Binding Effect**. The election must be made in writing and signed unless made at the hearing on the disclosure statement. An election made by the majorities required by § 1111(b)(1)(A)(i) is binding on all members of the class.

Committee Note

The language of Rule 3014 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case	**Rule 3015. Chapter 12 or 13—Time to File a Plan; Nonstandard Provisions; Objection to Confirmation; Effect of Confirmation; Modifying a Plan**
(a) FILING A CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.	**(a) Time to File a Chapter 12 Plan.** The debtor may file a Chapter 12 plan: (1) with the petition; or (2) within the time prescribed by § 1221.
(b) FILING A CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.	**(b) Time to File a Chapter 13 Plan.** **(1)** ***In General.*** The debtor may file a Chapter 13 plan with the petition or within 14 days after it is filed. The time to file may not be extended except for cause and on notice as the court directs. **(2)** ***Case Converted to Chapter 13.*** If a case is converted to Chapter 13, the plan must be filed within 14 days after conversion. The time may not be extended except for cause and on notice as the court directs.
(c) FORM OF CHAPTER 13 PLAN. If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, "nonstandard provision" means a provision not otherwise included in the Official or Local Form or deviating from it.	**(c) Form of a Chapter 13 Plan.** **(1)** ***In General.*** In filing a Chapter 13 plan, the debtor must use Form 113, unless the court has adopted a local form under Rule 3015.1. **(2)** ***Nonstandard Provision.*** With either form, a nonstandard provision is effective only if it is included in the section of the form that is designated for nonstandard provisions and is identified in accordance with any other requirements of the form. A nonstandard provision is one that is not included in the form or deviates from it.

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(d) NOTICE. If the plan is not included with the notice of the hearing on confirmation mailed under Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.	**(d) Serving a Copy of the Plan.** If the plan was not included with the notice of a confirmation hearing mailed under Rule 2002, the debtor must serve the plan on the trustee and creditors when it is filed.
(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed under subdivision (a) or (b) of this rule.	**(e) Copy to the United States Trustee.** The clerk must promptly send to the United States trustee a copy of any plan filed under (a) or (b) or any modification of it.
(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.	**(f) Objection to Confirmation; Determining Good Faith When No Objection is Filed.** **(1)** ***Serving an Objection.*** An entity that objects to confirmation of a plan must file and serve the objection on the debtor, trustee, and any other entity the court designates, and must send a copy to the United States trustee. Unless the court orders otherwise, the objection must be filed, served, and sent at least seven days before the date set for the confirmation hearing. The objection is governed by Rule 9014. **(2)** ***When No Objection Is Filed.*** If no objection is timely filed, the court may, without receiving evidence, determine that the plan has been proposed in good faith and not by any means forbidden by law.
(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan: (1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and	**(g) Effect of Confirmation of a Chapter 12 or 13 Plan on the Amount of a Secured Claim; Terminating the Stay.** **(1)** ***Secured Claim.*** When a plan is confirmed, the amount of a secured claim—determined in the plan under Rule 3012—becomes binding on the holder of the claim. That is the effect even if the holder files a contrary proof

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regardless of whether an objection to the claim has been filed; and (2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.	of claim, the debtor schedules that claim, or an objection to the claim is filed. **(2)** ***Terminating the Stay.*** When a plan is confirmed, a request in the plan to terminate the stay imposed under § 362(a), § 1201(a), or § 1301(a) is granted.
(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.	**(h) Modifying a Plan After It Is Confirmed.** **(1)** ***Request to Modify a Plan After It Is Confirmed.*** A request to modify a confirmed plan under § 1229 or § 1329 must identify the proponent and include the proposed modification. Unless the court orders otherwise for creditors not affected by the modification, the clerk or the court's designee must: (A) give the debtor, trustee, and creditors at least 21 days' notice, by mail, of the time to file objections and the date of any hearing; (B) send a copy of the notice to the United States trustee; and (C) include a copy or summary of the modification. *(2) Objecting to a Modification.* Rule 9014 governs an objection to a proposed modification. An objection must be filed and served on: • the debtor; • the trustee; and • any other entity the court designates. A copy must also be sent to the United States trustee.

Committee Note

The language of Rule 3015 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3015.1. Requirements for a Local Form for Plans Filed in a Chapter 13 Case	**Rule 3015.1 Requirements for a Local Form for a Chapter 13 Plan**
Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied: (a) a single Local Form is adopted for the district after public notice and an opportunity for public comment; (b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph; (c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not: (1) contain any nonstandard provision; (2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or (3) avoid a security interest or lien; (d) the Local Form contains separate paragraphs for: (1) curing any default and maintaining payments on a claim secured by the debtor's principal residence; (2) paying a domestic-support obligation; (3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and (4) surrendering property that secures a claim with a request that	As an exception to Rule 9029(a)(1), a court may require that a single local form be used for a chapter 13 plan in its district instead of Official Form 113 if it: (a) is adopted after public notice and an opportunity for comment; (b) numbers and labels each paragraph in boldface type with a heading that states its general subject matter; (c) includes an opening paragraph for the debtor to indicate that the plan does or does not: (1) contain a nonstandard provision; (2) limit the amount of a secured claim based on a valuation of the collateral; or (3) avoid a security interest or lien; (d) contains separate paragraphs relating to: (1) curing any default and maintaining payments on a claim secured by the debtor's principal residence; (2) paying a domestic support obligation; (3) paying a claim described in the final paragraph of § 1325(a); and (4) surrendering property that secures a claim and requesting that the stay under § 362(a) or 1301(a) related to the property be terminated; and (e) contains a final paragraph providing a place for: (1) nonstandard provisions as defined in Rule 3015(c), with a warning

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the stay under §§ 362(a) and 1301(a) be terminated as to the surrendered collateral; and (e) the Local Form contains a final paragraph for: (1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and (2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.	that any nonstandard provision placed elsewhere in the plan is void; and (2) a certification by the debtor's attorney, or by an unrepresented debtor, that the plan does not contain any nonstandard provision except as set out in the final paragraph.

Committee Note

The language of Rule 3015.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3016. Chapter 9 or 11—Plan and Disclosure Statement**
(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.	**(a) In General.** In a Chapter 9 or 11 case, every proposed plan or modification must be dated. In a Chapter 11 case, the plan must name the entity or entities proposing or filing it.
(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement under § 1125 of the Code or evidence showing compliance with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated and Rule 3017.1 shall apply as if the plan is a disclosure statement.	**(b) Filing a Disclosure Statement.** **(1)** ***In General.*** In a Chapter 9 or 11 case, unless (2) applies, the disclosure statement required by § 1125 or evidence showing compliance with § 1126(b) must be filed with the plan or at another time set by the court. ***(2) Providing Information Under § 1125(f)(1).*** A plan intended to provide adequate information under § 1125(f)(1) must be so designated. Rule 3017.1 then applies as if the plan were a disclosure statement.
(c) INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.	**(c) Injunction in a Plan.** If the plan provides for an injunction against conduct not otherwise enjoined by the Code, the plan and disclosure statement must: (1) describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined; and (2) identify the entities that would be subject to the injunction.
(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a small business case, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court.	**(d) Form of a Disclosure Statement and Plan in a Small Business Case.** In a small business case, the court may approve a disclosure statement that substantially conforms to Form 425B and confirm a plan that substantially conforms to Form 425A—or, in either instance, to a standard form approved by the court.

Committee Note

The language of Rule 3016 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3017. Chapter 9 or 11—Hearing on a Disclosure Statement and Plan**
(a) HEARING ON DISCLOSURE STATEMENT AND OBJECTIONS. Except as provided in Rule 3017.1, after a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 28 days' notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission and any party in interest who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed and served on the debtor, the trustee, any committee appointed under the Code, and any other entity designated by the court, at any time before the disclosure statement is approved or by an earlier date as the court may fix. In a chapter 11 reorganization case, every notice, plan, disclosure statement, and objection required to be served or mailed pursuant to this subdivision shall be transmitted to the United States trustee within the time provided in this subdivision.	**(a) Hearing on a Disclosure Statement; Objections.** *(1) Notice and Hearing.* (A) *Notice.* Except as provided in Rule 3017.1 for a small business case, the court must hold a hearing on a disclosure statement filed under Rule 3016(b) and any objection or modification to it. The hearing must be held on at least 28 days' notice under Rule 2002(b) to: • the debtor; • creditors; • equity security holders; and • other parties in interest. (B) *Limit on Sending the Plan and Disclosure Statement.* A copy of the plan and disclosure statement must be mailed with the notice of a hearing to: • the debtor; • any trustee or appointed committee; • the Securities and Exchange Commission: and • any party in interest that, in writing, requests a copy of the disclosure statement or plan. **(2)** ***Objecting to a Disclosure Statement.*** An objection to a disclosure statement must be filed and served before the disclosure statement

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	is approved or by an earlier date the court sets. The objection must be served on: • the debtor; • the trustee; • any appointed committee; and • any other entity the court designates. **(3)** ***Chapter 11—Copies to the United States Trustee.*** In a Chapter 11 case, a copy of every item required to be served or mailed under this Rule 3017(a) must also be sent to the United States trustee within the prescribed time.
(b) DETERMINATION ON DISCLOSURE STATEMENT. Following the hearing the court shall determine whether the disclosure statement should be approved.	**(b) Court Ruling on the Disclosure Statement.** After the hearing, the court must determine whether the disclosure statement should be approved.
(c) DATES FIXED FOR VOTING ON PLAN AND CONFIRMATION. On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.	**(c) Time to Accept or Reject a Plan and for the Confirmation Hearing.** At the time or before the disclosure statement is approved, the court: (1) must set a deadline for the holders of claims and interests to accept or reject the plan; and (2) may set a date for a confirmation hearing.
(d) TRANSMISSION AND NOTICE TO UNITED STATES TRUSTEE, CREDITORS, AND EQUITY SECURITY HOLDERS. Upon approval of a disclosure statement,—[2] except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or	**(d) Hearing on Confirmation.** ***(1) Transmitting the Plan and Related Documents.*** (A) *In General.* After the disclosure statement has been approved, the court must order the debtor in possession, the trustee, the plan

2 So in original. The comma probably should not appear.

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equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee, (1) the plan or a court-approved summary of the plan; (2) the disclosure statement approved by the court; (3) notice of the time within which acceptances and rejections of the plan may be filed; and (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion. In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. If the court opinion is not transmitted or only a summary of the plan is transmitted, the court opinion or the plan shall be provided on request of a party in interest at the plan proponent's expense. If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan	proponent, or the clerk to mail the following items to creditors and equity security holders and, in a Chapter 11 case, to send a copy of each to the United States trustee: (i) the court-approved disclosure statement; (ii) the plan or a court-approved summary of it; (iii) a notice of the time to file acceptances and rejections of the plan; and (iv) any other information as the court directs—including any opinion approving the disclosure statement or a court-approved summary of the opinion. (B) *Exception.* The court may vary the requirements for an unimpaired class of creditors or equity security holders. **(2)** ***Time to Object to a Plan; Notice of the Confirmation Hearing.*** Notice of the time to file an objection to a plan's confirmation and the date of the hearing on confirmation must be mailed to creditors and equity security holders in accordance with Rule 2002(b). A ballot that conforms to Form 314 must also be mailed to creditors and equity security holders who are entitled to vote on the plan. If the court's opinion is not sent (or only a summary of the plan was sent), a party in interest may request a copy of the opinion or plan, which must be provided at the plan proponent's expense. **(3)** ***Notice to Unimpaired Classes.*** If the court orders that the disclosure statement and plan (or the plan

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proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.	summary) not be mailed to an unimpaired class, a notice that the class has been designated in the plan as unimpaired must be mailed to the class members. The notice must show: (A) the name and address of the person from whom the plan (or summary) and the disclosure statement may be obtained at the plan proponent's expense; (B) the time to file an objection to the plan's confirmation; and (C) the date of the confirmation hearing. **(4)** ***Definition of "Creditors" and "Equity Security Holders."*** In this Rule 3017(d), "creditors" and "equity security holders" include record holders of stock, bonds, debentures, notes, and other securities on the date the order approving the disclosure statement is entered—or another date the court sets for cause and after notice and a hearing.
(e) TRANSMISSION TO BENEFICIAL HOLDERS OF SECURITIES. At the hearing held pursuant to subdivision (a) of this rule, the court shall consider the procedures for transmitting the documents and information required by subdivision (d) of this rule to beneficial holders of stock, bonds, debentures, notes, and other securities, determine the adequacy of the procedures, and enter any orders the court deems appropriate.	**(e) Procedure for Sending Information to Beneficial Holders of Securities.** At the hearing under (a), the court must: (1) determine the adequacy of the procedures for sending the documents and information listed in (d)(1) to beneficial holders of stock, bonds, debentures, notes, and other securities; and (2) issue any appropriate orders.
(f) NOTICE AND TRANSMISSION OF DOCUMENTS TO ENTITIES SUBJECT TO AN INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code and	**(f) Sending Information to Entities Subject to an Injunction.** **(1)** ***Timing of the Notice***. This Rule 3017(f) applies if, under a plan, an entity that is not a creditor or equity

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an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with: (1) at least 28 days' notice of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3); and (2) to the extent feasible, a copy of the plan and disclosure statement.	security holder is subject to an injunction against conduct not otherwise enjoined by the Code. At the hearing under (a), the court must consider procedures to provide the entity with at least 28 days' notice of: (A) the time to file an objection; and (B) the date of the confirmation hearing. **(2)** *Contents of the Notice.* The notice must: (A) provide the information required by Rule 2002(c)(3); and (B) if feasible, include a copy of the plan and disclosure statement.

Committee Note

The language of Rule 3017 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case	**Rule 3017.1. Disclosure Statement in a Small Business Case**
(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. In a small business case, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall: (1) fix a time within which the holders of claims and interests may accept or reject the plan; (2) fix a time for filing objections to the disclosure statement; (3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and (4) fix a date for the hearing on confirmation.	**(a) Conditionally Approving a Disclosure Statement.** In a small business case, the court may, on motion of the plan proponent or on its own, conditionally approve a disclosure statement filed under Rule 3016. Before doing so, the court must: (1) set the time within which the claim holders and interest holders may accept or reject the plan; (2) set the time to file an objection to the disclosure statement; (3) if a timely objection is filed, set the date for the hearing on final approval of the disclosure statement; and (4) set a date for the confirmation hearing.
(b) APPLICATION OF RULE 3017. Rule 3017(a), (b), (c), and (e) do not apply to a conditionally approved disclosure statement. Rule 3017(d) applies to a conditionally approved disclosure statement, except that conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).	**(b) Effect of a Conditional Approval.** Rule 3017(a)–(c) and (e) do not apply to a conditionally approved disclosure statement. But conditional approval is considered approval in applying Rule 3017(d).
(c) FINAL APPROVAL. (1) *Notice.* Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 and may be combined with notice of the hearing on confirmation of the plan.	**(c) Time to File an Objection; Date of a Hearing.** **(1)** ***Notice.*** Notice must be given under Rule 2002(b) of the time to file an objection and the date of a hearing to consider final approval of the disclosure statement. The notice may

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(2) *Objections*. Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix. (3) *Hearing*. If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.	be combined with notice of the confirmation hearing. **(2)** ***Time to File an Objection to the Disclosure Statement.*** An objection to the disclosure statement must be filed before the disclosure statement is finally approved or by an earlier date set by the court. The objection must be served on: • the debtor; • the trustee; • any appointed committee; and • any other entity the court designates. A copy must also be sent to the United States trustee. **(3)** ***Hearing on an Objection to the Disclosure Statement.*** If a timely objection to the disclosure statement is filed, the court must hold a hearing on final approval either before or combined with the confirmation hearing.

Committee Note

The language of Rule 3017.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case	**Rule 3018. Chapter 9 or 11—Accepting or Rejecting a Plan**
(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court, for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.	**(a) In General.** (1) ***Who May Accept or Reject a Plan.*** Within the time set by the court under Rule 3017, a claim holder or equity security holder may accept or reject a Chapter 9 or Chapter 11 plan under § 1126. (2) ***Claim Based on a Security of Record.*** Subject to (b), an equity security holder or creditor whose claim is based on a security of record may accept or reject a plan only if the equity security holder or creditor is the holder of record: (A) on the date the order approving the disclosure statement is entered; or (B) on another date the court sets after notice and a hearing and for cause. (3) ***Changing or Withdrawing an Acceptance or Rejection.*** After notice and a hearing and for cause, the court may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. (4) ***Temporarily Allowing a Claim or Interest.*** Even if an objection to a claim or interest has been filed, the court may, after notice and a hearing, temporarily allow a claim or interest in an amount that the court considers proper for voting to accept or reject a plan.
(b) ACCEPTANCES OR REJECTIONS OBTAINED BEFORE PETITION. An equity security holder or creditor whose claim is based on a security of record who accepted or	**(b) Treatment of Acceptances or Rejections Obtained Before the Petition Was Filed.** (1) ***Acceptance or Rejection by a Nonholder of Record.*** An equity security holder or creditor who

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rejected the plan before the commencement of the case shall not be deemed to have accepted or rejected the plan pursuant to § 1126(b) of the Code unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of such acceptance or rejection for the purposes of such solicitation. A holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Code shall not be deemed to have accepted or rejected the plan if the court finds after notice and hearing that the plan was not transmitted to substantially all creditors and equity security holders of the same class, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with § 1126(b) of the Code.	accepted or rejected a plan before the petition was filed will not be considered to have accepted or rejected the plan under § 1126(b) if the equity security holder or creditor: (A) has a claim or interest based on a security of record; and (B) was not the security's holder of record on the date specified in the solicitation of the acceptance or rejection. (2) *Defective Solicitations.* A holder of a claim or interest who accepted or rejected a plan before the petition was filed will not be considered to have accepted or rejected the plan if the court finds, after notice and a hearing, that: (A) the plan was not sent to substantially all creditors and equity security holders of the same class; (B) an unreasonably short time was prescribed for those creditors and equity security holders to accept or reject the plan; or (C) the solicitation did not comply with § 1126(b).
(c) FORM OF ACCEPTANCE OR REJECTION. An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form. If more than one plan is transmitted pursuant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security	**(c) Form for Accepting or Rejecting a Plan; Procedure When More Than One Plan Is Filed.** (1) *Form.* An acceptance or rejection of a plan must: (A) be in writing; (B) identify the plan or plans; (C) be signed by the creditor or equity security holder—or an authorized agent; and

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holder may indicate a preference or preferences among the plans so accepted.	(D) conform to Form 314. (2) ***When More Than One Plan Is Distributed.*** If more than one plan is transmitted under Rule 3017, a creditor or equity security holder may accept or reject one or more plans and may indicate preferences among the plans accepted.
(d) ACCEPTANCE OR REJECTION BY PARTIALLY SECURED CREDITOR. A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.	**(d) Partially Secured Creditor.** If a creditor's claim has been allowed in part as a secured claim and in part as an unsecured claim, the creditor may accept or reject a plan in both capacities.

