

**SUPPLEMENT TO THE AGENDA BOOK**

**ADVISORY COMMITTEE  
ON  
BANKRUPTCY RULES**

**New York, NY**

**April 2-3, 2013**

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# TAB 7

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# TAB 7A

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# TAB 7A.1

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## MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: FORMS MODERNIZATION PROJECT

DATE: MARCH 20, 2013

### A. Background

The Bankruptcy Official Forms Modernization Project (FMP) began its work in 2008. The project is being carried out by an ad hoc group composed of members of the Advisory Committee on Bankruptcy Rules' Subcommittee on Forms working in liaison with representatives of other relevant Judicial Conference committees.

The dual goals of the FMP are to improve the official bankruptcy forms and to improve the interface between the forms and available technology. The judiciary is in the process of developing "the next generation" of CM/ECF (Next Gen), and the modernized forms are being designed to use the enhanced technology that will become available through Next Gen. From a forms perspective, the major change in Next Gen will be the ability to store all information on forms as data so that authorized users can produce customized reports containing the information they want from the forms, displayed in whatever format they choose.

The FMP made a preliminary decision that the debtor forms for individuals and entities other than individuals should be separated, because separate areas of inquiry apply to each group. There is a greater need for the forms submitted by individuals to be less technical,

because more individuals are unsophisticated compared to other entities and individuals may not have the assistance of counsel. The FMP began by drafting and testing the forms for individuals.

As explained below, a small subset of the forms used by individuals at case commencement were published last year and most of the balance of the forms used by individuals at case commencement are ready for publication. The Advisory Committee had decided that initially publishing and implementing a small number of forms would allow other forms to be adjusted based on comments and experience and would allow the Next Gen programmers to work on forms sequentially rather than all at once. The Advisory Committee selected these particular forms because they involve only individual debtors and can replace existing forms.

The data on the published forms is frequently accessed by end users and judiciary users. Once the judiciary implements Next Gen judges and clerks' staff will be able to use forms data to generate customized reports. At the time of the fall Advisory Committee meeting, and still today, it is uncertain when the first release of Next Gen will become operational throughout the judiciary. Delivery of version 1.0 of Next Gen to the beta test courts is expected in late 2013 or early 2014. After beta testing is completed and any required changes are made, more courts will implement Next Gen. This is expected to occur in 2014. Implementation of some of the modernized forms on December 1, 2013 should allow for fuller testing of the technological features of the modernized forms before other modernized forms are approved.

B. Fall 2012 Advisory Committee Meeting

During the fall 2012 meeting, the Advisory Committee reviewed and commented on most of the forms remaining in the individual debtor filing package as well as the instructions for individual files. It also asked the Standing Committee to provide comments. The forms in that package have been revised in response to the comments from the two committees and are listed in the recommendation to publish for public comment at the end of this memo.

C. FMP Progress Since the Fall 2012 Advisory Committee Meeting

1. Individual Filing Package

a. Published Individual Forms

In August 2012 the Judicial Conference Committee on Rules of Practice and Procedure published a part of the individual debtor filing package, consisting of the fee waiver and installment fee forms (3A and 3B), the income and expense forms (6I and 6J), and the means test forms (22A-1, 22A-2, 22B, 22C-1, and 22C-2).

Thirty comments on the forms were submitted by the February 15 deadline, and one other letter was informally submitted to the working group. As explained in greater detail in memoranda compiling and analyzing the comments, the comments contained many specific suggestions and the overall evaluation of the draft forms was mixed.

As a result of the comments, and after further discussion at its March 1, 2013 meeting, the FMP concluded that the revised forms were an improvement on existing versions, and that the project to modernize the bankruptcy forms should continue. It recommended implementation of the published fee waiver and installment fee forms (3A and 3B) and the income and expense

forms (6I and 6J), effective December 1, 2013, with several changes to address some of the comments. The FMP does not think that the recommended changes raise substantive issues that would require republication of the revised forms. As a result of the comments on the means test forms (22A-1, 22A-2, 22B, 22C-1, and 22C-2), the FMP decided that substantive revisions should be considered, and that republication would be required after it receives guidance on some of the issues from the Advisory Committee. The attached memoranda explain the FMP's responses to the comments.