Committee Note

The language of Rule 3018 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case	**Rule 3019. Chapter 9 or 11—Modifying a Plan**
(a) MODIFICATION OF PLAN BEFORE CONFIRMATION. In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.	**(a) Modifying a Plan Before Confirmation.** In a Chapter 9 or 11 case, after a plan has been accepted and before confirmation, the plan proponent may file a modification. The modification is considered accepted by any creditor or equity security holder who has accepted it in writing. For others who have not accepted it in writing but have accepted the plan, the modification is considered accepted if, after notice and a hearing, the court finds that it does not adversely change the treatment of their claims or interests. The notice must be served on: • the trustee; • any appointed committee; and • any other entity the court designates.
(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification	**(b) Modifying a Plan After Confirmation in an Individual Debtor's Chapter 11 Case.** (1) *In General.* When a plan in an individual debtor's Chapter 11 case has been confirmed, a request to modify it under § 1127(e) is governed by Rule 9014. The request must identify the proponent, and the proposed modification must be filed with it. *(2) Time to File an Objection; Service.* (A) *Time.* Unless the court orders otherwise for creditors who are not affected by the proposed modification, the clerk—or the court's designee—must give the debtor, trustee, and creditors at least 21 days' notice, by mail, of: (i) the time to file an objection; and

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shall be filed and served on the debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.	(ii) if an objection is filed, the date of a hearing to consider the proposed modification. (B) *Service.* Any objection must be served on: • the debtor; • the entity proposing the modification; • the trustee; and • any other entity the court designates. A copy of the notice, modification, and objection must also be sent to the United States trustee.

Committee Note

The language of Rule 3019 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3020. In a Chapter 11 Case, Depositing Funds Before the Plan is Confirmed; Confirmation in a Chapter 9 or 11 Case**
(a) DEPOSIT. In a chapter 11 case, prior to entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money deposited shall be kept in a special account established for the exclusive purpose of making the distribution.	**(a) Chapter 11—Depositing Funds Before the Plan is Confirmed.** Before a plan is confirmed in a Chapter 11 case, the court may order that the funds required to be distributed upon confirmation be deposited with the trustee or debtor in possession. The funds must be kept in a special account and used only to make the distribution.
(b) OBJECTION TO AND HEARING ON CONFIRMATION IN A CHAPTER 9 OR CHAPTER 11 CASE. (1) *Objection.* An objection to confirmation of the plan shall be filed and served on the debtor, the trustee, the proponent of the plan, any committee appointed under the Code, and any other entity designated by the court, within a time fixed by the court. Unless the case is a chapter 9 municipality case, a copy of every objection to confirmation shall be transmitted by the objecting party to the United States trustee within the time fixed for filing objections. An objection to confirmation is governed by Rule 9014. (2) *Hearing.* The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.	**(b) Chapter 9 or 11—Objecting to Confirmation; Confirmation Hearing.** **(1)** *Objecting to Confirmation.* In a Chapter 9 or 11 case, an objection to confirmation is governed by Rule 9014. The objection must be filed and served within the time set by the court and be served on: • the debtor; • the trustee; • the plan proponent; • any appointed committee; and • any other entity the court designates. **(2)** *Copy to the United States Trustee.* In a Chapter 11 case, the objecting party must send a copy of the objection to the United States trustee within the time set to file an objection. **(3)** *Hearing on the Objection; Procedure If No Objection Is Filed.* After notice and a hearing as provided in Rule 2002, the court must rule on confirmation. If no objection is timely filed, the court may, without receiving

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	evidence, determine that the plan was proposed in good faith and not by any means forbidden by law.
(c) ORDER OF CONFIRMATION. (1) The order of confirmation shall conform to the appropriate Official Form. If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order of confirmation shall (1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction. (2) Notice of entry of the order of confirmation shall be mailed promptly to the debtor, the trustee, creditors, equity security holders, other parties in interest, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code. (3) Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).	**(c) Confirmation Order.** **(1)** ***Form of the Order; Injunctive Relief.*** A confirmation order must conform to Form 315. If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order must: (A) describe the acts enjoined in reasonable detail; (B) be specific in its terms regarding the injunction; and (C) identify the entities subject to the injunction. **(2)** ***Notice of Confirmation.*** Notice of entry of a confirmation order must be promptly mailed to: • the debtor; • the trustee; • creditors; • equity security holders; • other parties in interest; and • if known, identified entities subject to an injunction described in (1). **(3)** ***Copy to the United States Trustee.*** In a Chapter 11 case, a copy of the order must be sent to the United States trustee under Rule 2002(k).
(d) RETAINED POWER. Notwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.	**(d) Retained Power to Issue Future Orders Relating to Administration.** After a plan is confirmed, the court may continue to issue orders needed to administer the estate.

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(e) STAY OF CONFIRMATION ORDER. An order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.	**(e) Staying a Confirmation Order.** Unless the court orders otherwise, a confirmation order is stayed for 14 days after its entry.

Committee Note

The language of Rule 3020 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3021. Distribution Under Plan	**Rule 3021. Distributing Funds Under a Plan**
Except as provided in Rule 3020(e), after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims under Rule 3003(c)(5) that have been allowed. For purposes of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the holders of stock and other equity securities, of record at the time of commencement of distribution, unless a different time is fixed by the plan or the order confirming the plan.	**(a) In General.** After confirmation and when any stay under Rule 3020(e) expires, payments under the plan must be distributed to: • creditors whose claims have been allowed; • interest holders whose interests have not been disallowed; and • indenture trustees whose claims under Rule 3003(c)(5) have been allowed. **(b) Definition of "Creditors" and "Interest Holders."** In this Rule 3021: (1) "creditors" includes record holders of bonds, debentures, notes, and other debt securities as of the initial distribution date, unless the plan or confirmation order states a different date; and (2) "interest holders" includes record holders of stock and other equity securities as of the initial distribution date, unless the plan or confirmation order states a different date.

Committee Note

The language of Rule 3021 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3022. Final Decree in Chapter 11 Reorganization Case	**Rule 3022. Chapter 11—Final Decree**
After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.	After the estate is fully administered in a Chapter 11 case, the court must, on its own or on a party in interest's motion, enter a final decree closing the case.

Committee Note

The language of Rule 3022 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Bankruptcy Rules Restyling

4000 Series

Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

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PART IV—THE DEBTOR: DUTIES AND BENEFITS	**PART IV. THE DEBTOR'S DUTIES AND BENEFITS**
Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements	**Rule 4001. Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Using Cash Collateral; Obtaining Credit; Various Agreements**
(a) RELIEF FROM STAY; PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY. (1) *Motion*. A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. (2) *Ex Parte Relief*. Relief from a stay under § 362(a) or a request to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) may be granted without prior notice only if (A) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or the attorney for the adverse party can be heard in opposition, and (B) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the	**(a) Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property.** (1) ***Motion.*** A motion under § 362(d) for relief from the automatic stay—or a motion under § 363(e) to prohibit or condition the use, sale, or lease of property—must comply with Rule 9014. The motion must be served on: (A) the following, as applicable: (i) a committee elected under § 705 or appointed under § 1102; (ii) the committee's authorized agent; or (iii) the creditors included on the list filed under Rule 1007(d) if the case is a Chapter 9 or Chapter 11 case and no committee of unsecured creditors has been appointed under § 1102; and (B) any other entity the court designates. (2) ***Relief Without Notice.*** Relief from a stay under § 362(a)—or a request under § 363(e) to prohibit or condition the use, sale, or lease of property—may be granted without prior notice only if: (A) specific facts—shown by either an affidavit or a verified motion—

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reasons why notice should not be required. The party obtaining relief under this subdivision and § 362(f) or § 363(e) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such adverse party or parties a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay or reconsideration of the order prohibiting or conditioning the use, sale, or lease of property. In that event, the court shall proceed expeditiously to hear and determine the motion. (3) *Stay of Order*. An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.	clearly demonstrate that the movant will suffer immediate and irreparable injury, loss, or damage before the adverse party or its attorney can be heard in opposition; and (B) the movant's attorney certifies to the court in writing what efforts, if any, have been made to give notice and why it should not be required. *(3) Notice of Relief; Motion for Reinstatement or Reconsideration.* (A) *Notice of Relief.* A party who obtains relief under (2) and under § 362(f) or § 363(e) must: (i) immediately give oral notice both to the debtor and to the trustee or the debtor-in-possession; and (ii) promptly send them a copy of the order granting relief. (B) *Motion for Reinstatement or Reconsideration.* On 2 days' notice to the party who obtained relief under (2)—or on shorter notice as the court may order—the adverse party may move to reinstate the stay or reconsider the order prohibiting or conditioning the use, sale, or lease of property. The court must proceed expeditiously to hear and decide the motion. (4) *Stay of an Order Granting Relief from the Automatic Stay.* Unless the court orders otherwise, an order granting a motion for relief from the automatic stay under (1) is stayed for 14 days after it is entered.

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(b) USE OF CASH COLLATERAL. *(1) Motion; Service.* (A) *Motion.* A motion for authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order. (B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions, including: (i) the name of each entity with an interest in the cash collateral; (ii) the purposes for the use of the cash collateral; (iii) the material terms, including duration, of the use of the cash collateral; and (iv) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected. (C) *Service.* The motion shall be served on: (1) any entity with an interest in the cash collateral; (2) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the	**(b) Using Cash Collateral.** ***(1) Motion; Contents; Service.*** (A) *Motion.* A motion for authorization to use cash collateral must comply with Rule 9014 and must be accompanied by a proposed form of order. (B) *Contents.* The motion must include a concise statement of the relief requested, no longer than five pages. If the motion exceeds five pages, it must begin with the statement. The statement must list or summarize all material provisions (citing their locations in the relevant documents), including: (i) the name of each entity with an interest in the cash collateral; (ii) how it will be used; (iii) the material terms of its use, including duration; and (iv) all liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no such protection is proposed, an explanation of how each entity's interest is adequately protected. (C) *Service.* The motion must be served on: (i) each entity with an interest in the cash collateral; (ii) all those who must be served under (a)(1)(A); and (iii) any other entity the court designates.

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creditors included on the list filed under Rule 1007(d); and (3) any other entity that the court directs. (2) *Hearing.* The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.	*(2) Hearings; Notice.* (A) *Preliminary and Final Hearings.* The court may begin a final hearing on the motion no earlier than 14 days after it has been served. If the motion so requests, the court may conduct a preliminary hearing before that 14-day period ends. After a preliminary hearing, the court may authorize using only the cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (B) *Notice.* Notice of a hearing must be given to the parties who must be served with the motion under (1)(C) and to any other entity the court designates.
(c) OBTAINING CREDIT. *(1) Motion; Service.* (A) *Motion.* A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order. (B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or form of order	**(c) Obtaining Credit.** *(1) Motion; Contents; Service.* (A) *Motion.* A motion for authorization to obtain credit must comply with Rule 9014 and must be accompanied by a copy of the credit agreement and a proposed form of order. (B) *Contents.* The motion must include a concise statement of the relief requested, no longer than five pages. If the motion exceeds five pages, it must begin with the statement. The statement must list or summarize all material provisions of the credit agreement and form of order (citing their locations in the relevant documents), including interest rates, maturity dates, default provisions, liens, and borrowing

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includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each one; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2). In addition, the motion shall describe the nature and extent of each provision listed below: (i) a grant of priority or a lien on property of the estate under § 364(c) or (d); (ii) the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim; (iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim; (iv) a waiver or modification of Code provisions or applicable rules relating to the automatic stay; (v) a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364;	limits and conditions. If the credit agreement or form of order includes any of the provisions listed below in (i)-(xi), the concise statement must also list or summarize each one, describe its nature and extent, cite its location in the proposed agreement and form of order, and identify any that would remain effective if interim approval were to be granted but final relief denied under (2). The provisions are: (i) a grant of priority or a lien on property of the estate under § 364(c) or (d); (ii) the providing of adequate protection or priority for a claim that arose before the case commenced—including a lien on property of the estate, or the use of property of the estate or of credit obtained under § 364 to make cash payments on the claim; (iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the case commenced, or of any lien securing the claim; (iv) a waiver or modification of Code provisions or applicable rules regarding the automatic stay; (v) a waiver or modification of an entity's right to file a plan, seek to extend the time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or

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(vi) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order; (vii) a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien; (viii) a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action; (ix) the indemnification of any entity; (x) a release, waiver, or limitation of any right under § 506(c); or (xi) the granting of a lien on any claim or cause of action arising under §§ 544,[1] 545, 547, 548, 549, 553(b), 723(a), or 724(a). (C) *Service.* The motion shall be served on: (1) any com-mittee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity that the court directs. (2) *Hearing.* The court	request authorization to obtain credit under § 364; (vi) the establishment of deadlines for filing a plan of reorganization, approving a disclosure statement, holding a hearing on confirmation, or entering a confirmation order; (vii) a waiver or modification of the applicability of nonbankruptcy law regarding perfecting or enforcing a lien on property of the estate; (viii) a release, waiver, or limitation on a claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action; (ix) the indemnification of any entity; (x) a release, waiver, or limitation of any right under § 506(c); or (xi) the granting of a lien on a claim or cause of action arising under § 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a). (C) *Service.* The motion must be served on all those who must be served under (a)(1)(A) and any other entity the court designates. *(2) Hearings; Notice.* (A) *Preliminary and Final Hearings.* The court may begin a final hearing on the motion no earlier than 14 days after it has been served. If the

[1] So in original. Probably should be only one section symbol.

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may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct. (4) *Inapplicability in a Chapter 13 Case.* This subdivision (c) does not apply in a chapter 13 case.	motion so requests, the court may conduct a preliminary hearing before that 14-day period ends. After a preliminary hearing, the court may authorize obtaining credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (B) *Notice.* Notice of a hearing must be given to the parties who must be served with the motion under (1)(C) and to any other entity the court designates. **(3)** ***Inapplicability in a Chapter 13 Case.*** This subdivision (c) does not apply in a chapter 13 case.
(d) AGREEMENT RELATING TO RELIEF FROM THE AUTOMATIC STAY, PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY, PROVIDING ADEQUATE PROTECTION, USE OF CASH COLLATERAL, AND OBTAINING CREDIT. *(1) Motion; Service.* (A) *Motion.* A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order: (i) an agreement to provide adequate protection; (ii) an agreement to prohibit or condition the use, sale, or lease of property; (iii) an agreement to modify or terminate the stay provided	**(d) Various Agreements: Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Providing Adequate Protection; Using Cash Collateral; or Obtaining Credit.** ***(1) Motion; Contents; Service.*** (A) *Motion.* A motion to approve any of the following must be accompanied by a copy of the agreement and a proposed form of order: (i) an agreement to provide adequate protection; (ii) an agreement to prohibit or condition the use, sale, or lease of property; (iii) an agreement to modify or terminate the stay provided for in § 362;

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for in § 362; (iv) an agreement to use cash collateral; or (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property. (B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement. In addition, the concise statement shall briefly list or summarize, and identify the specific location of, each provision in the proposed form of order, agreement, or other document of the type listed in subdivision (c)(1)(B). The motion shall also describe the nature and extent of each such provision. (C) *Service.* The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs. (2) *Objection.* Notice of the motion and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) of	(iv) an agreement to use cash collateral; or (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate under which the entity consents to creating a lien that is senior or equal to the entity's lien or interest in the property. (B) *Contents.* The motion must include a concise statement of the relief requested, no longer than five pages. If the motion exceeds five pages, it must begin with the statement. The statement must: (i) list or summarize all the agreement's material provisions (citing their locations in the relevant documents); and (ii) briefly list or summarize, cite the location of, and describe the nature and extent of each provision in the proposed form of order, agreement, or other document of the type listed in (c)(1)(B). (C) *Service.* The motion must be served on all those who must be served under (a)(1)(A) and any other entity the court designates. (2) ***Objection.*** Notice of the motion must be mailed to the parties on whom service of the motion is required and any other entity the court designates. The notice must include the time within which objections may be filed and served on the debtor-in-possession or trustee. Unless the court sets a different time, any objections must be

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this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 14 days of the mailing of the notice. (3) *Disposition; Hearing.* If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct. (4) *Agreement in Settlement of Motion.* The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.	filed within 14 days after the notice is mailed. (3) ***Disposition Without a Hearing.*** If no objection is filed, the court may enter an order approving or disapproving the agreement without holding a hearing. (4) ***Hearing.*** If an objection is filed or if the court decides that a hearing is appropriate, the court must hold one after giving at least 7 days' notice to: • the objector; • the movant; • the parties who must be served with the motion under (1)(C); and • any other entity the court designates. (5) ***Agreement to Settle a Motion.*** The court may decide that a motion made under (a), (b), or (c) was sufficient to give reasonable notice of the agreement's material provisions and an opportunity for a hearing. If so, the court may order that the procedures prescribed in (1)–(4) do not apply and may approve the agreement without further notice.

Committee Note

The language of Rule 4001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 4002. Duties of Debtor	**Rule 4002. Debtor's Duties**
(a) IN GENERAL. In addition to performing other duties prescribed by the Code and rules, the debtor shall: (1) attend and submit to an examination at the times ordered by the court; (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness; (3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007; (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate; and (5) file a statement of any change of the debtor's address.	**(a) In General.** In addition to performing other duties that are required by the Code or these rules, the debtor must: (1) attend and submit to an examination when the court orders; (2) attend a hearing on a complaint objecting to discharge and, if called, testify as a witness; (3) if a schedule of property has not yet been filed under Rule 1007, report to the trustee immediately in writing: (A) the location of any real property in which the debtor has an interest; and (B) the name and address of every person holding money or property subject to the debtor's withdrawal or order; (4) cooperate with the trustee in preparing an inventory, examining proofs of claim, and administering the estate; and (5) file a statement of any change in the debtor's address.
(b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE DOCUMENTATION. (1) *Personal Identification.* Every individual debtor shall bring to the meeting of creditors under § 341: (A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and (B) evidence of social security number(s), or a written statement that such documentation does not exist.	**(b) Individual Debtor's Duty to Provide Documents.** *(1) Personal Identifying Information.* An individual debtor must bring to the § 341 meeting of creditors: (A) a government-issued identification containing the debtor's picture, or other personal identifying information that establishes the debtor's identity; and (B) evidence of any social-security number, or a written statement that no such evidence exists.

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(2) *Financial Information.* Every individual debtor shall bring to the meeting of creditors under § 341, and make available to the trustee, the following documents or copies of them, or provide a written statement that the documentation does not exist or is not in the debtor's possession: (A) evidence of current income such as the most recent payment advice; (B) unless the trustee or the United States trustee instructs otherwise, statements for each of the debtor's depository and investment accounts, including checking, savings, and money market accounts, mutual funds and brokerage accounts for the time period that includes the date of the filing of the petition; and (C) documentation of monthly expenses claimed by the debtor if required by § 707(b)(2)(A) or (B). (3) *Tax Return.* At least 7 days before the first date set for the meeting of creditors under § 341, the debtor shall provide to the trustee a copy of the debtor's federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist. (4) *Tax Returns Provided to Creditors.* If a creditor, at least 14 days before the first date set for the meeting of creditors under § 341, requests a copy of the debtor's tax return that is to be provided to the trustee under subdivision (b)(3), the debtor, at least 7 days before the first date set for the	**(2)** ***Financial Documents.*** An individual debtor must bring the following documents (or copies) to the § 341 meeting of creditors and make them available to the trustee—or provide a written statement that they do not exist or are not in the debtor's possession: (A) evidence of current income, such as the most recent payment advice; (B) unless the trustee or the United States trustee instructs otherwise, a statement for each depository or investment account—including a checking, savings, or money-market account, mutual fund or brokerage account—for the period that includes the petition's filing date; and (C) if required by § 707(b)(2)(A) or (B), documents showing claimed monthly expenses. **(3)** ***Tax Return to Be Provided to the Trustee.*** At least 7 days before the first date set for the § 341 meeting of creditors, the debtor must provide the trustee with: (A) a copy of the debtor's federal income-tax return, including any attachments to it, for the most recent tax year ending before the case was commenced and for which the debtor filed a return; (B) a transcript of the return; or (C) a written statement that the documentation does not exist. **(4)** ***Tax Return to Be Provided to a Creditor.*** Upon a creditor's request at least 14 days before the first date set for the § 341 meeting of creditors, the debtor must provide the creditor with the tax information specified in (3).