b. Remaining Individual Forms Ready for Publication

Judge Wedoff and Professor Gibson presented the remaining draft forms for individuals to the Standing Committee at its January 2013 meeting. As will be reported in more detail during the meeting, members of the Standing Committee generally approved the draft forms, but they were concerned that the Schedule D: The Property You Claim as Exempt (B106D), which is the modernized version of Schedule C - Property Claimed as Exempt, did not adequately respond to *Schwab v. Reilly*, 130 S. Ct. 2652 (2010). The Advisory Committee previously published a proposed revision of the Schedule of Exempt Property (Schedule 6C) to address the *Schwab* decision, but had decided during its spring 2012 meeting not to adopt the amendment. The concerns of the Standing Committee regarding the schedule of exempt property, and the recommended response, were separately considered during a joint meeting of the Consumer and Forms Subcommittees and are the subject of a separate memorandum.

Changes to the remaining draft forms for individuals were made in response to comments from both the Advisory Committee and the Standing Committee. Further changes were made to

the draft forms as a result of the comments received on the subset of modernized forms that was published for public comment in 2012. Significantly, most shading has been removed from the forms and the black banner part dividers separating the parts of the form have been reduced. The revised versions of the forms, committee notes and the related instruction booklet for individuals are included with these materials and are listed by number and title at the end of this memo in the recommendation to publish for public comment this summer. Although the normal effective date for official bankruptcy forms published this summer would be December 1, 2014, the FMP and Subcommittee on Forms recommend that the effective date be held until December 1, 2015 or later. A delayed effective date is necessary because the individual forms have new numbering scheme (discussed below) that is related to versions of the forms that will be used for non-individuals, and because the non-individual forms are approximately one year behind the individual versions in development. A delayed effective date is also desirable because the forms should not go into effect until Next Gen is operational in most courts.

Some forms pertinent to individuals will be drafted later. For example, the attorney disclosure of compensation form, which will remain a Director's Form, is being drafted as part of the non-individual forms.

c. Numbering of Modernized Forms

As part of finalizing the individual forms, the FMP developed a new numbering system that both organizes the bankruptcy forms in a logical way and has some relationship to current form numbers. As explained in the last status memorandum, the basic numbering protocol is:

1XX – Forms for Individuals Filing for Bankruptcy

2XX – Forms for Non-individual Filing for Bankruptcy

3XX – Orders and Court Notices

4XX – Additional Official Forms

XXXX - Director's Forms

A forms number conversion chart comparing old and new numbers has been prepared and is included in these materials.

To the extent possible, forms incorporate their current numbers. The individual schedules have, however, been relettered because some schedules have been combined (e.g. all property is now on a single schedule rather than having separate schedules for real and personal property). The FMP decided not to reference existing letters used on the current schedules when two schedules were combined, for example calling the new property schedule A/B because it is derived from current Schedules A and B. The main reason the group decided against such a designation is the belief of several members that it would seem odd to users who have not been exposed to the current lettering system for schedules, and because current users will be learning a new numbering system in any event. The FMP decided that the schedules could be more logically arranged in the following order: assets, liabilities, exemptions because that is the order in which someone considering the significance of the debtor's assets would look at the information. Exemptions are often impacted by the amount of the debtor's equity which is determined by deducting any secured debt from the asset value. Thus, the modernized schedules have been reordered in that way.



A request has been received from Committee members Judge Arthur Harris and Jill Michaux to reletter the schedules so that the lettering more consistently tracks current lettering. They have prepared a memorandum on their suggestion which is included with these materials.

2. Non-Individual Form Preparation

Since the Advisory Committee's fall 2012 meeting, the FMP has completed the initial drafts of the forms to be used by entities or non-individuals, and the instructions (including glossary) related to those forms. In addition, the drafting group prepared a draft Director's Form that a non-individual can use to report income and expenses if a local court does not require a specific form.

Beth Wiggins and Molly Johnson from the Federal Judicial Center have established and are following a research plan for the non-individual forms. Several of the career law clerks who worked on the individual forms provided feedback on the non-individual versions after using them to complete several different types of non-individual cases. Dr. Wiggins and Dr. Johnson will obtain input on the non-individual forms and instructions from the several of the same people and groups who provided input on the guiding principles for the non-individual forms, including the National Association of Bankruptcy Trustees, representatives of groups of chapter 11 attorneys, U.S. Trustee attorneys, the Western District of Michigan group put together by Judge Hughes (liaison from the Bankruptcy Judges Advisory Group, a group put together by former Advisory Committee member Judge Klein, and from software vendors. In addition, they hope to test and review the forms with students from University of Maryland MBA program (a joint program with the law school).