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meeting of creditors under § 341, shall provide to the requesting creditor a copy of the return, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist. (5) *Confidentiality of Tax Information.* The debtor's obligation to provide tax returns under Rule 4002(b)(3) and (b)(4) is subject to procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts.	The debtor must do so at least 7 days before the meeting. **(5)** ***Safeguarding Confidential Tax Information.*** The debtor's obligation to provide tax returns under (3) and (4) is subject to procedures established by the Director of the Administrative Office of the United States Courts for safeguarding confidential tax information.

Committee Note

The language of Rule 4002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 4003. Exemptions	**Rule 4003. Exemptions**
(a) CLAIM OF EXEMPTIONS. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.	**(a) Claiming an Exemption.** A debtor must list the property claimed as exempt under § 522 on Form 106C filed under Rule 1007. If the debtor fails to do so within the time specified in Rule 1007(c), a debtor's dependent may file the list within 30 days after the debtor's time to file expires.
(b) OBJECTING TO A CLAIM OF EXEMPTIONS. (1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. (2) The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney. (3) An objection to a claim of exemption based on § 522(q) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed. (4) A copy of any objection shall	**(b) Objecting to a Claimed Exemption.** (1) ***By a Party in Interest.*** Except as (2) and (3) provide, a party in interest may file an objection to a claimed exemption within 30 days after the later of: • the conclusion of the § 341 meeting of creditors; • the filing of an amendment to the list; or • the filing of a supplemental schedule. On a party in interest's motion filed before the time to object expires, the court may, for cause, extend the time to file an objection. (2) ***By the Trustee for a Fraudulently Claimed Exemption.*** If the debtor has fraudulently claimed an exemption, the trustee may file an objection within one year after the case is closed. The trustee must deliver or mail the objection to: • the debtor; • the debtor's attorney; • the person who filed the list of exempt property; and • that person's attorney.

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be delivered or mailed to the trustee, the debtor and the debtor's attorney, and the person filing the list and that person's attorney.	(3) *Objection Based on § 522(q).* An objection based on § 522(q) must be filed: (A) before the case is closed; or (B) if an exemption is first claimed after a case has been reopened, before the reopened case is closed. (4) *Distributing Copies of the Objection.* A copy of any objection, other than one filed by the trustee under (b)(2), must be delivered or mailed to: • the trustee; • the debtor; • the debtor's attorney; • the person who filed the list of exempt property; and • that person's attorney.
(c) BURDEN OF PROOF. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.	**(c) Burden of Proof.** In a hearing under this Rule 4003, the objecting party has the burden of proving that an exemption was not properly claimed. After notice and a hearing, the court must determine the issues presented.
(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding under § 522(f) to avoid a lien or other transfer of property exempt under the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to	**(d) Avoiding a Lien or Other Transfer of Exempt Property.** A proceeding under § 522(f) to avoid a lien or other transfer of exempt property must be commenced by motion under Rule 9014, or by serving a Chapter 12 or 13 plan on the affected creditors as Rule 7004 provides for serving a summons and complaint. As an exception to (b), a creditor may object to a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

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a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.	

Committee Note

The language of Rule 4003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 4004. Grant or Denial of Discharge	**Rule 4004. Granting or Denying a Discharge**
(a) TIME FOR OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED. In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (a)(9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.	**(a) Time to Object to a Discharge; Notice.** (1) ***Chapter 7.*** In a Chapter 7 case, a complaint—or a motion under § 727(a)(8) or (9)—objecting to a discharge must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. (2) ***Chapter 11.*** In a Chapter 11 case, a complaint objecting to a discharge must be filed on or before the first date set for the hearing on confirmation. (3) ***Chapter 13.*** In a Chapter 13 case, a motion objecting to a discharge under § 1328(f) must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. (4) ***Notice to the United States Trustee, the Creditors, and the Trustee.*** At least 28 days' notice of the time so fixed must be given to: • the United States trustee under Rule 2002(k); • all creditors under Rule 2002(f); • the trustee; and • the trustee's attorney.
(b) EXTENSION OF TIME. (1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired. (2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and	**(b) Extending the Time to File an Objection.** (1) ***Motion Before the Time Expires.*** On a party in interest's motion and after notice and a hearing, the court may, for cause, extend the time to object to a discharge. The motion must be filed before the time has expired. (2) ***Motion After the Time Has Expired.*** After the time to object has

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before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.	expired and before a discharge is granted, a party in interest may file a motion to extend the time to object if: (A) the objection is based on facts that, if learned after the discharge is granted, would provide a basis for revocation under § 727(d), and the movant did not know those facts in time to object; and (B) the movant files the motion promptly after learning those facts.
(c) GRANT OF DISCHARGE. (1) In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge, except that the court shall not grant the discharge if: (A) the debtor is not an individual; (B) a complaint, or a motion under § 727(a)(8) or (a)(9), objecting to the discharge has been filed and not decided in the debtor's favor; (C) the debtor has filed a waiver under § 727(a)(10); (D) a motion to dismiss the case under § 707 is pending; (E) a motion to extend the time for filing a complaint objecting to the discharge is pending; (F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending; (G) the debtor has not paid in full the filing fee prescribed by	**(c) Granting a Discharge.** (1) *Chapter 7.* In a Chapter 7 case, when the times to object to discharge and to file a motion to dismiss the case under Rule 1017(e) expire, the court must promptly grant the discharge—except under these circumstances: (A) the debtor is not an individual; (B) a complaint, or a motion under § 727(a)(8) or (9), objecting to the discharge is pending; (C) the debtor has filed a waiver under § 727(a)(10); (D) a motion is pending to dismiss the case under § 707; (E) a motion is pending to extend the time to file a complaint objecting to the discharge; (F) a motion is pending to extend the time to file a motion to dismiss the case under Rule 1017(e)(1); (G) the debtor has not fully paid the filing fee required by 28 U.S.C. § 1930(a), together with any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is

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28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f); (H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management if required by Rule 1007(b)(7); (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 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). (2) Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain. (3) If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than 30 days after the statement is filed.	payable to the clerk upon commencing a case—unless the court has waived the fees under 28 U.S.C. § 1930(f); (H) the debtor has not filed a statement showing that a course on personal financial management has been completed—if such a statement is required by Rule 1007(b)(7); (I) a motion is pending to delay or postpone a discharge under § 727(a)(12); (J) a motion is pending to extend the time to file a reaffirmation agreement under Rule 4008(a); (K) the court has not concluded a hearing on a presumption—in effect under § 524(m)—that a reaffirmation agreement is an undue hardship; or (L) a motion is pending to delay discharge because the debtor has not filed with the court all tax documents required to be filed under § 521(f). (2) *Delay in Entering a Discharge in General.* On the debtor's motion, the court may delay entering a discharge for 30 days and, on a motion made within that time, delay entry to a date certain. (3) *Delaying Entry Because of Rule 1007(b)(8).* If the debtor is required to file a statement under Rule 1007(b)(8), the court must not grant a discharge until at least 30 days after the statement is filed. (4) *Individual Chapter 11 or Chapter 13 Case.* In a Chapter 11 case in which the debtor is an individual—or in a Chapter 13 case—the court must not

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(4) In a chapter 11 case in which the debtor is an individual, or a chapter 13 case, the court shall not grant a discharge if the debtor has not filed any statement required by Rule 1007(b)(7).	grant a discharge if the debtor has not filed a statement required by Rule 1007(b)(7).
(d) APPLICABILITY OF RULES IN PART VII AND RULE 9014. An objection to discharge is governed by Part VII of these rules, except that an objection to discharge under §§ 727(a)(8),[1] (a)(9), or 1328(f) is commenced by motion and governed by Rule 9014.	**(d) Applying Part VII Rules and Rule 9014.** The Part VII rules govern an objection to a discharge, except that Rule 9014 governs an objection to a discharge under § 727(a)(8) or (9) or § 1328(f).
(e) ORDER OF DISCHARGE. An order of discharge shall conform to the appropriate Official Form.	**(e) Form of a Discharge Order.** A discharge order must conform to the appropriate Official Form.
(f) REGISTRATION IN OTHER DISTRICTS. An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the clerk of that district. When so registered the order of discharge shall have the same effect as an order of the court of the district where registered.	**(f) Registering a Discharge in Another District.** A discharge order that becomes final may be registered in another district by filing a certified copy with the clerk of the court for that district. When registered, the order has the same effect as an order of the court where it is registered.
(g) NOTICE OF DISCHARGE. The clerk shall promptly mail a copy of the final order of discharge to those specified in subdivision (a) of this rule.	**(g) Notice of a Final Discharge Order.** The clerk must promptly mail a copy of the final discharge order to those entities listed in (a)(4).

Committee Note

The language of Rule 4004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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[1] So in original. Probably should be only one section symbol.

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Rule 4005. Burden of Proof in Objecting to Discharge	**Rule 4005. Burden of Proof in Objecting to a Discharge**
At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.	At a trial on a complaint objecting to a discharge, the plaintiff has the burden of proof.

Committee Note

The language of Rule 4005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 4006. Notice of No Discharge	**Rule 4006. Notice When No Discharge Is Granted**
If an order is entered: denying a discharge; revoking a discharge; approving a waiver of discharge; or, in the case of an individual debtor, closing the case without the entry of a discharge, the clerk shall promptly notify all parties in interest in the manner provided by Rule 2002.	The clerk must promptly notify in the manner provided by Rule 2002(f) all parties in interest of an order: (a) denying a discharge; (b) revoking a discharge; (c) approving a waiver of discharge; or (d) closing an individual debtor's case without entering a discharge.

Committee Note

The language of Rule 4006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 4007. Determination of Dischargeability of a Debt	**Rule 4007. Determining Whether a Debt Is Dischargeable**
(a) PERSONS ENTITLED TO FILE COMPLAINT. A debtor or any creditor may file a complaint to obtain a determination of the dischargeability of any debt.	**(a) Who May File a Complaint.** A debtor or any creditor may file a complaint to determine whether a debt is dischargeable.
(b) TIME FOR COMMENCING PROCEEDING OTHER THAN UNDER § 523(c) OF THE CODE. A complaint other than under § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.	**(b) Time to File.** A complaint, except one under § 523(c), may be filed at any time. If a case is reopened to permit filing the complaint, no fee for reopening is required.
(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.	**(c) Chapter 7, 11, 12, or 13—Time to File a Complaint Under § 523(c); Notice of Time; Extension.** Except as (d) provides, a complaint to determine whether a debt is dischargeable under § 523(c) must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. The clerk must give all creditors at least 30 days' notice of the time to file in the manner provided by Rule 2002. On a party in interest's motion filed before the time expires, the court may, after notice and a hearing and for cause, extend the time to file.
(d) TIME FOR FILING COMPLAINT UNDER § 523(a)(6) IN A CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF	**(d) Chapter 13—Time to File a Complaint Under § 523(a)(6); Notice of Time; Extension.** When a debtor files a motion for a discharge under § 1328(b), the court

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TIME FIXED. On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under § 523(a)(6) and shall give no less than 30 days' notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.	must set the time to file a complaint under § 523(a)(6) to determine whether a debt is dischargeable. The clerk must give all creditors at least 30 days' notice of the time to file in the manner provided by Rule 2002. On a party in interest's motion filed before the time expires, the court may, after notice and a hearing and for cause, extend the time to file.
(e) APPLICABILITY OF RULES IN PART VII. A proceeding commenced by a complaint filed under this rule is governed by Part VII of these rules.	**(e) Applying Part VII Rules.** The Part VII rules govern a proceeding on a complaint filed under this Rule 4007.

Committee Note

The language of Rule 4007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 4008. Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement	**Rule 4008. Reaffirmation Agreement and Supporting Statement**
(a) FILING OF REAFFIRMATION AGREEMENT. A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code. The reaffirmation agreement shall be accompanied by a cover sheet, prepared as prescribed by the appropriate Official Form. The court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement.	**(a) Time to File; Cover Sheet.** A reaffirmation agreement must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. The agreement must have a cover sheet prepared as prescribed by Form 427. At any time, the court may extend the time to file the agreement.
(b) STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT. The debtor's statement required under § 524(k)(6)(A) of the Code shall be accompanied by a statement of the total income and expenses stated on schedules I and J. If there is a difference between the total income and expenses stated on those schedules and the statement required under § 524(k)(6)(A), the statement required by this subdivision shall include an explanation of the difference.	**(b) Supporting Statement.** The debtor's supporting statement required by § 524(k)(6)(A) must be accompanied by a statement of the total income and expenses as shown on Schedules I and J. If the income and expenses shown on the supporting statement differ from those shown on the schedules, the supporting statement must explain the difference.

Committee Note

The language of Rule 4008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Bankruptcy Rules Restyling

5000 Series

Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

ORIGINAL	REVISION
PART V—Courts and Clerks	**PART V. COURTS AND CLERKS**
Rule 5001. Courts and Clerks' Offices	**Rule 5001. Courts and Clerks' Offices**
(a) COURTS ALWAYS OPEN. The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.	**(a) Courts Always Open.** Bankruptcy courts are considered always open for filing a pleading, motion, or other paper; issuing and returning process; making rules; or entering an order.
(b) TRIALS AND HEARINGS; ORDERS IN CHAMBERS. All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. Except as otherwise provided in 28 U.S.C. § 152(c), all other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.	**(b) Location for Trials and Hearings; Proceedings in Chambers.** Every trial or hearing must be held in open court—in a regular courtroom if convenient. Except as provided in 28 U.S.C. § 152(c), any other act may be performed—or a proceeding held—in chambers anywhere within or outside the district. But unless it is ex parte, a hearing may be held outside the district only if all affected parties consent.
(c) CLERK'S OFFICE. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 9006(a).	**(c) Clerk's Office Hours.** A clerk's office—with the clerk or a deputy in attendance—must be open during business hours on all days except Saturdays, Sundays, and the legal holidays listed in Rule 9006(a)(6).

Committee Note

The language of Rule 5001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5002. Restrictions on Approval of Appointments	**Rule 5002. Restrictions on Approving Court Appointments**
(a) APPROVAL OF APPOINTMENT OF RELATIVES PROHIBITED. The appointment of an individual as a trustee or examiner pursuant to § 1104 of the Code shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the appointment or the United States trustee in the region in which the case is pending. The employment of an individual as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the employment. The employment of an individual as attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 may be approved by the court if the individual is a relative of the United States trustee in the region in which the case is pending, unless the court finds that the relationship with the United States trustee renders the employment improper under the circumstances of the case. Whenever under this subdivision an individual may not be approved for appointment or employment, the individual's firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof also may not be approved for appointment or employment.	**(a) Appointing or Employing Relatives.** (1) *Trustee or Examiner.* A bankruptcy judge must not approve appointing an individual as a trustee or examiner under § 1104 if the individual is a relative of either the judge or the United States trustee in the region in which the case is pending. (2) *Attorney, Accountant, Appraiser, Auctioneer, or Other Professional Person.* A bankruptcy judge must not approve employing under § 327, § 1103, or § 1114 an individual as an attorney, accountant, appraiser, auctioneer, or other professional person who is a relative of the judge. The court may approve employing a relative of the United States trustee in the region in which the case is pending unless, under the circumstances in the case, the relationship makes the employment improper. (3) *Related Entities and Associates.* If an appointment under (1) or an employment under (2) is forbidden, so is appointing or employing: (A) the individual's firm, partnership, corporation, or any other form of business association or relationship; or (B) a member, associate, or professional employee of an entity listed in (A).
(b) JUDICIAL DETERMINATION THAT APPROVAL OF APPOINTMENT OR EMPLOYMENT IS IMPROPER. A bankruptcy judge may not approve the	**(b) Other Considerations in Approving Appointments or Employment.** A bankruptcy judge must not approve appointing a person as a trustee or examiner under (a)(1), or employing a

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appointment of a person as a trustee or examiner pursuant to § 1104 of the Code or approve the employment of a person as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 of the Code if that person is or has been so connected with such judge or the United States trustee as to render the appointment or employment improper.	person under (a)(2), if the person is, or has been, so connected with the judge or the United States trustee as to make the appointment or employment improper.

Committee Note

The language of Rule 5002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 5003. Records Kept By the Clerk	**Rule 5003. Records to Be Kept by the Clerk**
(a) BANKRUPTCY DOCKETS. The clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.	**(a) Bankruptcy Docket.** The clerk must keep a docket in each case and must: (1) enter on the docket each judgment, order, and activity, as prescribed by the Director of the Administrative Office of the United States Courts; and (2) show the date of entry for each judgment or order.
(b) CLAIMS REGISTER. The clerk shall keep in a claims register a list of claims filed in a case when it appears that there will be a distribution to unsecured creditors.	**(b) Claims Register.** When it appears that there will be a distribution to unsecured creditors, the clerk must keep in a claims register a list of the claims filed in the case.
(c) JUDGMENTS AND ORDERS. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a correct copy of every final judgment or order affecting title to or lien on real property or for the recovery of money or property, and any other order which the court may direct to be kept. On request of the prevailing party, a correct copy of every judgment or order affecting title to or lien upon real or personal property or for the recovery of money or property shall be kept and indexed with the civil judgments of the district court.	**(c) Judgments and Orders.** (1) *In General.* In the form and manner prescribed by the Director of the Administrative Office of the United States Courts, the clerk must keep a copy of: (A) every final judgment or order affecting title to, or a lien on, real property; (B) every final judgment or order for the recovery of money or property; and (C) any other order the court designates. (2) *Indexing with the District Court.* On a prevailing party's request, a copy of the following must be kept and indexed with the district court's civil judgments: (A) every final judgment or order affecting title to, or a lien on, real or personal property; and

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	(B) every final judgment or order for the recovery of money or property.
(d) INDEX OF CASES; CERTIFICATE OF SEARCH. The clerk shall keep indices of all cases and adversary proceedings as prescribed by the Director of the Administrative Office of the United States Courts. On request, the clerk shall make a search of any index and papers in the clerk's custody and certify whether a case or proceeding has been filed in or transferred to the court or if a discharge has been entered in its records.	**(d) Index of Cases; Certificate of Search.** (1) ***Index of Cases.*** The clerk must keep an index of cases and adversary proceedings in the form and manner prescribed by the Director of the Administrative Office of the United States Courts. (2) ***Searching the Index; Certificate of Search.*** On request, the clerk must search the index and papers in the clerk's custody and certify whether a case or proceeding has been filed in or transferred to the court—and if so, whether a discharge has been entered.
(e) REGISTER OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS AND CERTAIN TAXING AUTHORITIES. The United States or the state or territory in which the court is located may file a statement designating its mailing address. The United States, state, territory, or local governmental unit responsible for collecting taxes within the district in which the case is pending may also file a statement designating an address for service of requests under § 505(b) of the Code, and the designation shall describe where further information concerning additional requirements for filing such requests may be found. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes the mailing addresses designated under the first sentence of this subdivision, and a	**(e) Register of Mailing Addresses of Federal and State Governmental Units and Certain Taxing Authorities.** (1) ***In General.*** The United States—or a state or a territory where the court is located—may file a statement designating its mailing address. A taxing authority (including a local taxing authority) may also file a statement designating an address for serving requests under § 505(b). The designation must describe where to find further information about additional requirements for serving a request. ***(2) Register of Mailing Address.*** (A) *In General.* In the form and manner prescribed by the Director of the Administrative Office of the United States Courts, the clerk must keep a register of the mailing addresses

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separate register of the addresses designated for the service of requests under § 505(b) of the Code. The clerk is not required to include in any single register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.	of the governmental units listed in the first sentence of (1) and a separate register containing the addresses of taxing authorities for serving requests under § 505(b). (B) *Number of Entries.* The clerk need not include in any register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. But if more than one mailing address is included, the clerk must also include information that would enable a user to determine when each address is applicable. Mailing to only one applicable address provides effective notice. (C) *Keeping the Register Current.* The clerk must update the register annually, as of January 2 of each year. (D) *Mailing Address Presumed to Be Proper.* A mailing address in the register is conclusively presumed to be proper. But a failure to use that address does not invalidate notice that is otherwise effective under applicable law.
(f) OTHER BOOKS AND RECORDS OF THE CLERK. The clerk shall keep any other books and records required by the Director of the Administrative Office of the United States Courts.	**(f) Other Books and Records.** The clerk must keep any other books and records required by the Director of the Administrative Office of the United States Courts.