### 3. Forms Data and Next Gen

It is still uncertain what access to forms information collected as data will be provided to active bankruptcy case participants outside the judiciary, such as trustees. The extent to which bankruptcy participants outside the judiciary can access and use the data to prepare their own reports will depend on policies of the Judicial Conference. Those policies are still being considered and prepared.

Another concern raised about implementation of the modernized forms has been whether the judiciary is going to be able to develop a method to capture electronically information on forms that are filed by pro se parties. The Pro Se Pathfinder project has developed a method for doing that, but going from development to implementation has been slow. Two districts, the Central District of California and the District of New Jersey are testing the software. The District of New Mexico has ceased participating in the implementation of the Pro Se Pathfinder at this time.

### 4. Planning and Scheduling for the Project

During the next six months the FMP will need to: (a) begin work on preparing the modernized drafts of the remaining Official Forms; (b) revise the B22s in response to the comments received following publication and the direction of the Advisory Committee, (c) complete testing and revision of the draft non-individual forms along with Committee Notes so that they can be presented to the Advisory Committee with a request that the drafts be published; and (d) work with the software vendors and the Administrative Office's technology division

regarding implementation of forms 3A, 3B, 6I, and 6J, if the Judicial Conference approves a recommendation for those forms to go into effect on December 1, 2013.

In addition, work will continue with Next Gen and the pertinent Judicial Conference Committees regarding access to forms data by trustees and others outside the judiciary who have case-related reasons to access the data and who agree to limit their use to case administration.

D. Conclusion

**The FMP and the Subcommittee on Forms request that this Committee:**

**1. Ask the Standing Committee to publish for comment this summer the following draft modernized individual debtor forms and their Committee Notes, with a delayed recommended effective date to be determined after the non-individual versions of the forms are published for comment:**

- B101 Voluntary Petition for Individuals Filing for Bankruptcy**
- B101A Initial Statement About an Eviction Judgment Against You**
- B101B Statement About Payment of an Eviction Judgment Against You**
- B104 List in Individual Chapter 11 Cases of Creditors Who Have the 20 Largest Unsecured Claims Against You Who are not Insiders**
- B105 Involuntary Petition Against an Individual**
- B106Sum A Summary of Your Assets and Liabilities and Certain Statistical Information**
- B106A Schedule A: Property**
- B106B Schedule B: Creditors Who Hold Claims Secured by Property**
- B106C Schedule C: Creditors Who Have Unsecured Claims**

<b>B106D</b>	<b>Schedule D: The Property You Claim as Exempt</b>
<b>B106E</b>	<b>Schedule E: Executory Contracts and Unexpired Leases</b>
<b>B106F</b>	<b>Schedule F: Your Codebtors</b>
<b>B106Dec</b>	<b>Declaration About an Individual Debtor's Schedules</b>
<b>B107</b>	<b>Your Statement of Financial Affairs for Individuals Filing for Bankruptcy</b>
<b>B112</b>	<b>Statement of Intention for Individuals Filing Under Chapter 7</b>
<b>B119</b>	<b>Bankruptcy Petition Preparer's Notice, Declaration and Signature</b>
<b>B121</b>	<b>Statement About Your Social Security Numbers</b>
<b>B318</b>	<b>Discharge of Debtor in a Chapter 7 Case</b>
<b>B423</b>	<b>Certification About a Financial Management Course</b>
<b>B427</b>	<b>Cover Sheet for Reaffirmation Agreement</b>

**An instruction booklet for individuals is also included for comment.**

- 2. Ask the Standing Committee to approve Forms 3A, 3B, 6I, and 6J for implementation, as revised in response to the comments, with an effective date of December 1, 2013.**
- 3. With respect to the means test forms (B-22s) approve the recommended changes and provide direction on the legal issues identified in the attached memorandum, with the goal being to redraft the forms in time to ask the Standing Committee to approve publication of the revised B-22s at its June 2013 meeting with an effective date of December 1, 2014.**

# TAB 7A.2

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
 FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS  
 RE: EXEMPTION SCHEDULE AND *SCHWAB*  
 DATE: MARCH 22, 2013

The issue of *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), and the schedule for claiming exemptions is back before the Committee for further consideration. In response to comments offered by members of the Standing Committee on an earlier draft of the form, **the Subcommittees recommend that the Advisory Committee approve for publication the revised Official Form 106D (“Schedule D: The Property You Claim as Exempt”) that is included in these agenda materials.**