Committee Note

The language of Rule 5003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5004. Disqualification	**Rule 5004. Disqualifying a Bankruptcy Judge**
(a) DISQUALIFICATION OF JUDGE. A bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case.	**(a) From Presiding Over a Proceeding, Contested Matter, or Case.** A bankruptcy judge's disqualification is governed by 28 U.S.C. § 455. The judge is disqualified from presiding over a proceeding or contested matter in which a disqualifying circumstance arises—and, when appropriate, from presiding over the entire case.
(b) DISQUALIFICATION OF JUDGE FROM ALLOWING COMPENSATION. A bankruptcy judge shall be disqualified from allowing compensation to a person who is a relative of the bankruptcy judge or with whom the judge is so connected as to render it improper for the judge to authorize such compensation.	**(b) From Allowing Compensation.** The bankruptcy judge is disqualified from allowing compensation to a relative or to a person who is so connected with the judge as to make the judge's allowing it improper.

Committee Note

The language of Rule 5004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5005. Filing and Transmittal of Papers	**Rule 5005. Filing Papers and Sending Copies to the United States Trustee**
(a) FILING. (1) *Place of Filing.* The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices. *(2) Electronic Filing and Signing.* (A) *By a Represented Entity—Generally Required; Exceptions.* An entity represented by an attorney shall file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule. (B) *By an Unrepresented Individual—When Allowed or Required.* An individual not represented by an attorney: (i) may file electronically only if allowed by court order or by local rule; and (ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.	**(a) Filing Papers.** **(1)** ***With the Clerk.*** Except as provided in 28 U.S.C. § 1409, the following papers required to be filed by these rules must be filed with the clerk in the district where the case is pending: • lists; • schedules; • statements; • proofs of claim or interest; • complaints; • motions; • applications; • objections; and • other papers. The clerk must not refuse to accept for filing any petition or other paper solely because it is not in the form required by these rules or any local rule or practice. **(2)** ***With a Judge of the Court.*** A judge may personally accept for filing a paper listed in (1). The judge must note on the paper the date of filing and promptly send it to the clerk. *(3) Electronic Filing and Signing.* (A) *By a Represented Entity—Generally Required; Exceptions.* An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule. *(B) By an Unrepresented Individual—*

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(C) *Signing.* A filing made through a person's electronic filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature. (D) *Same as a Written Paper.* A paper filed electronically is a written paper for purposes of these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.	*When Allowed or Required.* An individual not represented by an attorney: (i) may file electronically only if allowed by court order or by local rule; and (ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions. (C) *Signing.* A filing made through a person's electronic filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature. (D) *Same as a Written Paper.* A paper filed electronically is a written paper for purposes of these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107.
(b) TRANSMITTAL TO THE UNITED STATES TRUSTEE. (1) The complaints, motions, applications, objections and other papers required to be transmitted to the United States trustee by these rules shall be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending. (2) The entity, other than the clerk, transmitting a paper to the United States trustee shall promptly file as proof of such transmittal a verified statement identifying the paper and stating the date on which it was transmitted to the United States trustee. (3) Nothing in these rules shall	**(b) Sending Copies to the United States Trustee.** All papers required to be sent to the United States trustee must be mailed or delivered to the office of the United States trustee or other place within the district that the United States trustee designates. An entity, other than the clerk, that sends a paper to the United States trustee must promptly file a verified statement identifying the paper and stating the date it was sent. The clerk need not send a copy of a paper to a United States trustee who requests in writing that it not be sent.

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require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.	
(c) ERROR IN FILING OR TRANSMITTAL. A paper intended to be filed with the clerk but erroneously delivered to the United States trustee, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. A paper intended to be transmitted to the United States trustee but erroneously delivered to the clerk, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the United States trustee. In the interest of justice, the court may order that a paper erroneously delivered shall be deemed filed with the clerk or transmitted to the United States trustee as of the date of its original delivery.	**(c) When a Paper Is Erroneously Filed or Delivered.** **(1)** *Paper Intended for the Clerk.* If a paper intended to be filed with the clerk is erroneously delivered to a person listed below, that person must note on it the date of receipt and promptly send it to the clerk: • the United States trustee; • the trustee; • the trustee's attorney; • a bankruptcy judge; • a district judge; • the clerk of the bankruptcy appellate panel; or • the clerk of the district court. **(2)** *Paper Intended for the United States Trustee.* If a paper intended for the United States trustee is erroneously delivered to the clerk or to another person listed in (1), the clerk or that person must note on it the date of receipt and promptly send it to the United States trustee. **(3)** *Applicable Filing Date.* In the interests of justice, the court may order that the original date of receipt shown on a paper erroneously delivered under (1) or (2) be deemed the date it was filed with the clerk or sent to the United States trustee.

Committee Note

The language of Rule 5005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5006. Certification of Copies of Papers	**Rule 5006. Providing Certified Copies**
The clerk shall issue a certified copy of the record of any proceeding in a case under the Code or of any paper filed with the clerk on payment of any prescribed fee.	Upon payment of the prescribed fee, the clerk must issue a certified copy of the record of any proceeding or any paper filed with the clerk.

Committee Note

The language of Rule 5006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5007. Record of Proceedings and Transcripts	**Rule 5007. Record of Proceedings and Transcripts**
(a) FILING OF RECORD OR TRANSCRIPT. The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy.	**(a) Filing Original Notes, Tape Recordings, and Other Original Records of a Proceeding; Transcripts.** (1) ***Records.*** The reporter or operator of a recording device must certify the original notes of testimony, tape recordings, and other original records of a proceeding and must promptly file them with the clerk. (2) ***Transcripts.*** A person who prepares a transcript must promptly file a certified copy with the clerk.
(b) TRANSCRIPT FEES. The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk.	**(b) Fee for a Transcript.** The fee for a copy of a transcript must be charged at the rate prescribed by the Judicial Conference of the United States. No fee may be charged for filing the certified copy.
(c) ADMISSIBILITY OF RECORD IN EVIDENCE. A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.	**(c) Sound Recording or Transcript as Prima Facie Evidence.** In any proceeding, a certified sound recording or a transcript of a proceeding is admissible as prima facie evidence of the record.

Committee Note

The language of Rule 5007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors	**Rule 5008. Chapter 7—Notice That a Presumption of Abuse Has Arisen Under § 707(b)**
If a presumption of abuse has arisen under § 707(b) in a chapter 7 case of an individual with primarily consumer debts, the clerk shall within 10 days after the date of the filing of the petition notify creditors of the presumption of abuse in accordance with Rule 2002. If the debtor has not filed a statement indicating whether a presumption of abuse has arisen, the clerk shall within 10 days after the date of the filing of the petition notify creditors that the debtor has not filed the statement and that further notice will be given if a later filed statement indicates that a presumption of abuse has arisen. If a debtor later files a statement indicating that a presumption of abuse has arisen, the clerk shall notify creditors of the presumption of abuse as promptly as practicable.	**(a) Notice to Creditors.** When a presumption of abuse under § 707(b) arises in a Chapter 7 case of an individual with primarily consumer debts, the clerk must, within 10 days after the petition is filed, so notify the creditors in accordance with Rule 2002(f)(1)(J). **(b) Debtor's Statement.** If the debtor does not file a statement indicating whether a presumption has arisen, the clerk must, within 10 days after the petition is filed, so notify creditors and indicate that further notice will be given if a later-filed statement shows that the presumption has arisen. If the debtor later files such a statement , the clerk must promptly notify the creditors.

Committee Note

The language of Rule 5008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5009. Closing Chapter 7, Chapter 12, Chapter 13, and Chapter 15 Cases; Order Declaring Lien Satisfied	**Rule 5009. Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied**
(a) CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13. If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.	**(a) Closing a Chapter 7, 12, or 13 Case.** The estate in a Chapter 7, 12, or 13 case is presumed to have been fully administered when: (1) the trustee has filed a final report and final account and has certified that the estate has been fully administered; and (2) within 30 days after the filing, no objection to the report has been filed by the United States trustee or a party in interest.
(b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7) STATEMENT. If an individual debtor in a chapter 7 or 13 case is required to file a statement under Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the required statement is filed within the applicable time limit under Rule 1007(c).	**(b) Chapter 7 or 13—Notice of a Failure to File a Statement About Completing a Course on Personal Financial Management.** This rule (b) applies if an individual debtor in a Chapter 7 or 13 case is required to file a statement under Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a). The clerk must promptly notify the debtor that the case will be closed without entering a discharge unless the statement is filed within the time prescribed by Rule 1007(c).
(c) CASES UNDER CHAPTER 15. A foreign representative in a proceeding recognized under § 1517 of the Code shall file a final report when the purpose of the representative's appearance in the court is completed. The report shall describe the nature and results of the representative's activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in	**(c) Closing a Chapter 15 Case.** **(1)** ***Foreign Representative's Final Report.*** In a proceeding recognized under § 1517, when the purpose of a foreign representative's appearance is completed, the representative must file a final report describing the nature and results of the representative's activities in the court. **(2)** ***Giving Notice of the Report.*** The representative must send a copy of the report to the United States trustee, give notice of its filing, and file a certificate

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the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.	with the court indicating that the notice has been given, to: (A) the debtor; (B) all persons or bodies authorized to administer the debtor's foreign proceedings; (C) all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and (D) any other entity the court designates. **(3)** *Presumption of Full Administration.* If the United States trustee or a party in interest does not file an objection within 30 days after the certificate is filed, the case is presumed to have been fully administered.
(d) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint.	**(d) Order Declaring a Lien Satisfied.** This rule (d) applies in a Chapter 12 or 13 case when a claim secured by property of the estate is subject to a lien under applicable nonbankruptcy law. The debtor may move for an order declaring that the secured claim has been satisfied and the lien has been released under the terms of the confirmed plan. The motion must be served—in the manner provided by Rule 7004 for serving a summons and complaint—on the claim holder and any other entity the court designates.

Committee Note

The language of Rule 5009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5010. Reopening Cases	**Rule 5010. Reopening a Case**
A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code. In a chapter 7, 12, or 13 case a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is necessary to protect the interests of creditors and the debtor or to insure efficient administration of the case.	On the debtor's or another party in interest's motion, the court may, under § 350(b), reopen a case. In a reopened Chapter 7, 12, or 13 case, the United States trustee must not appoint a trustee unless the court determines that one is needed to protect the interests of the creditors and the debtor, or to ensure that the reopened case is efficiently administered.

Committee Note

The language of Rule 5010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5011. Withdrawal and Abstention from Hearing a Proceeding	**Rule 5011. Motion to Withdraw a Case or Proceeding or to Abstain from Hearing a Proceeding; Staying a Proceeding**
(a) WITHDRAWAL. A motion for withdrawal of a case or proceeding shall be heard by a district judge.	**(a) Withdrawing a Case or Proceeding.** A motion to withdraw a case or proceeding under 28 U.S.C. § 157(d) must be heard by a district judge.
(b) ABSTENTION FROM HEARINGA PROCEEDING. A motion for abstention pursuant to 28 U.S.C. § 1334(c) shall be governed by Rule 9014 and shall be served on the parties to the proceeding.	**(b) Abstaining from Hearing a Proceeding.** A motion requesting the court to abstain from hearing a proceeding under 28 U.S.C. § 1334(c) is governed by Rule 9014. The motion must be served on all parties to the proceeding.
(c) EFFECT OF FILING OF MOTION FOR WITHDRAWAL OR ABSTENTION. The filing of a motion for withdrawal of a case or proceeding or for abstention pursuant to 28 U.S.C. § 1334(c) shall not stay the administration of the case or any proceeding therein before the bankruptcy judge except that the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion. A motion for a stay ordinarily shall be presented first to the bankruptcy judge. A motion for a stay or relief from a stay filed in the district court shall state why it has not been presented to or obtained from the bankruptcy judge. Relief granted by the district judge shall be on such terms and conditions as the judge deems proper.	**(c) Staying a Proceeding After a Motion to Withdraw or Abstain.** A motion filed under (a) or (b) does not stay proceedings in a case or affect its administration. But a bankruptcy judge may, on proper terms and conditions, stay a proceeding until the motion is decided. **(d) Motion to Stay a Proceeding.** A motion to stay a proceeding must ordinarily be submitted first to the bankruptcy judge. If it—or a motion for relief from a stay—is filed in the district court, the motion must state why it has not been first presented to or obtained from the bankruptcy judge. The district judge may grant relief on terms and conditions the judge considers proper.

Committee Note

The language of Rule 5011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5012. Agreements Concerning Coordination of Proceedings in Chapter 15 Cases	**Rule 5012. Chapter 15—Agreement to Coordinate Proceedings**
Approval of an agreement under § 1527(4) of the Code shall be sought by motion. The movant shall attach to the motion a copy of the proposed agreement or protocol and, unless the court directs otherwise, give at least 30 days' notice of any hearing on the motion by transmitting the motion to the United States trustee, and serving it on the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct.	An agreement to coordinate proceedings under § 1527(4) may be approved on motion with an attached copy of the agreement or protocol. Unless the court orders otherwise, the movant must give at least 30 days' notice of any hearing on the motion by sending a copy to the United States trustee and serving it on: • the debtor; • all persons or bodies authorized to administer the debtor's foreign proceedings; • all entities against whom provisional relief is sought under § 1519; • all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and • any other entity the court designates.

Committee Note

The language of Rule 5012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Bankruptcy Rules Restyling

6000 Series

Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

ORIGINAL	REVISION
PART VI—COLLECTION AND LIQUIDATION OF THE ESTATE	**PART VI. COLLECTING AND LIQUIDATING PROPERTY OF THE ESTATE**
Rule 6001. Burden of Proof As to Validity of Postpetition Transfer	**Rule 6001. Burden of Proving the Validity of a Postpetition Transfer**
Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof.	An entity that asserts the validity of a postpetition transfer under § 549 has the burden of proof.

Committee Note

The language of Rule 6001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6002. Accounting by Prior Custodian of Property of the Estate	**Rule 6002. Custodian's Report to the United States Trustee**
(a) ACCOUNTING REQUIRED. Any custodian required by the Code to deliver property in the custodian's possession or control to the trustee shall promptly file and transmit to the United States trustee a report and account with respect to the property of the estate and the administration thereof.	**(a) Custodian's Report and Account.** A custodian required by § 543 to deliver property to the trustee must promptly file and send to the United States trustee a report and account about the property of the estate and its administration.
(b) EXAMINATION OF ADMINISTRATION. On the filing and transmittal of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, after notice and a hearing, the court shall determine the propriety of the administration, including the reasonableness of all disbursements.	**(b) Examining the Administration.** After the custodian's report and account has been filed and the superseded administration has been examined, the court must, after notice and a hearing, determine whether the custodian's administration has been proper and disbursements have been reasonable.

Committee Note

The language of Rule 6002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case—Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts	**Rule 6003. Delay in Granting Certain Applications and Motions Made Immediately After the Petition Is Filed**
Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: (a) an application under Rule 2014; (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; or (c) a motion to assume or assign an executory contract or unexpired lease in accordance with § 365.	**(a) In General.** Unless relief is needed to avoid immediate and irreparable harm, the court must not, within 21 days after the petition is filed, grant an application or motion to: (1) employ a professional person under Rule 2014; (2) use, sell, or lease property of the estate, including a motion to pay all or a part of a claim that arose before the petition was filed; (3) incur any other obligation regarding the property of the estate; or (4) assume or assign an executory contract or unexpired lease under § 365. **(b) Exception.** This rule does not apply to a motion under Rule 4001.

Committee Note

The language of Rule 6003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6004. Use, Sale, or Lease of Property	**Rule 6004. Use, Sale, or Lease of Property**
(a) NOTICE OF PROPOSED USE, SALE, OR LEASE OF PROPERTY. Notice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (k) and, if applicable, in accordance with § 363(b)(2) of the Code.	**(a) Notice.** (1) *In General*. Notice of a proposed use, sale, or lease of property that is not in the ordinary course of business must be given: (A) under Rule 2002(a)(2), (c)(1), (i), and (k); and (B) in accordance with § 363(b)(2), if applicable. (2) *Exceptions*. Notice under (a) is not required if (d) applies or the proposal involves cash collateral only.
(b) OBJECTION TO PROPOSAL. Except as provided in subdivisions (c) and (d) of this rule, an objection to a proposed use, sale, or lease of property shall be filed and served not less than seven days before the date set for the proposed action or within the time fixed by the court. An objection to the proposed use, sale, or lease of property is governed by Rule 9014.	**(b) Objection.** Except as provided in (c) and (d), an objection to a proposed use, sale, or lease of property must be filed and served at least 7 days before the date set for the proposed action or within the time set by the court. Rule 9014 governs the objection.
(c) SALE FREE AND CLEAR OF LIENS AND OTHER INTERESTS. A motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold. The notice required by subdivision (a) of this rule shall include the date of the hearing on the motion and the time within which objections may be filed and served on the debtor in possession or trustee.	**(c) Motion to Sell Property Free and Clear of Liens and Other Interests; Objection.** A motion for authority to sell property free and clear of liens or other interests must be made in accordance with Rule 9014 and served on the parties who have the liens or other interests. The notice required by (a) must include: (1) the date of the hearing on the motion; and (2) the time to file and serve an objection on the debtor in possession or trustee.
(d) SALE OF PROPERTY UNDER $2,500. Notwithstanding subdivision (a) of this rule, when all of the nonexempt	**(d) Notice of an Intent to Sell Property Valued at Less Than $2500; Objection.** If all the nonexempt property of the estate

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property of the estate has an aggregate gross value less than $2,500, it shall be sufficient to give a general notice of intent to sell such property other than in the ordinary course of business to all creditors, indenture trustees, committees appointed or elected pursuant to the Code, the United States trustee and other persons as the court may direct. An objection to any such sale may be filed and served by a party in interest within 14 days of the mailing of the notice, or within the time fixed by the court. An objection is governed by Rule 9014.	—in the aggregate—has a gross value less than $2500, a notice of an intent to sell the property that is not in the ordinary course of business must be served on: • creditors; • indenture trustees; • any committees elected under § 705 or appointed under § 1102; • the United States trustee; and • other persons as the court orders. A party in interest may file and serve an objection within 14 days after the notice is mailed or within the time set by the court. Rule 9014 governs the objection.
(e) HEARING. If a timely objection is made pursuant to subdivision (b) or (d) of this rule, the date of the hearing thereon may be set in the notice given pursuant to subdivision (a) of this rule.	**(e) Notice of a Hearing on an Objection.** The date of a hearing on an objection under (b) or (d) may be set in the notice under (a).
(f) CONDUCT OF SALE NOT IN THE ORDINARY COURSE OF BUSINESS. (1) *Public or Private Sale.* All sales not in the ordinary course of business may be by private sale or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed on completion of a sale. If the property is sold by an auctioneer, the auctioneer shall file the statement, transmit a copy thereof to the United States trustee, and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement and transmit a copy	**(f) Conducting a Sale That Is Not in the Ordinary Course of Business.** *(1) Public Auction or Private Sale.* (A) *Itemized Statement Required.* A sale that is not in the ordinary course of business may be made by public auction or private sale. Unless it is impracticable, when the sale is completed, an itemized statement must be filed that shows: • the property sold; • the name of each purchaser; and • the amount paid for each item or lot, or if sold in bulk, for the entire property. (B) *If by Auction.* If the property is sold by auction, the auctioneer must file

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thereof to the United States trustee. (2) *Execution of Instruments.* After a sale in accordance with this rule the debtor, the trustee, or debtor in possession, as the case may be, shall execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser.	the itemized statement and send a copy to the United States trustee and to either the trustee, debtor in possession, or Chapter 13 debtor. (C) *If by Private Sale.* If the property is not sold by auction, the trustee, debtor in possession, or Chapter 13 debtor must file the itemized statement and send a copy to the United States trustee. **(2)** ***Signing the Sale Documents.*** When a sale is complete, the debtor, trustee, or debtor in possession must sign any document that is necessary or court-ordered to transfer the property to the purchaser.
(g) SALE OF PERSONALLY IDENTIFIABLE INFORMATION. (1) *Motion.* A motion for authority to sell or lease personally identifiable information under § 363(b)(1)(B) shall include a request for an order directing the United States trustee to appoint a consumer privacy ombudsman under § 332. Rule 9014 governs the motion which shall be served on: any committee elected under § 705 or appointed under § 1102 of the Code, or if the case is a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list of creditors filed under Rule 1007(d); and on such other entities as the court may direct. The motion shall be transmitted to the United States trustee. (2) *Appointment.* If a consumer privacy ombudsman is appointed under § 332, no later than seven days before the hearing on the motion under § 363(b)(1)(B), the United States trustee shall file a notice of the appointment,	**(g) Selling Personally Identifiable Information.** **(1)** ***Request for a Consumer-Privacy Ombudsman.*** A motion for authority to sell or lease personally identifiable information under § 363(b)(1)(B) must include a request for an order directing the United States trustee to appoint a consumer-privacy ombudsman under § 332. Rule 9014 governs the motion. It must be sent to the United States trustee and served on: • any committee elected under § 705 or appointed under § 1102; • in a Chapter 11 case in which no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and • other entities as the court orders. **(2)** ***Notice That an Ombudsman Has Been Appointed.*** If a consumer-privacy ombudsman is appointed, the United States trustee must give notice of the appointment at least 7 days

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including the name and address of the person appointed. The United States trustee's notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.	before the hearing on any motion under § 363(b)(1)(B). The notice must give the name and address of the person appointed and include the person's verified statement that sets forth any connection with: • the debtor, creditors, or any other party in interest; • their respective attorneys and accountants; • the United States trustee; and • any person employed in the United States trustee's office.
(h) STAY OF ORDER AUTHORIZING USE, SALE, OR LEASE OF PROPERTY. An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.	**(h) Staying an Order Authorizing the Use, Sale, or Lease of Property.** Unless the court orders otherwise, an order authorizing the use, sale, or lease of property (other than cash collateral) is stayed for 14 days after the order is entered.

Committee Note

The language of Rule 6004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6005. Appraisers and Auctioneers	**Rule 6005. Employing an Appraiser or Auctioneer**
The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.	A court order approving the employment of an appraiser or auctioneer must set the amount or rate of compensation. An officer or employee of the United States judiciary or United States Department of Justice is not eligible to act as an appraiser or auctioneer. No residence or licensing requirement disqualifies a person from being employed.

Committee Note

The language of Rule 6005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease	**Rule 6006. Assuming, Rejecting, or Assigning an Executory Contract or Unexpired Lease**
(a) PROCEEDING TO ASSUME, REJECT, OR ASSIGN. A proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014.	**(a) Procedure in General.** A proceeding to assume, reject, or assign an executory contract or unexpired lease—other than as part of a plan—is governed by Rule 9014.
(b) PROCEEDING TO REQUIRE TRUSTEE TO ACT. A proceeding by a party to an executory contract or unexpired lease in a chapter 9 municipality case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case, to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease is governed by Rule 9014.	**(b) Requiring a Trustee, Debtor in Possession, or Debtor to Assume or Reject a Contract or Lease.** In a Chapter 9, 11, 12, or 13 case, Rule 9014 governs a proceeding by a party to an executory contract or unexpired lease to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease.
(c) NOTICE. Notice of a motion made pursuant to subdivision (a) or (b) of this rule shall be given to the other party to the contract or lease, to other parties in interest as the court may direct, and, except in a chapter 9 municipality case, to the United States trustee.	**(c) Notice of a Motion.** Notice of a motion under (a) or (b) must be given to: • the other party to the contract or lease; • other parties in interest as the court orders; and • except in a Chapter 9 case, the United States trustee.
(d) STAY OF ORDER AUTHORIZING ASSIGNMENT. An order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.	**(d) Staying an Order Authorizing an Assignment.** Unless the court orders otherwise, an order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed for 14 days after the order is entered.

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(e) LIMITATIONS. The trustee shall not seek authority to assume or assign multiple executory contracts or unexpired leases in one motion unless: (1) all executory contracts or unexpired leases to be assumed or assigned are between the same parties or are to be assigned to the same assignee; (2) the trustee seeks to assume, but not assign to more than one assignee, unexpired leases of real property; or (3) the court otherwise authorizes the motion to be filed. Subject to subdivision (f), the trustee may join requests for authority to reject multiple executory contracts or unexpired leases in one motion.	**(e) Combining in One Motion a Request Involving Multiple Contracts or Leases.** **(1)** *Limitations.* The trustee must not seek authority to assume or assign multiple executory contracts or unexpired leases in one omnibus motion unless: (A) they are all between the same parties or are to be assigned to the same assignee; (B) the trustee seeks to assume, but not assign to more than one assignee, unexpired leases of real property; or (C) the court allows the motion to be filed. **(2)** *Exception for Authority to Reject.* Subject to (f), a trustee may join requests for authority to reject multiple executory contracts or unexpired leases in one omnibus motion.
(f) OMNIBUS MOTIONS. A motion to reject or, if permitted under subdivision (e), a motion to assume or assign multiple executory contracts or unexpired leases that are not between the same parties shall: (1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion; (2) list parties alphabetically and identify the corresponding contract or lease; (3) specify the terms, including the curing of defaults, for each requested assumption or assignment; (4) specify the terms, including the identity of each assignee and the	**(f) Content of an Omnibus Motion.** A motion to reject—or, if permitted under (e), a motion to assume or assign—multiple executory contracts or unexpired leases that are not between the same parties must: (1) state in a conspicuous place that the parties' names and their contracts or leases are listed in the motion; (2) list the parties alphabetically and identify the corresponding contract or lease; (3) specify the terms, including how a default will be cured, for each requested assumption or assignment; (4) specify the terms, including the assignee's identity and the adequate assurance of future performance by each assignee, for each requested assignment;

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adequate assurance of future performance by each assignee, for each requested assignment; (5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and (6) be limited to no more than 100 executory contracts or unexpired leases.	(5) be numbered consecutively with other omnibus motions to reject, assume, or assign executory contracts or unexpired leases; and (6) be limited to no more than 100 executory contracts or unexpired leases.
(g) FINALITY OF DETERMINATION. The finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion.	**(g) Determining the Finality of an Order Regarding an Omnibus Motion.** The finality of an order regarding any executory contract or unexpired lease included in an omnibus motion must be determined as though the contract or lease were the subject of a separate motion.

Committee Note

The language of Rule 6006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6007. Abandonment or Disposition of Property	**Rule 6007. Abandoning or Disposing of Property; Objections**
(a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION; OBJECTIONS; HEARING. Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.	**(a) Notice by the Trustee or Debtor in Possession.** (1) ***Notice.*** Unless the court orders otherwise, the trustee or debtor in possession must give notice of a proposed abandonment or disposition of property to: • the United States trustee; • creditors; • indenture trustees; and • any committees elected under § 705 or appointed under § 1102. (2) ***Objection.*** A party in interest may file and serve an objection within 14 days after the notice is mailed or within the time set by the court. If a timely objection is filed, the court must set a hearing on notice to the United States trustee and other entities as the court orders.
(b) MOTION BY PARTY IN INTEREST. A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate. Unless otherwise directed by the court, the party filing the motion shall serve the motion and any notice of the motion on the trustee or debtor in possession, the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of service, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other	**(b) Motion by a Party in Interest.** (1) ***Service.*** A party in interest may file and serve a motion to require the trustee or debtor in possession to abandon property of the estate. Unless the court orders otherwise, the motion (and any notice of the motion) must be served on: • the trustee or debtor in possession; • the United States trustee; • creditors; • indenture trustees; and • any committees elected under § 705 or appointed under § 1102.

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entities as the court may direct. If the court grants the motion, the order effects the trustee's or debtor in possession's abandonment without further notice, unless otherwise directed by the court.	(2) ***Objection.*** A party in interest may file and serve an objection within 14 days after service or within the time set by the court. If a timely objection is filed, the court must set a hearing on notice to the United States trustee and other entities as the court orders. (3) ***Order.*** If the court grants the motion to abandon property, the order effects the trustee's or debtor in possession's abandonment without further notice—unless the court orders otherwise.
[(c) HEARING]	

Committee Note

The language of Rule 6007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6008. Redemption of Property from Lien or Sale	**Rule 6008. Redeeming Property from a Lien or a Sale to Enforce a Lien**
On motion by the debtor, trustee, or debtor in possession and after hearing on notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.	On motion by the debtor, trustee, or debtor in possession and after a hearing on notice as the court may order, the court may authorize property to be redeemed from a lien or from a sale to enforce a lien under applicable law.

Committee Note

The language of Rule 6008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession	**Rule 6009. Prosecuting and Defending the Debtor's Interests**
With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.	With or without court approval, the trustee or debtor in possession may: (a) appear in any action or proceeding by or against the debtor and act on the debtor's behalf; or (b) commence and prosecute in any tribunal an action or proceeding on the estate's behalf.

Committee Note

The language of Rule 6009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6010. Proceeding to Avoid Indemnifying Lien or Transfer to Surety	**Rule 6010. Avoiding an Indemnifying Lien or a Transfer to a Surety**
If a lien voidable under § 547 of the Code has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, nonexempt property of the debtor, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by the rules in Part VII.	This rule applies if a lien voidable under § 547 has been dissolved by furnishing a bond or other obligation and the surety has been indemnified by the transfer or creation of a lien on the debtor's nonexempt property. The surety must be joined as a defendant in any proceeding to avoid that transfer or lien. The proceeding is governed by the rules in Part VII.

Committee Note

The language of Rule 6010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6011. Disposal of Patient Records in Health Care Business Case	**Rule 6011. Claiming Patient Records Scheduled for Destruction in a Health-Care-Business Case**
(a) NOTICE BY PUBLICATION UNDER § 351(1)(A). A notice regarding the claiming or disposing of patient records under § 351(1)(A) shall not identify any patient by name or other identifying information, but shall: (1) identify with particularity the health care facility whose patient records the trustee proposes to destroy; (2) state the name, address, telephone number, email address, and website, if any, of a person from whom information about the patient records may be obtained; (3) state how to claim the patient records; and (4) state the date by which patient records must be claimed, and that if they are not so claimed the records will be destroyed.	**(a) Notice by Publication About the Records.** A notice by publication about destroying or claiming patient records under § 351(1)(A) must not identify any patient by name or contain other identifying information. The notice must: (1) identify with particularity the health-care facility whose patient records the trustee proposes to destroy; (2) state the name, address, telephone number, e-mail address, and website (if any) of the person from whom information about the records may be obtained; (3) state how to claim the records and the final date for doing so; and (4) state that if they are not claimed by that date, they will be destroyed.
(b) NOTICE BY MAIL UNDER § 351(1)(B). Subject to applicable nonbankruptcy law relating to patient privacy, a notice regarding the claiming or disposing of patient records under § 351(1)(B) shall, in addition to including the information in subdivision (a), direct that a patient's family member or other representative who receives the notice inform the patient of the notice. Any notice under this subdivision shall be mailed to the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, to the Attorney General of the State where the health care facility is located, and to any	**(b) Notice by Mail About the Records.** (1) ***Required Information***. Subject to applicable nonbankruptcy law relating to patient privacy, a notice by mail about destroying or claiming patient records under § 351(1)(B) must: (A) include the information described in (a); and (B) direct a family member or other representative who receives the notice to tell the patient about it. (2) ***Mailing***. The notice must be mailed to: • the patient;

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insurance company known to have provided health care insurance to the patient.	• any family member or other contact person whose name and address have been given to the trustee or debtor for providing information about the patient's health care; • the Attorney General of the State where the health-care facility is located; and • any insurance company known to have provided health-care insurance to the patient.
(c) PROOF OF COMPLIANCE WITH NOTICE REQUIREMENT. Unless the court orders the trustee to file proof of compliance with § 351(1)(B) under seal, the trustee shall not file, but shall maintain, the proof of compliance for a reasonable time.	**(c) Proof of Compliance with Notice Requirements.** Unless the court orders the trustee to file a proof of compliance with § 351(1)(B) under seal, the trustee must keep proof of compliance for a reasonable time, but not file it.
(d) REPORT OF DESTRUCTION OF RECORDS. The trustee shall file, no later than 30 days after the destruction of patient records under § 351(3), a report certifying that the unclaimed records have been destroyed and explaining the method used to effect the destruction. The report shall not identify any patient by name or other identifying information.	**(d) Report on the Destruction of Unclaimed Records.** Within 30 days after a patient's unclaimed records have been destroyed under § 351(3), the trustee must file a report that certifies the destruction and explains the method used. The report must not identify any patient by name or by other identifying information.

Committee Note

The language of Rule 6011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Fill in this information to identify your case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (*If known*): _____

Chapter you are filing under:
- ❑ Chapter 7
- ❑ Chapter 11
- ❑ Chapter 12
- ❑ Chapter 13

❑ Check if this is an amended filing

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy

12/22

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
1. Your full name Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)
2. All other names you have used in the last 8 years Include your married or maiden names and any assumed, trade names and *doing business as* names. Do NOT list the name of any separate legal entity such as a corporation, partnership, or LLC that is not filing this petition.	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name _____ Business name (if applicable) _____ Business name (if applicable)	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name _____ Business name (if applicable) _____ Business name (if applicable)
3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)	xxx – xx – ____ ____ ____ ____ OR **9** xx – xx – ____ ____ ____ ____	xxx – xx – ____ ____ ____ ____ OR **9** xx – xx – ____ ____ ____ ____

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
4. Your Employer Identification Number (EIN), if any.	EIN __ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __	EIN __ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __
5. Where you live	_____ Number Street _____ _____ City State ZIP Code _____ County **If your mailing address is different from the one above, fill it in here.** Note that the court will send any notices to you at this mailing address. _____ Number Street _____ P.O. Box _____ City State ZIP Code	**If Debtor 2 lives at a different address:** _____ Number Street _____ _____ City State ZIP Code _____ County **If Debtor 2's mailing address is different from yours, fill it in here.** Note that the court will send any notices to this mailing address. _____ Number Street _____ P.O. Box _____ City State ZIP Code
6. Why you are choosing *this district* to file for bankruptcy	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.) _____ _____ _____ _____	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.) _____ _____ _____ _____

Part 2: Tell the Court About Your Bankruptcy Case

7. The chapter of the Bankruptcy Code you are choosing to file under

Check one. (For a brief description of each, see *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form 2010)). Also, go to the top of page 1 and check the appropriate box.

- ❑ Chapter 7
- ❑ Chapter 11
- ❑ Chapter 12
- ❑ Chapter 13

8. How you will pay the fee

- ❑ **I will pay the entire fee when I file my petition**. Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
- ❑ **I need to pay the fee in installments**. If you choose this option, sign and attach the *Application for Individuals to Pay The Filing Fee in Installments* (Official Form 103A).
- ❑ **I request that my fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.

9. Have you filed for bankruptcy within the last 8 years?

- ❑ No
- ❑ Yes. District _____ When _____ (MM / DD / YYYY) Case number _____
  District _____ When _____ (MM / DD / YYYY) Case number _____
  District _____ When _____ (MM / DD / YYYY) Case number _____

10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?

- ❑ No
- ❑ Yes. Debtor _____ Relationship to you _____
  District _____ When _____ (MM / DD / YYYY) Case number, if known_____
  Debtor _____ Relationship to you _____
  District _____ When _____ (MM / DD / YYYY) Case number, if known_____

11. Do you rent your residence?

- ❑ No. Go to line 12.
- ❑ Yes. Has your landlord obtained an eviction judgment against you?
  - ❑ No. Go to line 12.
  - ❑ Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it as part of this bankruptcy petition.

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

- ❑ No. Go to Part 4.
- ❑ Yes. Name and location of business

_____
Name of business, if any

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Check the appropriate box to describe your business:

- ❑ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ❑ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ❑ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ❑ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ❑ None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a *small business debtor*?

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

- ❑ No. I am not filing under Chapter 11.
- ❑ No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.
- ❑ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I do not choose to proceed under Subchapter V of Chapter 11.
- ❑ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I choose to proceed under Subchapter V of Chapter 11.

Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

- ❑ No
- ❑ Yes. What is the hazard? _____

_____

If immediate attention is needed, why is it needed? _____

_____

Where is the property? _____
Number Street

_____

_____ _____ _____
City State ZIP Code

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling

15. Tell the court whether you have received a briefing about credit counseling.

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

❑ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

❑ **I am not required to receive a briefing about credit counseling because of:**

- ❑ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ❑ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ❑ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):

You must check one:

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

❑ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

❑ **I am not required to receive a briefing about credit counseling because of:**

- ❑ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ❑ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ❑ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?

16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

- ❑ No. Go to line 16b.
- ❑ Yes. Go to line 17.

16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

- ❑ No. Go to line 16c.
- ❑ Yes. Go to line 17.

16c. State the type of debts you owe that are not consumer debts or business debts.