Exemption Schedule as Approved by Committee in September 2012

At the fall 2012 meeting, the Advisory Committee tentatively approved for publication proposed Official Form 106D, which is part of the package of individual debtor forms drafted by the Forms Modernization Project. As approved at that meeting, Schedule D included four columns for providing information to claim property as exempt:

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

Brief description of the property and line on <i>Schedule A</i> that lists this property		Current value of the portion you own <small>Copy the value from <i>Schedule A</i></small>	Amount of the exemption you claim	Specific laws that allow exemption
Brief description:		\$ _____	_____	_____
Line from <i>Schedule A</i> :	_____			_____
Brief description:		\$ _____	_____	_____
Line from <i>Schedule A</i> :	_____			_____

The third column—Amount of the exemption you claim—included just a blank line so that a debtor could insert either a specific dollar amount or use the option offered by *Schwab* of claiming as exempt “100% of fair market value.”<sup>1</sup>

The instructions at the beginning of the form explained, “For each item of property you claim as exempt, you must specify the amount of the exemption you claim. Usually, a specific dollar amount is claimed as exempt, but in some circumstances the amount of the exemption claimed might be indicated as 100% of fair market value. For example, a debtor might claim 100% of fair market value for an exemption that is unlimited in amount, such as some exemptions for health aids.”

This design of the form represented a compromise between the current exemption schedule and an earlier published amendment to the schedule, which was eventually withdrawn by the Advisory Committee. The existing exemption schedule requires a debtor to specify “the value of the claimed exemption.” The proposed amendment that was published in August 2011 added two checkboxes to the form to allow debtors to state the value of a claimed exemption as either (1) the “Full fair market value of the exempted property” or (2) “Exemption limited to \$\_\_\_\_\_.”

The Advisory Committee decided not to pursue the August 2011 proposal after reviewing the comments that were submitted in response to publication. A number of them, mostly by bankruptcy trustees, stated that because the new option could be easily invoked by checking a box, it would encourage debtors to claim the full fair market value of an asset as exempt, even

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<sup>1</sup> The *Schwab* Court stated, “Where, as here, it is important to the debtor to exempt the full market value of the asset or the asset itself, our decision will encourage the debtor to declare the value of her claimed exemption in a manner that makes the scope of the exemption clear, for example, by listing the exempt value as “full fair market value (FMV)” or “100% of FMV.” 130 S. Ct. at 2668.



when using an exemption capped at an amount less than the asset's value. They argued that the increase in such exemption claims would then lead to a "plethora of objections."

#### Consideration of the Proposed Form at the January 2013 Standing Committee Meeting

In January Judge Wedoff presented for the Standing Committee's preliminary review the proposed exemption form (Official Form 106D) that the Committee had approved in September. Standing Committee members raised several concerns about the form's proposed wording and format. They were concerned that the option of claiming 100% of fair market value was presented too subtly for pro se debtors to understand it. One member suggested that additional examples be provided of when that option could properly be invoked, and another suggested highlighting the relevant instructions. It was also suggested that perhaps the Committee had given too much deference to the views of trustees and that the Committee should consider revising the form to present the "100% fmv" option more clearly. At the conclusion of the meeting, one member of the Standing Committee suggested that the column for "Amount of the exemption you claim" provide two options: (1) a checkbox followed by a line with a dollar sign, and (2) a checkbox followed by "100% of fair market value, not greater than any applicable statutory limit."

#### Consideration by the Subcommittees

A revised draft of proposed Official Form 106D was prepared to incorporate the suggestions offered by the Standing Committee. During the Subcommittees' joint conference call on March 7, 2013, they reviewed the proposed revision and made some additional wording changes. They recommend that two options be provided for "Amount of the exemption you claim": (1) a checkbox followed by a line with a dollar sign, and (2) a checkbox followed by "100% of fair market value, up to any applicable statutory limit." The instructions at the top of

Schedule D relating to the exemption amount appear in a separate paragraph, written in bold.

They read as follows:

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

The Subcommittees believe that this version of the form provides the debtor a means of claiming an exemption of 100% of fair market value when doing so is permissible under applicable law.