_____

17. Are you filing under Chapter 7?

Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

- ❑ No. I am not filing under Chapter 7. Go to line 18.
- ❑ Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?
  - ❑ No
  - ❑ Yes

18. How many creditors do you estimate that you owe?

- ❑ 1-49
- ❑ 50-99
- ❑ 100-199
- ❑ 200-999
- ❑ 1,000-5,000
- ❑ 5,001-10,000
- ❑ 10,001-25,000
- ❑ 25,001-50,000
- ❑ 50,001-100,000
- ❑ More than 100,000

19. How much do you estimate your assets to be worth?

- ❑ $0-$50,000
- ❑ $50,001-$100,000
- ❑ $100,001-$500,000
- ❑ $500,001-$1 million
- ❑ $1,000,001-$10 million
- ❑ $10,000,001-$50 million
- ❑ $50,000,001-$100 million
- ❑ $100,000,001-$500 million
- ❑ $500,000,001-$1 billion
- ❑ $1,000,000,001-$10 billion
- ❑ $10,000,000,001-$50 billion
- ❑ More than $50 billion

20. How much do you estimate your liabilities to be?

- ❑ $0-$50,000
- ❑ $50,001-$100,000
- ❑ $100,001-$500,000
- ❑ $500,001-$1 million
- ❑ $1,000,001-$10 million
- ❑ $10,000,001-$50 million
- ❑ $50,000,001-$100 million
- ❑ $100,000,001-$500 million
- ❑ $500,000,001-$1 billion
- ❑ $1,000,000,001-$10 billion
- ❑ $10,000,000,001-$50 billion
- ❑ More than $50 billion

Part 7: Sign Below

For you

I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct.

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11,12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

✘ _____
Signature of Debtor 1

Executed on _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Executed on _____
MM / DD / YYYY

For your attorney, if you are represented by one

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

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

✘ _____ Date _____
Signature of Attorney for Debtor MM / DD / YYYY

_____
Printed name

_____
Firm name

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Contact phone _____ Email address _____

_____ _____
Bar number State

For you if you are filing this bankruptcy without an attorney

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

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

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

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

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

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

- ❑ No
- ❑ Yes

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

- ❑ No
- ❑ Yes

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

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

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

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

Committee Note

Official Form 101 is amended to eliminate language in former Part 1, Question 4, which asked for "any business names . . . you have used in the last 8 years." Instead, Part 1, Question 2, is modified to add to the direction with respect to "other names you have used in the last 8 years"—which currently directs the debtor to "Include your married and maiden names"—to ask the debtor to include "any assumed, trade names, or *doing business as* names," and to direct that the debtor should not include the names of separate legal entities that are not filing the petition. Many individual debtors erroneously believed that Question 4 was asking for the names of corporations or limited liability corporations in which they held any interest in the past 8 years, and any names listed in response were then treated as additional debtors for purposes of noticing and reporting. By asking for the information in Question 2, the form now makes it clearer that the only names to be listed are names that were used by the debtor personally in conducting business, not names used by other legal entities. This amendment also conforms Official Form 101 to Official Forms 105, 201, and 205 with respect to the same information.

Information to identify the case:

Debtor 1 _____ (First Name / Middle Name / Last Name)

Last 4 digits of Social Security number or ITIN ___ ___ ___ ___

EIN __ __ – __ __ __ __ __ __ __

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

Last 4 digits of Social Security number or ITIN ___ ___ ___ ___

EIN __ __ – __ __ __ __ __ __ __

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

[Date case filed for chapter 11 _____ MM / DD / YYYY] OR

Case number: _____

[Date case filed in chapter _____ _____ MM / DD / YYYY

Date case converted to chapter 11 _____] MM / DD / YYYY

Official Form 309E1 (For Individuals or Joint Debtors)

Notice of Chapter 11 Bankruptcy Case

12/22

For the debtors listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors and debtors, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

Confirmation of a chapter 11 plan may result in a discharge of debt. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 10 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at https://pacer.uscourts.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

	About Debtor 1:	About Debtor 2:
1. **Debtor's full name**		
2. **All other names used in the last 8 years**		
3. **Address**		**If Debtor 2 lives at a different address:**
4. **Debtor's attorney** Name and address		Contact phone _____ Email _____
5. **Bankruptcy clerk's office** Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at https://pacer.uscourts.gov.		Hours open _____ Contact phone _____

For more information, see page 2 ▶

6. Meeting of creditors

Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend.

Creditors may attend, but are not required to do so.

_____ at _____ Location:
Date Time

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

7. Deadlines

The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.

Deadline to file a complaint objecting to discharge or to challenge whether certain debts are dischargeable (see line 10 for more information):

- if you assert that the debtor is not entitled to receive a discharge of any debts under 11 U.S.C. § 1141(d)(3) the deadline is the first date set for hearing on confirmation of the plan. The court or its designee will send you notice of that date later.
- if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6) **the deadline is**:_____

Deadline for filing proof of claim:

[Not yet set. If a deadline is set, the court will send you another notice.] or

[date, if set by the court)]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed*, *contingent*, or *unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed*, *contingent*, or *unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at https://pacer.uscourts.gov.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a 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.

Deadline to object to exemptions:

The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.

Filing deadline: 30 days after the *conclusion* of the meeting of creditors

8. Creditors with a foreign address

If you are a creditor receiving mailed notice at a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

9. Filing a Chapter 11 bankruptcy case

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive 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 property and may continue to operate the debtor's business.

10. Discharge of debts

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of a debt. See 11 U.S.C. § 1141(d). However, unless the court orders otherwise, the debts will not be discharged until all payments under the plan are made. A discharge means that creditors may never try to collect the debt from the debtors personally except as provided in the plan. If you believe that a particular debt owed to you should be excepted from the discharge under 11 U.S.C. § 523 (a)(2), (4), or (6), you must file a complaint and pay the filing fee in the bankruptcy clerk's office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1141 (d)(3), you must file a complaint and pay the filing fee in the clerk's office by the first date set for the hearing on confirmation of the plan. The court will send you another notice telling you of that date.

11. Exempt property

The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors, even if the case is converted to chapter 7. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at https://pacer.uscourts.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 7.

Information to identify the case:

Debtor 1 _____ (First Name / Middle Name / Last Name)

Last 4 digits of Social Security number or ITIN ___ ___ ___ ___

EIN __ __ – __ __ __ __ __ __ __

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

Last 4 digits of Social Security number or ITIN ___ ___ ___ ___

EIN __ __ – __ __ __ __ __ __ __

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

[Date case filed for chapter 11 _____ MM / DD / YYYY] OR

Case number: _____

[Date case filed in chapter _____ _____ MM / DD / YYYY

Date case converted to chapter 11 _____] MM / DD / YYYY

Official Form 309E2 (For Individuals or Joint Debtors under Subchapter V)

Notice of Chapter 11 Bankruptcy Case

12/22

For the debtors listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read all pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

Confirmation of a chapter 11 plan may result in a discharge of debt. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at https://pacer.uscourts.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

	About Debtor 1:	About Debtor 2:
1. **Debtor's full name**		
2. **All other names used in the last 8 years**		
3. **Address**		**If Debtor 2 lives at a different address:**
4. **Debtor's attorney** Name and address		Contact phone _____ Email _____
5. **Bankruptcy trustee** Name and address		Contact phone _____ Email _____

For more information, see page 2 ▶

6. Bankruptcy clerk's office

Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at https://pacer.uscourts.gov.

Hours open
_____

Contact phone
_____

7. Meeting of creditors

Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend.

Creditors may attend, but are not required to do so.

_____ at _____ Location:
Date Time

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

8. Deadlines

The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.

Deadline to file a complaint objecting to discharge or to challenge whether certain debts are dischargeable (see line 11 for more information):

- if you assert that the debtor is not entitled to receive a discharge of any debts under 11 U.S.C. § 1141(d)(3) the deadline is the first date set for hearing on confirmation of the plan. The court or its designee will send you notice of that date later.
- if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6) **the deadline is**:_____

Deadline for filing proof of claim:

[Not yet set. If a deadline is set, the court will send you another notice.] or

[date, if set by the court)]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed*, *contingent*, or *unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed*, *contingent*, or *unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at https://pacer.uscourts.gov.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a 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.

Deadline to object to exemptions:

The law permits debtors to keep certain property as exempt.

If you believe that the law does not authorize an exemption claimed, you may file an objection.

Filing deadline: 30 days after the *conclusion* of the meeting of creditors

9. Creditors with a foreign address

If you are a creditor receiving mailed notice at a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Filing a Chapter 11 bankruptcy case

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. The debtor will generally remain in possession of the property and may continue to operate the debtor's business.

For more information, see page 3 ▶

11. Discharge of debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of a debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtors personally except as provided in the plan. If you believe that a particular debt owed to you should be excepted from the discharge under 11 U.S.C. § 523 (a)(2), (4), or (6), you must file a complaint and pay the filing fee in the bankruptcy clerk's office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1141 (d)(3), you must file a complaint and pay the filing fee in the clerk's office by the first date set for the hearing on confirmation of the plan. The court will send you another notice telling you of that date.
12. Exempt property	The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors, even if the case is converted to chapter 7. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at https://pacer.uscourts.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 8.

Committee Note

Official Form 309E1, line 7, and Official Form 309E2, line 8, are amended to clarify which deadline applies for filing complaints to deny the debtor a discharge and which applies for filing complaints seeking to except a particular debt from discharge.

Fill in this information to identify the case:
Debtor 1 _____
Debtor 2 (Spouse, if filing) _____
United States Bankruptcy Court for the: _____ District of _____ (State)
Case number _____

Official Form 410C13-1N

Trustee's Midcase Notice of the Status of the Mortgage Claim

12/23

The trustee must file this notice in a chapter 13 case between 18 and 24 months after the petition was filed. Rule 3002.1(f)(1).

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Cure Amount

		Amount
a. Allowed amount of prepetition arrearage, if any:	(a)	$ _____
b. Total prepetition arrearage paid by the trustee as of date of notice:	(b)	$ _____
c. Remaining balance of the prepetition arrearage:	(c)	$ _____

Part 3: Postpetition Mortgage Payment

Check one:

- ❑ Ongoing postpetition mortgage payments are made by the debtor.
- ❑ Ongoing postpetition mortgage payments are paid through the trustee.

  Current monthly payment: $ _____

  Next mortgage payment due: ____/____/_____
  MM / DD / YYYY

Part 4: A Response Is Required by Bankruptcy Rule 3002.1(f)(2)

Within 21 days after service of this notice, **the holder of the claim must file a response using Official Form 410C13-R.**

✘ _____ Date ____/_____/_____
Signature

Trustee _____
First Name Middle Name Last Name

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

Fill in this information to identify the case:
Debtor 1 _____
Debtor 2 (Spouse, if filing) _____
United States Bankruptcy Court for the: _____ District of _____ (State)
Case number _____

Official Form 410C13-1R

Response to Trustee's Midcase Notice of the Status of the Mortgage Claim

12/23

The claim holder must respond to the Trustee's Midcase Notice of the Status of the Mortgage Claim within 21 days after it was served. Rule 3002.1(f)(2).

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Cure Amount

Check all that are applicable:

- ❑ Claim holder agrees with the allowed amount of the prepetition arrearage and the arrearage balance set forth in the Trustee's Notice.
- ❑ Claim holder disagrees with the allowed amount of the prepetition arrearage set forth in the Trustee's Notice. Claim holder asserts that the allowed amount of the prepetition arrearage is $ _____.
- ❑ Claim holder disagrees with the prepetition arrearage balance set forth in the Trustee's Notice. Claim holder asserts that the prepetition balance as of the date of the Trustee's Notice is $ _____.

Part 3: Postpetition Mortgage Payment

The status of the ongoing postpetition mortgage payments as of the date of the Trustee's Notice is:

Current postpetition monthly payment: $ _____

Date next postpetition mortgage payment due: ____/____/_____
MM / DD / YYYY

Total ongoing postpetition payments due and unpaid: $ _____

Check one:

❑ The debtor is current on the ongoing postpetition mortgage payments.

❑ Claim holder asserts that the debtor is not current on the ongoing postpetition mortgage payments.

Part 4: Itemized Payment History

If the claim holder disagrees in Part 2 with the prepetition arrearage balance listed in the Trustee's Notice or states in Part 3 that the debtor is not current on ongoing postpetition payments as of the date of the Trustee's Notice, the claim holder must attach an itemized payment history listing:

- all payments received during the period from the filing of the bankruptcy petition through the date of this response; and
- how the payments were applied to principal, interest, and escrow from the filing of the bankruptcy petition through the date of this response.

Part 5: Sign Here

The person completing this response must sign it. Check the appropriate box:

❑ I am the claim holder.

❑ I am the claim holder's authorized agent.

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

✘ _____ Date ____/_____/_____
Signature

_____
First Name Middle Name Last Name

_____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

United States Bankruptcy Court

_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Motion to Determine the Status of the Mortgage Claim (conduit)

(The trustee should use this form if the trustee made the ongoing postpetition mortgage payments.)

The trustee states as follows:

1. On _____, debtor completed all payments under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder is attached.

2. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

3. The trustee disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: $ _____

b. Total amount of the prepetition arrearage paid by the trustee: $ _____

c. Allowed amount of postpetition arrearage, if any: $ _____

d. Postpetition arrearage paid by the trustee: $ _____

e. Total: (Add lines b. and d.): $ _____

4. The trustee disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges recoverable under Rule 3002.1(c): $ _____

b. Amount of postpetition fees, expenses, and charges listed in a. and paid through the trustee: $ _____

5. The ongoing postpetition mortgage payments were paid through the trustee.

Total postpetition ongoing mortgage payments paid	$ _____
Current monthly payment	$ _____
Date of next mortgage payment due	____/_____/_____

6. Therefore, I ask the court for an order under Rule 3002.1(h) determining that, as of the date of this motion, the debtor is current on all payments required by the plan and § 1322(b)(5) to be paid to the holder of the mortgage claim—including all escrow amounts—and that all postpetition fees, expenses, and charges are satisfied in full.

Signed: _____
(Trustee)

Date: _____

United States Bankruptcy Court
_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Motion to Determine the Status of the Mortgage Claim (nonconduit)

(The trustee should use this form if the debtor made the ongoing postpetition mortgage payments directly to the claim holder.)

The trustee states as follows:

1. On _____, debtor completed all payments under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder is attached.

2. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

3. The trustee disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: $ _____

b. Total amount of the prepetition arrearage paid by the trustee: $ _____

c. Allowed amount of postpetition arrearage, if any: $ _____

d. Postpetition arrearage paid by the trustee: $ _____

e. Total: (Add lines b. and d.): $ _____

4. The trustee disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges recoverable under Rule 3002.1(c): $ _____

b. Amount of postpetition fees, expenses, and charges listed in a. and paid through the trustee: $ _____

5. The debtor's chapter 13 plan provided that ongoing postpetition mortgage payments were to be paid by the debtor directly to the claim holder.

6. Therefore, I ask the court for an order under Rule 3002.1(h) determining that, as of the date of this motion, the debtor has cured the prepetition arrearage on the mortgage and that all postpetition fees, expenses, and charges are satisfied in full. Unless the claim holder responds to this motion with an allegation that the debtor is not current on the ongoing postpetition mortgage payments, I also ask the court to determine that the debtor is current on all postpetition payments required by the plan and § 1322(b)(5) to be paid to the holder of the mortgage claim—including all escrow amounts.

Signed: _____
(Trustee)

Date: _____

United States Bankruptcy Court
_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Response to Trustee's Motion to Determine the Status of the Mortgage Claim

_____ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

2. Prepetition Arrearage

Check one:

- ☐ Debtor has paid in full the amount required to cure any prepetition arrearage on this mortgage claim.
- ☐ Debtor has not paid in full the amount required to cure any prepetition arrearage on this mortgage claim. The claim holder asserts that the total prepetition arrearage amount remaining unpaid as of the date of this response is: $ _____.

3. Ongoing Postpetition Mortgage Payments

Check all that apply:

- ☐ Debtor is current on all ongoing postpetition mortgage payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs. The claim holder attaches a payoff statement and provides the following information as of the date of this response:

  Date last payment was received on the mortgage: _____

  Date next postpetition payment from the debtor is due: _____

  Amount of the next postpetition payment that is due: $_____

Unpaid principal balance of the loan: $_____

Additional amounts due for any deferred or accrued interest: $_____

Balance of the escrow account: $_____

Balance of unapplied funds or funds held in a suspense account: $_____

☐ Debtor is not current on all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code. The claim holder asserts that the debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/_____.
MM / DD / YYYY

☐ Debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The claim holder asserts that the total amount remaining unpaid as of the date of this response is $_____.

4. Itemized Payment History

Include if applicable:

Because the claim holder disagrees that the prepetition arrearage has been paid in full or states that the debtor Is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the creditor contends remain unpaid.

_____ Date ____/_____/_____
Signature

Print _____ Title _____
First Name Middle Name Last Name

Company _____

If different from the notice address listed on the proof of claim to which this response applies:

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

The person completing this response must sign it. Check the appropriate box:

- ☐ I am the claim holder.
- ☐ I am the claim holder's authorized agent.

Committee Note

Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R are new. They are adopted to implement new provisions of Rule 3002.1 that prescribe procedures for determining the status of a home mortgage claim in a chapter 13 case.

Official Form 410C13-1N is to be used by a trustee to provide the notice required by Rule 3002.1(f)(1). This notice is filed midway through a chapter 13 case (18-24 months after the petition was filed), and it requires the trustee to report on the status of payments to cure any prepetition arrearages and, if the trustee makes the ongoing postpetition mortgage payments, the amount and date of the next payment.

Within 21 days after service of the trustee's notice, the holder of the mortgage claim must file a response using Official Form 410C13-1R. *See* Rule 3002.1(f)(2). The claim holder must indicate whether it agrees with the trustee's statements about the cure of any prepetition arrearage, and it must also provide information about the status of ongoing postpetition mortgage payments. If the claim holder disagrees with the trustee or states that the debtor is not current on postpetition mortgage payments, it must attach an itemized payment history for the postpetition period.

Official Forms 410C13-10C and 410C13-10NC implement Rule 3002.1(g)(1). Form 410C13-10C is used if the trustee made the ongoing postpetition mortgage payments (as a conduit), and Form 410C13-10NC is used if those payments were made by the debtor directly to the holder of the mortgage claim (nonconduit). This motion is filed at the end of a chapter 13 case when the debtor has

completed all plan payments, and it seeks a court order determining the status of the mortgage claim. The trustee informs the court about the payments the trustee has made to the claim holder for the cure of any pre- and postpetition arrearages and for any postpetition fees, expenses, and charges. If the trustee made the ongoing postpetition mortgage payments, the trustee must also state the total amount paid and the amount and date of the next mortgage payment.

As required by Rule 3002.1(g)(2), the holder of the mortgage claim must respond to the trustee's motion within 28 days after service, using Official Form 410C13-10R. The claim holder must indicate whether it agrees with the trustee's statements about the cure of any arrearages and the payment of any postpetition fees, expenses, and charges. It must also provide information about the status of ongoing postpetition mortgage payments. If the claim holder disagrees with the trustee or states that the debtor is not current on postpetition mortgage payments, it must attach an itemized payment history for the postpetition period. If it asserts that the debtor is current on all postpetition payments, it must attach a payoff statement and provide the information listed in paragraph 3 of the form.

[Caption as in Form 416A, 416B, or 416D, as appropriate]

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):
   _____

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

   For appeals in an adversary proceeding.

   ❑ Plaintiff
   ❑ Defendant
   ❑ Other (describe) _____

   For appeals in a bankruptcy case and not in an adversary proceeding.

   ❑ Debtor
   ❑ Creditor
   ❑ Trustee
   ❑ Other (describe) _____

Part 2: Identify the subject of this appeal

1. Describe the judgment—or the appealable order or decree—from which the appeal is taken:
   _____

2. State the date on which the judgment—or the appealable order or decree—was entered:
   _____

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment—or appealable order or decree—from which the appeal is taken and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: _____ Attorney: _____
   _____
   _____
   _____

2. Party: _____ Attorney: _____
   _____
   _____
   _____

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ❑ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

_____ Date: _____

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Name, address, and telephone number of attorney (or appellant(s) if not represented by an attorney):

_____
_____
_____
_____

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

[**Note to inmate filers:** If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

Committee Note

Parts 2 and 3 of the form are amended to conform to wording in the simultaneously amended Rule 8003. The new wording is intended to remind appellants that appeals as of right from orders and decrees are limited to those that are "appealable"—that is, either deemed final or issued under § 1121(d). *See* 28 U.S.C. § 158(a)(2). It also seeks to avoid the misconception that it is necessary or appropriate to identify each and every order of the bankruptcy court that the appellant may wish to challenge on appeal. It requires identification of only "the judgment—or the appealable order or decree—from which the appeal is taken."

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

MEMORANDUM

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

FROM: Hon. Robert M. Dow, Jr., Chair
Advisory Committee on Civil Rules

RE: Report of the Advisory Committee on Civil Rules

DATE: December 9, 2020

Introduction

The Advisory Committee on Civil Rules met on a teleconference platform that included public access on October 16, 2020. Draft minutes from the meeting are attached to this report.

Part I of this report presents three items for action. * * * The others recommend approval for publication of an amendment to clarify the intended meaning of Rule 15(a)(1) and an amendment to broaden the means for providing notice of a magistrate judge's recommended disposition under Rule 72(b)(1).

* * * * *

I. Action Items

* * * * *

B. For Publication: Cure Literal Gap in Rule 15(a)(1)

Suggestion 19-CV-Z

A drafting mishap leaves the way open to read a dead zone into the middle of the Rule 15(a)(1) provision for amending a pleading once as a matter of course. The problem arises from the word "within," and is readily remedied by substituting "no later than." Describing the problem shows that correction is easy.

Using italics and overlining to emphasize the problem word, and underlining to identify the cure, Rule 15(a)(1) provides:

> (a) AMENDMENTS BEFORE TRIAL.
>
> (1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course ~~*within*~~ no later than:
>
> (A) 21 days after serving it, or
>
> (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

The problem is that a period introduced by "within" is measured by the required interval counted from the described event. An amendment "within" 21 days from service of a responsive pleading or one of the described Rule 12 motions begins at service, not before. If a responsive pleading is required, subparagraph (A) allows one amendment as a matter of course within 21 days after serving the pleading; that period then closes. The responsive pleading or motion, however, may not have been served by that time. The situations that appear on the face of the rules arise when the time to plead or move is longer than 21 days, most commonly 60 days. Or the time may be extended by agreement of the parties, or perhaps a scheduling order. In those situations, there is a gap in the right to amend. It expires after 21 days from serving the pleading, and is revived only on service of the responsive pleading or motion.

The death and revival of the right to amend once as a matter of course make no sense. It might be hoped that the folly of this unintended result is so apparent that no one would adopt the literal reading of "within." But lawyers have struggled with the issue, and a number of reported opinions show that courts have had to work to reach the right result. The question is more than

theoretical. And it can be fixed so readily that amendment is appropriate.

Substituting "no later than" for "within" makes the intended meaning clear. When a responsive pleading is required, the right to amend once as a matter of course arises on serving the pleading and continues until 21 days after service of a responsive pleading or a designated Rule 12 motion, whichever is earlier.

The Advisory Committee recommends publication for comment of an amendment that substitutes "no later than" for "within" in Rule 15(a)(1).

* * * * *

C. For Publication: Rule 5 Service Under Rule 72(b)(1)

Rule 72(b)(1) directs a magistrate judge to enter a recommended disposition "when assigned, without the parties' consent, to hear a pretrial matter dispositive of a claim or defense or a prisoner petition challenging the conditions of confinement." It concludes with this sentence: "The clerk must promptly mail a copy to each party."

Mailing a copy is out of step with current electronic docket practices. Rule 77(d)(1) was amended in 2001 to direct that the clerk serve notice of entry of an order or judgment "as provided in Rule 5(b)."

Criminal Rule 59(b)(1) includes a provision analogous to Civil Rule 72(b)(1), directing the magistrate judge to enter a recommendation for disposition of described motions or matters, and concluding: "The clerk must immediately serve copies on all parties."

The Advisory Committee recommends that Rule 72(b)(2) be amended to incorporate all Rule 5(b) methods for serving notice[.]

* * * * *

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

Rule 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) ***Amending as a Matter of Course.*** A party may amend its pleading once as a matter of course ~~within~~no later than:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

* * * * *

Committee Note

Rule 15(a)(1) is amended to substitute "no later than" for "within" to measure the time allowed to amend once as a

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

matter of course. A literal reading of "within" would lead to an untoward practice if a pleading is one to which a responsive pleading is required and neither a responsive pleading nor one of the Rule 12 motions has been served within 21 days after service of the pleading. Under this reading, the time to amend once as a matter of course lapses 21 days after the pleading is served and is revived only on the later service of a responsive pleading or one of the Rule 12 motions. [The amendment could not come "within" 21 days after the event until the event had happened.] There is no reason to suspend the right to amend in this way. "No later than" makes it clear that the right to amend continues without interruption until 21 days after the earlier of the events described in Rule 15(a)(1)(B).

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

Rule 72. Magistrate Judges: Pretrial Order

* * * * *

(b) Dispositive Motions and Prisoner Petitions.

(1) ***Findings and Recommendations.*** * * * The magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact. The clerk must ~~promptly mail~~immediately serve a copy ~~to~~on each party as provided in Rule 5(b).

* * * * *

Committee Note

Rule 72(b)(1) is amended to permit the clerk to serve a copy of a magistrate judge's recommended disposition by any of the means provided in Rule 5(b). [Service of a notice of entry of judgment under Rule 5(b) is permitted by Rule 77(d) as well.]

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

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

MEMORANDUM

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

FROM: Honorable Patrick J. Schiltz, Chair
Advisory Committee on Evidence Rules

DATE: May 15, 2021

RE: Report of the Advisory Committee on Evidence Rules

I. Introduction

The Advisory Committee on Evidence Rules (the "Committee") met remotely on April 30, 2021. At the meeting the Committee discussed ongoing projects involving possible amendments to Rules 106, 615, and 702. It also considered items to be put on the agenda for further consideration by the Committee.

The Committee made the following determinations at the meeting:

● It unanimously approved proposed amendments to Rules 106, 615, and 702, and is submitting them to the Standing Committee with the recommendation that they be released for public comment;

*****

II. Action Items

A. Proposed Amendment to Rule 106, for Release for Public Comment

At the suggestion of Hon. Paul Grimm, the Committee has for the last four years considered and discussed whether Rule 106 --- the rule of completeness --- should be amended. Rule 106 provides that if a party introduces all or part of a written or recorded statement in such a way as to be misleading, the opponent may require admission of a completing statement that would correct the misimpression. The Committee has considered whether Rule 106 should be amended in two respects: 1) to provide that a completing statement is admissible over a hearsay objection; and 2) to provide that the rule covers unrecorded oral statements, as well as written and recorded statements.

The courts are not uniform in the treatment of these issues. On the hearsay question, some courts have held that when a party introduces a portion of a statement that is misleading, it can still object, on hearsay grounds, to completing evidence that corrects the misimpression. Other courts have held essentially that if a party introduces a portion of a statement so that it can mislead the factfinder about the statement actually made, that party forfeits the right to object to the remainder that is necessary to remedy the misimpression. As to unrecorded oral statements, most courts have found that when necessary to complete, such statements are admissible either under Rule 611(a) or under the common law rule of completeness.

After much discussion and consideration, the Committee has unanimously approved, for release for public comment, an amendment to Rule 106 that would: 1) allow the completing statement to be admissible over a hearsay objection; and 2) cover unrecorded oral statements. The overriding goal of the amendment is to treat all questions of completeness in a single rule. That is particularly important because completeness questions often arise at trial, and so it is important for the parties and the court to be able to refer to a single rule to govern admissibility. What has been particularly confusing to courts and practitioners is that Rule 106 has been considered a "partial codification" of the common law --- meaning that the parties must be aware that common law may still be invoked. One goal of the amendment is to displace the common law --- as it has been displaced by all the other Federal Rules of Evidence.

As to admissibility of out-of-court statements, the amendment takes the position that the proponent, by providing a misleading presentation, forfeits the right to foreclose admission of a remainder that is necessary to remedy the misimpression. Simple notions of fairness, already embodied in Rule 106, dictate that a misleading presentation cannot stand unrebutted. The amendment leaves it up to the court to determine whether the completing remainder will be admissible to prove a fact, or admissible for the more limited non-hearsay purpose of providing context. Either usage is encompassed within the rule terminology--- that the completing remainder is admissible "over a hearsay objection."

As to unrecorded oral statements, the rationale for covering them is that most courts already admit such statements when necessary to complete --- they just do so under a different evidence rule or under the common law. The Committee was convinced that covering unrecorded oral statements under Rule 106 would be a user-friendly change, especially because the existing hodgepodge of coverage of unrecorded statements presents a trap for the unwary. As stated above, the fact that completeness questions commonly rise at the trial itself means that parties cannot be expected to quickly get an answer from the common law, or from a rule such as Rule 611(a), that does not specifically deal with completeness.

It is important to note that nothing in the amendment changes the basic rule, which applies only to the narrow circumstances in which a party has created a misimpression about the statement, and the adverse party proffers a statement that in fact corrects the misimpression. So, the mere fact that a statement is probative and contradicts a statement offered by the opponent is not enough to justify completion under Rule 106.

The Committee unanimously approved the proposed amendment to Rule 106. The Committee recommends that the proposed amendment, and the accompanying Committee Note, be released for public comment.

The proposed amendment to Rule 106, and the Committee Note, are attached to this Report.

B. Proposed Amendment to Rule 615, for Release for Public Comment

Rule 615 provides for court orders excluding witnesses so that they "cannot hear other witnesses' testimony." The Committee determined that there are problems raised in the case law and in practice regarding the scope of a Rule 615 order: does it apply only to exclude witnesses from the courtroom (as stated in the text of the rule) or does it extend outside the confines of the courtroom to prevent prospective witnesses from obtaining or being provided trial testimony? Most courts have held that a Rule 615 order extends to prevent access to trial testimony outside of court, because exclusion from the courtroom is not sufficient to protect against the risk of witnesses tailoring their testimony after obtaining access to trial testimony. But other courts have read the rule as it is written.

After extensive consideration and research over three years, the Committee agreed on an amendment that would clarify the extent of an order under Rule 615. Committee members have noted that where parties can be held in contempt for violating a court order, some clarification of the operation of sequestration outside the actual trial setting itself is necessary. The Committee's investigation of this problem is consistent with its ongoing efforts to ensure that the Evidence Rules are keeping up with technological advancement, given the increased possibility of witness access to information about testimony through news, social media, YouTube or daily transcripts.

At the Spring, 2021 meeting the Committee unanimously voted in favor of an amendment that limits an exclusion order to just that --- exclusion of witnesses from the courtroom. But a new subdivision would provide that the court has discretion to issue further orders to "(1) prohibit disclosure of trial testimony to witnesses who are excluded from the courtroom; and (2) prohibit excluded witnesses from accessing trial testimony."

The Committee also considered whether an amendment to Rule 615 should address orders that prohibit counsel from preparing prospective witnesses with trial testimony. The Committee resolved that any amendment to Rule 615 should not mention trial counsel in text, because the question of whether counsel can use trial testimony to prepare witnesses raises issues of professional responsibility and the right to counsel that are beyond the purview of the Evidence Rules.

Finally, the Committee approved an additional amendment to the existing provision that allows an entity-party to designate "an officer or employee" to be exempt from exclusion. There is some dispute in the courts on whether the entity-party is limited to one such exemption or is entitled to more than one. The amendment clarifies that the exemption is limited to one officer or employee. The rationale is that the exemption is intended to put entities on a par with individual parties, who cannot be excluded under Rule 615. Allowing the entity more than one exemption is inconsistent with that rationale.

The Committee unanimously approved the proposed amendment to Rule 615. The Committee recommends that the proposed amendment, and the accompanying Committee Note, be released for public comment.

The proposed amendment to Rule 615, and the Committee Note, are attached to this Report

C. Proposed Amendment to Rule 702, for Release for Public Comment

The Committee has been researching and discussing the possibility of an amendment to Rule 702 for four years. The project began with a Symposium on forensic experts and *Daubert,* held at Boston College School of Law in October, 2017. That Symposium addressed, among other things, the challenges to forensic evidence raised in a report by the President's Council of Advisors on Science and Technology. A Subcommittee on Rule 702 was appointed to consider possible treatment of forensic experts, as well as the weight/admissibility question discussed below. The Subcommittee, after extensive discussion, recommended against certain courses of action. The Subcommittee found that: 1) It would be difficult to draft a freestanding rule on forensic expert testimony, because any such amendment would have an inevitable and problematic overlap with Rule 702; and 2) It would not be advisable to set forth detailed requirements for forensic evidence either in text or Committee Note because such a project would require extensive input from the scientific community, and there is substantial debate about what requirements are appropriate.

The Committee agreed with these suggestions by the Rule 702 Subcommittee. But the Subcommittee did express interest in considering an amendment to Rule 702 that would focus on one important aspect of forensic expert testimony --- the problem of overstating results (for example, by stating an opinion as having a "zero error rate", where that conclusion is not supportable by the methodology). The Committee heard extensively from DOJ on the important efforts it is now employing to regulate the testimony of its forensic experts, and to limit possible overstatement.

The Committee considered a proposal to add a new subdivision (e) to Rule 702 that would essentially prohibit any expert from drawing a conclusion overstating what could actually be concluded from a reliable application of a reliable methodology. But a majority of the members decided that the amendment would be problematic, because Rule 702(d) already requires that the expert must reliably apply a reliable methodology. If an expert overstates what can be reliably concluded (such as a forensic expert saying the rate of error is zero) then the expert's opinion should be excluded under Rule 702(d). The Committee was also concerned about the possible unintended consequences of adding an overstatement provision that would be applied to all experts, not just forensic experts.

The Committee, however, unanimously favored a slight change to existing Rule 702(d) that would emphasize that the court must focus on the expert's opinion, and must find that the opinion actually proceeds from a reliable application of the methodology. The Committee unanimously approved a proposal that would amend Rule 702(d) to require the court to find that "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." As the Committee Note elaborates: "A testifying expert's opinion must stay within the bounds of what can be concluded by a reliable application of the expert's basis and methodology." The language of the amendment more clearly empowers the court to pass judgment on the conclusion that the expert has drawn from the methodology. As such it is consistent with the decision in *General Electric Co., v. Joiner,* 522 U.S. 136 (1997), where the Court declared that a trial court must consider not only the expert's methodology but also the expert's conclusion; that is because the methodology must not only be reliable, it must be reliably applied.

Finally, the Committee resolved to respond to the fact that many courts have declared that the reliability requirements set forth in Rule 702(b) and (d) --- that the expert has relied on sufficient facts or data and has reliably applied a reliable methodology --- are questions of weight and not admissibility, and more broadly that expert testimony is presumed to be admissible. These statements can be read to misstate Rule 702, because its admissibility requirements must be met by a preponderance of the evidence. The Committee has determined that in a fair number of cases, the courts have found expert testimony admissible even though the proponent has not satisfied the Rule 702(b) and (d) requirements by a preponderance of the evidence.

Initially, the Committee was reluctant to propose a change to the text of Rule 702 to address these mistakes as to the proper standard of admissibility, in part because the preponderance of the evidence standard applies to almost all evidentiary determinations, and specifying that standard in one rule might raise negative inferences as to other rules. But ultimately the Committee unanimously agreed that adding the preponderance of the evidence standard to the text of Rule 702 would be a substantial improvement that would address an important conflict among the courts. While it is true that the Rule 104(a) preponderance of the evidence standard applies to Rule 702 as well as other rules, it is with respect to the reliability requirements of expert testimony that many courts are misapplying that standard. Moreover, it takes some effort to determine the applicable standard of proof --- Rule 104(a) does not mention the applicable standard of proof, requiring a resort to case law. And while *Daubert* mentions the standard, it is only in a footnote, in a case in which there is much said about the liberal standards of the Federal Rules of Evidence. Consequently, the Committee unanimously approved an amendment that would explicitly add the preponderance of the evidence standard to Rule 702(a)-(d). The Committee Note to the proposal

makes clear that there is no intent to raise any negative inference regarding the applicability of the Rule 104(a) standard of proof to other rules --- emphasizing the preponderance standard in Rule 702 specifically was made necessary by the decisions that have failed to apply it to the reliability requirements of Rule 702.

The Committee unanimously approved the proposed amendment to Rule 702. The Committee recommends that the proposed amendment, and the accompanying Committee Note, be released for public comment.

The proposed amendment to Rule 702, and the Committee Note, are attached to this Report.

*****

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE[1]

Rule 106. Remainder of or Related ~~Writings or Recorded~~ Written or Oral Statements

If a party introduces all or part of a ~~writing or recorded~~ written or oral statement, an adverse party may require the introduction, at that time, of any other part—or any other ~~writing or recorded~~ written or oral statement—that in fairness ought to be considered at the same time. The adverse party may do so over a hearsay objection.

Committee Note

Rule 106 has been amended in two respects. First, the amendment provides that if the existing fairness standard requires completion, then that completing statement is admissible over a hearsay objection. Courts have been in conflict over whether completing evidence properly required for completion under Rule 106 can be admitted over a hearsay objection. The Committee has determined that the rule of completeness, grounded in fairness, cannot fulfill its function if the party that creates a misimpression about the meaning of a proffered statement can then object on hearsay grounds and exclude a statement that would correct the misimpression. *See United States v. Sutton*, 801 F.2d 1346, 1368 (D.C. Cir.1986) (noting that "[a] contrary construction

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

raises the specter of distorted and misleading trials, and creates difficulties for both litigants and the trial court"). For example, assume the defendant in a murder case admits that he owned the murder weapon, but also simultaneously states that he sold it months before the murder. In this circumstance, admitting only the statement of ownership creates a misimpression because it suggests that the defendant implied that he owned the weapon at the time of the crime—when that is not what he said. In this example the prosecution, which has by definition created the situation that makes completion necessary, should not be permitted to invoke the hearsay rule and thereby allow the misleading statement to remain unrebutted. A party that presents a distortion can fairly be said to have forfeited its right to object on hearsay grounds to a statement that would be necessary to correct a misimpression. For similar results see Rules 502(a), 410(b)(1), and 804(b)(6).