# TAB 7A.3

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No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date
<b>OFFICIAL FORMS</b>						
<b>Chart Draft -- 3.21.2013</b>						
<a href="#">B 1</a>	Voluntary Petition	B101	Voluntary Petition for Individuals Filing for Bankruptcy ( <i>incorporates exhibits – carves out eviction judgment statement as new form B101AB</i> )	Yes	Fall 2012	August 2013
		B101A B101B	Your Statement About an Eviction Judgment Against You – Parts A and B ( <i>was in Form B1</i> )	Yes	Fall 2012	August 2013
		B201	Voluntary Petition for Non-Individuals Filing for Bankruptcy	Yes	Fall 2013	August 2014
	Exhibit A	B201A	Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy Under Chapter 11	Yes	Fall 2013	August 2014
	Exhibit C	B101 B201	<i>Hazardous Property or Property That Needs Immediate Attention -- incorporated in Forms B101 and B201</i>	Yes		
	Exhibit D	B101	<i>Individual Debtor's Statement of Compliance with Credit Counseling Requirement – Incorporated in Form B101</i>	Yes		
<a href="#">B 2</a>	Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership	B202	Declaration Under Penalty of Perjury On Behalf of a Corporation or Partnership ( <i>For petition, schedules, SOFA, etc</i> )	Yes	Fall 2013	August 2014
<a href="#">B 3A</a>	Application and Order to Pay Filing Fee in Installments	B103A	Application for Individuals to Pay the Filing Fee in Installments	Yes	Spring 2011, spring 2013	August 2012
<a href="#">B 3B</a>	Application for Waiver of Chapter 7 Filing Fee	B103B	Application to Have the Chapter 7 Filing Fee Waived	Yes	Spring 2011, spring 2013	August 2012

\*1XX = Individual Filing Package    2XX = Non-Individual Filing Package    3XX = Orders and Court Notices  
 4XX = Add. Official Forms    XXXX = director's forms  
 April 2-3, 2013

No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date	
<a href="#">B 4</a>	List of Creditors Holding 20 Largest Unsecured Claims	B104	For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders ( <i>individuals</i> )	Yes	Fall 2012	August 2013	
		B204	For Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders ( <i>non-individuals</i> )	Yes	Fall 2013	August 2014	
<a href="#">B 5</a>	Involuntary Petition	B105	Involuntary Petition Against an Individual	Yes	Fall 2012	August 2013	
		B205	Involuntary Petition Against a Non-Individual	Yes	Fall 2013	August 2014	
<a href="#">B6</a>	Cover Sheet for Schedules	<b>No coversheet created</b>					
<a href="#">B6</a>	Summary of Schedules (Includes Statistical Summary of Certain Liabilities)	B106 -- Summary	A Summary of Your Assets and Liabilities and Certain Statistical Information ( <i>individuals</i> )	Yes	Fall 2012	August 2013	
		B206 -- Summary	A Summary of Your Assets and Liabilities ( <i>non-individuals</i> )	Yes	Fall 2013	August 2014	
<a href="#">B 6A</a>	Schedule A - Real Property	}	B106-A	Schedule A: Property (Official Form 106A) ( <i>combines real and personal property, individuals</i> )	Yes	Fall 2012	August 2013
<a href="#">B 6B</a>	Schedule B - Personal Property		B206-A	Schedule A: Property ( <i>combines real and personal property, non-individuals</i> )	Yes	Fall 2013	August 2014
<a href="#">B 6C</a>	Schedule C - Property Claimed as Exempt	B106-D	Schedule D: The Property You Claim as Exempt ( <i>individuals</i> )	Yes	Fall 2012, spring 2013	August 2013	
<a href="#">B 6D</a>	Schedule D - Creditors Holding Secured Claims	B106-B	Schedule B: Creditors Who Hold Claims Secured By Property ( <i>against individuals</i> )	Yes	Fall 2012	August 2013	
		B206-B	Schedule B: Creditors Who Hold Claims Secured By	Yes	Fall 2013	August	

\*1XX = Individual Filing Package    2XX = Non-Individual Filing Package    3XX = Orders and Court Notices  
4XX = Add. Official Forms    XXXX = director's forms  
April 2-3, 2013