The courts that have permitted completion over hearsay objections have not usually specified whether the completing remainder may be used for its truth or only for its nonhearsay value in showing context. Under the amended rule, the use to which a completing statement can be put will be dependent on the circumstances. In some cases, completion will be sufficient for the proponent of the completing statement if it is admitted to provide context for the initially proffered statement. In such situations, the completing statement is properly admitted over a hearsay objection because it is offered for a non-hearsay purpose. An example would be a completing statement that corrects a misimpression about what a party heard before undertaking a disputed action, where the party's state of mind is relevant. The completing statement in this example is admitted only to show what the party actually heard, regardless of the underlying truth of the completing statement. But in some cases, a completing statement places an initially proffered

statement in context only if the completing statement is true. An example is the defendant in a murder case who admits that he owned the murder weapon, but also simultaneously states that he sold it months before the murder. The statement about selling the weapon corrects a misimpression only if it is offered for its truth. In such cases, Rule 106 operates to allow the completing statement to be offered as proof of a fact.

Second, Rule 106 has been amended to cover oral statements that have not been recorded. Most courts have already found unrecorded completing statements to be admissible under either Rule 611(a) or the common-law rule of completeness. This procedure, while reaching the correct result, is cumbersome and creates a trap for the unwary. Most questions of completion arise when a statement is offered in the heat of trial—where neither the parties nor the court should be expected to consider the nuances of Rule 611(a) or the common law in resolving completeness questions. The amendment, as a matter of convenience, covers these questions under one rule. The rule is expanded to now cover all writings and all statements—whether in documents, in recordings, or in oral form.

The original Advisory Committee Note cites "practical reasons" for limiting the coverage of the rule to writings and recordings. To the extent that the concern was about disputes over the content or existence of an unrecorded statement, that concern does not justify excluding all unrecorded statements completely from the coverage of the rule. *See United States v. Bailey,* 2017 WL 5126163, at *7 (D. Md. Nov. 16, 2017) ("A blanket rule of prohibition is unwarranted, and invites abuse. Moreover, if the content of some oral statements are disputed and difficult to prove, others are not—because they have been summarized . . . , or because they were witnessed by enough people to assure that

what was actually said can be established with sufficient certainty."). A party seeking completion with an oral statement would of course need to provide admissible evidence that the statement was made. Otherwise, there would be no showing that the original statement is misleading, and the request for completion should be denied. In some cases, the court may find that the difficulty in proving the completing statement substantially outweighs its probative value—in which case exclusion is possible under Rule 403.

The rule retains the language that completion is made at the time the original portion is introduced. That said, many courts have held that the trial court has discretion to allow completion at a later point. *See, e.g.*, *Phoenix Assocs. III v. Stone*, 60 F.3d 95, 103 (2d Cir. 1995) ("While the wording of Rule 106 appears to require the adverse party to proffer the associated document or portion contemporaneously with the introduction of the primary document, we have not applied this requirement rigidly."). Nothing in the amendment is intended to limit the court's discretion to allow completion at a later point.

The intent of the amendment is to displace the common-law rule of completeness. In *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 171-72 (1988), the Court in dictum referred to Rule 106 as a "partial codification" of the common-law rule of completeness. There is no other rule of evidence that is interpreted as coexisting with common-law rules of evidence, and the practical problem of a rule of evidence operating with a common-law supplement is apparent—especially when the rule is one, like the rule of completeness, that arises most often during the trial. Displacing the common-law is especially appropriate because the results under this rule as amended will generally

be in accord with the common-law doctrine of completeness at any rate.

The amendment does not give a green light of admissibility to all excised portions of written or oral statements. It does not change the basic rule, which applies only to the narrow circumstances in which a party has created a misimpression about the statement, and the adverse party proffers a statement that in fact corrects the misimpression. The mere fact that a statement is probative and contradicts a statement offered by the opponent is not enough to justify completion under Rule 106. So for example, the mere fact that a defendant denies guilt before later admitting it does not, without more, mandate the admission of his previous denial. *See United States v. Williams*, 930 F.3d 44 (2d Cir. 2019).

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE[1]

Rule 615. Excluding Witnesses from the Courtroom; Preventing an Excluded Witness's Access to Trial Testimony

(a) Excluding Witnesses. At a party's request, the court must order witnesses excluded from the courtroom so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

(a)(1) a party who is a natural person;

(b)(2) an one officer or employee of a party that is not a natural person, after being if that officer or employee has been designated as the party's representative by its attorney;

(c)(3) a any person whose presence a party shows to be essential to presenting the party's claim or defense; or

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

~~(d)~~(4) a person authorized by statute to be present.

(b) Additional Orders to Prevent Disclosing and Accessing Testimony. An order under (a) operates only to exclude witnesses from the courtroom. But the court may also, by order:

(1) prohibit disclosure of trial testimony to witnesses who are excluded from the courtroom; and

(2) prohibit excluded witnesses from accessing trial testimony.

Committee Note

Rule 615 has been amended for two purposes. Most importantly, the amendment clarifies that the court, in entering an order under this rule, may also prohibit excluded witnesses from learning about, obtaining, or being provided with trial testimony. Many courts have found that a "Rule 615 order" extends beyond the courtroom, to prohibit excluded witnesses from obtaining access to or being provided with trial testimony. But the terms of the rule did not so provide; and other courts have held that a Rule 615 order was limited to exclusion of witnesses from the trial. On the one hand, the courts extending Rule 615 beyond courtroom exclusion properly recognized that the core purpose of the rule is to prevent witnesses from tailoring their testimony to the evidence presented at trial—and that

purpose can only be effectuated by regulating out-of-court exposure to trial testimony. *See United States v. Robertson*, 895 F.3d 1206, 1215 (9th Cir. 2018) ("The danger that earlier testimony could improperly shape later testimony is equally present whether the witness hears that testimony in court or reads it from a transcript."). On the other hand, a rule extending an often vague "Rule 615 order" outside the courtroom raised questions of fair notice, given that the text of the rule itself was limited to exclusion of witnesses from the courtroom.

An order under subdivision (a) operates only to exclude witnesses from the courtroom. This includes exclusion of witnesses from a virtual trial. Subdivision (b) emphasizes that the court may by order extend the sequestration beyond the courtroom, to prohibit parties subject to the order from disclosing trial testimony to excluded witnesses, as well as to directly prohibit excluded witnesses from trying to access trial testimony. Such an extension is often necessary to further the rule's policy of preventing tailoring of testimony.

The rule gives the court discretion to determine what requirements, if any, are appropriate in a particular case to protect against the risk that witnesses excluded from the courtroom will obtain trial testimony.

Nothing in the language of the rule bars a court from prohibiting counsel from disclosing trial testimony to a sequestered witness. However, an order governing counsel's disclosure of trial testimony to prepare a witness raises difficult questions of professional responsibility and effective assistance of counsel, as well as the right to confrontation in criminal cases, and is best addressed by the court on a case-by-case basis.

Finally, the rule has been amended to clarify that the exception from exclusion for entity representatives is limited to one designated agent per entity. This limitation, which has been followed by most courts, generally provides parity for individual and entity parties. The rule does not prohibit the court from exercising discretion to allow an entity-party to swap one representative for another as the trial progresses, so long as only one witness-agent is exempt at any one time. If an entity seeks to have more than one witness-agent protected from exclusion, it is free to argue under subdivision (a)(3) that the additional agent is essential to presenting the party's claim or defense.

Nothing in this amendment prohibits a court from exempting from exclusion multiple witnesses if they are found essential under (a)(3). *See, e.g.*, *United States v. Arayatanon*, 980 F.3d 444 (5th Cir. 2020) (no abuse of discretion in exempting from exclusion two agents, upon a showing that both were essential to the presentation of the government's case).

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE[1]

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent has demonstrated by a preponderance of the evidence that:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the ~~expert has reliably applied~~expert's opinion reflects a reliable application of the

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

principles and methods to the facts of the case.

Committee Note

Rule 702 has been amended in two respects. First, the rule has been amended to clarify and emphasize that the admissibility requirements set forth in the rule must be established to the court by a preponderance of the evidence. *See* Rule 104(a). Of course, the Rule 104(a) standard applies to most of the admissibility requirements set forth in the Evidence Rules. *See Bourjaily v. United States*, 483 U.S. 171 (1987). But many courts have held that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a).

There is no intent to raise any negative inference regarding the applicability of the Rule 104(a) standard of proof for other rules. The Committee concluded that emphasizing the preponderance standard in Rule 702 specifically was made necessary by the courts that have failed to apply correctly the reliability requirements of that rule.

The amendment clarifies that the preponderance standard applies to the three reliability-based requirements added in 2000—requirements that many courts have incorrectly determined to be governed by the more permissive Rule 104(b) standard. But of course other admissibility requirements in the rule (such as that the expert must be qualified and the expert's testimony must help the trier of fact) are governed by the Rule 104(a) standard as well.

Of course, some challenges to expert testimony will raise matters of weight rather than admissibility even under the Rule 104(a) standard. For example, if the court finds by a preponderance of the evidence that an expert has a sufficient basis to support an opinion, the fact that the expert has not read every single study that exists will raise a question of weight and not admissibility. But this does not mean, as certain courts have held, that arguments about the sufficiency of an expert's basis always go to weight and not admissibility. Rather it means that once the court has found the admissibility requirement to be met by a preponderance of the evidence, any attack by the opponent will go only to the weight of the evidence.

It will often occur that experts come to different conclusions based on contested sets of facts. Where that is so, the preponderance of the evidence standard does not necessarily require exclusion of either side's experts. Rather, by deciding the disputed facts, the jury can decide which side's experts to credit.

Rule 702 requires that the expert's knowledge "help" the trier of fact to understand the evidence or to determine a fact in issue. Unfortunately, some courts have required the expert's testimony to "appreciably help" the trier of fact. Applying a higher standard than helpfulness to otherwise reliable expert testimony is unnecessarily strict.

Rule 702(d) has also been amended to emphasize that a trial judge must exercise gatekeeping authority with respect to the opinion ultimately expressed by a testifying expert. A testifying expert's opinion must stay within the bounds of what can be concluded by a reliable application of the expert's basis and methodology. Judicial gatekeeping is essential because just as jurors may be unable to evaluate meaningfully the reliability of scientific and other methods

underlying expert opinion, jurors may also be unable to assess the conclusions of an expert that go beyond what the expert's basis and methodology may reliably support.

The amendment is especially pertinent to the testimony of forensic experts in both criminal and civil cases. Forensic experts should avoid assertions of absolute or one hundred percent certainty—or to a reasonable degree of scientific certainty—if the methodology is subjective and thus potentially subject to error. In deciding whether to admit forensic expert testimony, the judge should (where possible) receive an estimate of the known or potential rate of error of the methodology employed, based (where appropriate) on studies that reflect how often the method produces accurate results. Expert opinion testimony regarding the weight of feature comparison evidence (i.e., evidence that a set of features corresponds between two examined items) must be limited to those inferences that can reasonably be drawn from a reliable application of the principles and methods. This amendment does not, however, bar testimony that comports with substantive law requiring opinions to a particular degree of certainty.

Nothing in the amendment imposes any new, specific procedures. Rather, the amendment is simply intended to clarify that Rule 104(a)'s requirement that a court must determine admissibility by a preponderance applies to expert opinions under Rule 702. Similarly, nothing in the amendment requires the court to nitpick an expert's opinion in order to reach a perfect expression of what the basis and methodology can support. The Rule 104(a) standard does not require perfection. On the other hand, it does not permit the expert to make extravagant claims that are unsupported by the expert's basis and methodology.

The amendment's reference to "a preponderance of the evidence" is not meant to indicate that the information presented to the judge at a Rule 104(a) hearing must meet the rules of admissibility. It simply means that the judge must find, on the basis of the information presented, that the proponent has shown the requirements of the rule to be satisfied more likely than not.

§ 440 Procedures for Committees on Rules of Practice and Procedure

This section contains the "Procedures for the Judicial Conference's Committee on Rules of Practice and Procedure and Its Advisory Rules Committees," last amended in September 2011. JCUS-SEP 2011, p. 35.

§ 440.10 Overview

The Rules Enabling Act, 28 U.S.C. §§ 2071–2077, authorizes the Supreme Court to prescribe general rules of practice and procedure and rules of evidence for the federal courts. Under the Act, the Judicial Conference must appoint a standing committee, and may appoint advisory committees to recommend new and amended rules. Section 2073 requires the Judicial Conference to publish the procedures that govern the work of the Committee on Rules of Practice and Procedure (the "Standing Committee") and its advisory committees on the Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure and on the Evidence Rules. *See* 28 U.S.C. § 2073(a)(1). These procedures do not limit the rules committees' authority. Failure to comply with them does not invalidate any rules committee action. *Cf*. 28 U.S.C. § 2073(e).

§ 440.20 Advisory Committees

§ 440.20.10 Functions

Each advisory committee must engage in "a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use" in its field, taking into consideration suggestions and recommendations received from any source, new statutes and court decisions affecting the rules, and legal commentary. *See* 28 U.S.C. § 331.

§ 440.20.20 Suggestions and Recommendations

Suggestions and recommendations on the rules are submitted to the Secretary of the Standing Committee at the Administrative Office of the United States Courts, Washington, D.C. The Secretary will acknowledge the suggestions or recommendations and refer them to the appropriate advisory committee. If the Standing Committee takes formal action on them, that action will be reflected in the Standing Committee's minutes, which are posted on the judiciary's rulemaking website.

§ 440.20.30 Drafting Rule Changes

(a) Meetings

Each advisory committee meets at the times and places that the chair designates. Advisory committee meetings must be open to the public, except when the committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the reason. Each meeting must be preceded by notice of the time and place, published in the *Federal Register* and on the judiciary's rulemaking website, sufficiently in advance to permit interested persons to attend.

(b) Preparing Draft Changes

The reporter assigned to each advisory committee should prepare for the committee, under the direction of the committee or its chair, draft rule changes, committee notes explaining their

purpose, and copies or summaries of written recommendations and suggestions received by the committee.

(c) Considering Draft Changes

The advisory committee studies the rules' operation and effect. It meets to consider proposed new and amended rules (together with committee notes), whether changes should be made, and whether they should be submitted to the Standing Committee with a recommendation to approve for publication. The submission must be accompanied by a written report explaining the advisory committee's action and its evaluation of competing considerations.

§ 440.20.40 Publication and Public Hearings

(a) Publication

Before any proposed rule change is published, the Standing Committee must approve publication. The Secretary then arranges for printing and circulating the proposed change to the bench, bar, and public. Publication should be as wide as possible. The proposed change must be published in the *Federal Register* and on the judiciary's rulemaking website. The Secretary must:

(1) notify members of Congress, federal judges, and the chief justice of each state's highest court of the proposed change, with a link to the judiciary's rulemaking website; and

(2) provide copies of the proposed change to legal-publishing firms with a request to timely include it in publications.

(b) Public Comment Period

A public comment period on the proposed change must extend for at least six months after notice is published in the *Federal Register*, unless a shorter period is approved under paragraph (d) of this section.

(c) Hearings

The advisory committee must conduct public hearings on the proposed change unless eliminating them is approved under paragraph (d) of this section or not enough witnesses ask to testify at a particular hearing. The hearings are held at the times and places that the advisory committee's chair determines. Notice of the times and places must be published in the *Federal Register* and on the judiciary's rulemaking website. The hearings must be transcribed. Whenever possible, a transcript should be produced by a qualified court reporter.

(d) Expedited Procedures

The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained. The Standing Committee may also eliminate public notice and comment for a technical or conforming amendment if the Committee determines that they are unnecessary. When an exception is made, the chair must advise the Judicial Conference and provide the reasons.

§ 440.20.50 Procedures After the Comment Period

(a) Summary of Comments

When the public comment period ends, the reporter must prepare a summary of the written comments received and of the testimony presented at public hearings. If the number of comments is very large, the reporter may summarize and aggregate similar individual comments, identifying the source of each one.

(b) Advisory Committee Review; Republication

The advisory committee reviews the proposed change in light of any comments and testimony. If the advisory committee makes substantial changes, the proposed rule should be republished for an additional period of public comment unless the advisory committee determines that republication would not be necessary to achieve adequate public comment and would not assist the work of the rules committees.

(c) Submission to the Standing Committee

The advisory committee submits to the Standing Committee the proposed change and committee note that it recommends for approval. Each submission must:

(1) be accompanied by a separate report of the comments received;

(2) explain the changes made after the original publication; and

(3) include an explanation of competing considerations examined by the advisory committee.

§ 440.20.60 Preparing Minutes and Maintaining Records

(a) Minutes of Meetings

The advisory committee's chair arranges for preparing the minutes of the committee meetings.

(b) Records

The advisory committee's records consist of:

- written suggestions received from the public;
- written comments received from the public on drafts of proposed rules;
- the committee's responses to public suggestions and comments;
- other correspondence with the public about proposed rule changes;
- electronic recordings and transcripts of public hearings (when prepared);
- the reporter's summaries of public comments and of testimony from public hearings;
- agenda books and materials prepared for committee meetings;
- minutes of committee meetings;
- approved drafts of rule changes; and
- reports to the Standing Committee.

(c) Public Access to Records

The records must be posted on the judiciary's rulemaking website, except for general public correspondence about proposed rule changes and electronic recordings of hearings when transcripts are prepared. This correspondence and archived records are maintained by the AO and are available for public inspection. Minutes of a closed meeting may be made available to the public but with any deletions necessary to avoid frustrating the purpose of closing the meeting under § 440.20.30(a).

§ 440.30 Standing Committee

§ 440.30.10 Functions

The Standing Committee's functions include:

(a) coordinating the work of the advisory committees;

(b) suggesting proposals for them to study;

(c) considering proposals they recommend for publication for public comment; and

(d) for proposed rule changes that have completed that process, deciding whether to accept or modify the proposals and transmit them with its own recommendation to the Judicial Conference, recommit them to the advisory committee for further study and consideration, or reject them.

§ 440.30.20 Procedures

(a) Meetings

The Standing Committee meets at the times and places that the chair designates. Committee meetings must be open to the public, except when the Committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the reason. Each meeting must be preceded by notice of the time and place, published in the *Federal Register* and on the judiciary's rulemaking website, sufficiently in advance to permit interested persons to attend.

(b) Attendance by the Advisory Committee Chairs and Reporters

The advisory committees' chairs and reporters should attend the Standing Committee meetings to present their committees' proposed rule changes and committee notes, to inform the Standing Committee about ongoing work, and to participate in the discussions.

(c) Action on Proposed Rule Changes or Committee Notes

The Standing Committee may accept, reject, or modify a proposed change or committee note, or may return the proposal to the advisory committee with instructions or recommendations.

(d) Transmission to the Judicial Conference

The Standing Committee must transmit to the Judicial Conference the proposed rule changes and committee notes that it approves, together with the advisory committee report. The Standing Committee's report includes its own recommendations and explains any changes that it made.

§ 440.30.30 Preparing Minutes and Maintaining Records

(a) Minutes of Meetings

The Secretary prepares minutes of Standing Committee meetings.

(b) Records

The Standing Committee's records consist of:

- the minutes of Standing Committee and advisory committee meetings;
- agenda books and materials prepared for Standing Committee meetings;
- reports to the Judicial Conference; and
- official correspondence about rule changes, including correspondence with advisory committee chairs.

(c) Public Access to Records

The records must be posted on the judiciary's rulemaking website, except for official correspondence about rule changes. This correspondence and archived records are maintained by the AO and are available for public inspection. Minutes of a closed meeting may be made available to the public but with any deletions necessary to avoid frustrating the purpose of closing the meeting under § 440.30.20(a).

Last revised (Transmittal 01-023) April 6, 2021

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