No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date
			Property <i>(against non-individuals)</i>			2014
<a href="#">B 6E</a>	Schedule E - Creditors Holding Unsecured Priority Claims	} B106C	Schedule C: Creditors Who Have Unsecured Claims <i>(against individuals, combines priority and non-priority)</i>	Yes	Fall 2012	August 2013
<a href="#">B 6F</a>	Schedule F - Creditors Holding Unsecured Nonpriority Claims		B206C	Schedule C: Creditors Who Have Unsecured Claims <i>(against non-individuals, combines priority and non-priority)</i>	Yes	Fall 2013
<a href="#">B 6G</a>	Schedule G - Executory Contracts and Unexpired Leases	B106E	Schedule E: Executory Contracts and Unexpired Leases <i>(individuals)</i>	Yes	Fall 2012	August 2013
		B206E	Schedule E: Executory Contracts and Unexpired Leases <i>(non-individuals)</i>	Yes	Fall 2013	August 2014
<a href="#">B 6H</a>	Schedule H - Codebtors	B106F	Schedule F: Your Codebtors <i>(individuals)</i>	Yes	Fall 2012	August 2013
		B206F	Schedule F: Your Codebtors <i>(non-individuals)</i>	Yes	Fall 2013	August 2014
<a href="#">B 6I</a>	Schedule I - Current Income of Individual Debtor(s)	B106G	Schedule G: Your Income <i>(individuals – published as B6I)</i>	Yes	Fall 2011, spring 2013	August 2012
			<b>no non-individual version</b>			
<a href="#">B 6J</a>	Schedule J- Current Expenditures of Individual Debtor(s)	B106H	Schedule H: Your Expenses <i>(individuals- published as 6J)</i>	Yes	Fall 2011, spring 2013	August 2012
			<b>no non-individual version</b>			
<a href="#">B 6</a>	Declaration Concerning Debtor's Schedules	B106 -- Declaration	Declaration About an Individual Debtor's Schedules	Yes	Fall 2012	August 2013
		B202	Declaration Under Penalty of Perjury On Behalf of a Corporation or Partnership <i>(For petition, schedules,</i>	Yes	Fall 2013	August

\*1XX = Individual Filing Package  
 4XX = Add. Official Forms  
 April 2-3, 2013

2XX = Non-Individual Filing Package  
 XXXX = director's forms

3XX = Orders and Court Notices

No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date
			SOFA, etc)			2014
<a href="#">B 7</a>	Statement of Financial Affairs	B107	Your Statement of Financial Affairs for Individuals Filing for Bankruptcy	Yes	Fall 2012	August 2013
		B207	Statement of Your Financial Affairs ( <i>non-Individuals</i> )	Yes	Fall 2013	August 2014
<a href="#">B 8</a>	Chapter 7 Individual Debtor's Statement of Intention	B112	Statement of Intention for Individuals Filing Under Chapter 7	Yes	Fall 2012	August 2013
<a href="#">B 9</a>	Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Deadlines	<b>No coversheet created.</b>				
<a href="#">B 9A</a>	Chapter 7 Individual or Joint Debtor No Asset Case	B 309A	(For Individuals or Joint Debtors) Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline	Yes	Fall 2013	August 2014
<a href="#">B 9B</a>	Chapter 7 Corporation/Partnership No Asset Case	B 309C	(For Corporations or Partnerships) Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline Set	Yes	Fall 2013	August 2014
<a href="#">B 9C</a>	Chapter 7 Individual or Joint Debtor Asset Case	B 309B	(For Individuals or Joint Debtors) Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set	Yes	Fall 2013	August 2014
<a href="#">B 9D</a>	Chapter 7 Corporation/Partnership Asset Case (12/11)	B 309D	(For Corporations or Partnerships) Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set	Yes	Fall 2013	August 2014
<a href="#">B 9E</a>	Chapter 11 Individual or Joint Debtor Case	} B 309E	(For Individuals or Joint Debtors) Notice of Chapter 11 Bankruptcy Case ( <i>former Alt version combined with Form B309-E</i> )	Yes	Fall 2013	August 2014
<a href="#">B 9E(Alt.)</a>	Chapter 11 Individual or Joint Debtor Case					
<a href="#">B 9F</a>	Chapter 11 Corporation/Partnership Case	} B 309F	(For Corporations or Partnerships) Notice of Chapter 11 Bankruptcy Case ( <i>former Alt version combined with Form B309-F</i> )	Yes	Fall 2013	August 2014
<a href="#">B 9F(Alt.)</a>	Chapter 11 Corporation/Partnership Case					
<a href="#">B 9G</a>	Chapter 12 Individual or Joint	B 309G	(For Individuals or Joint Debtors) Notice of Chapter	Yes	Fall 2013	August

\*1XX = Individual Filing Package  
 4XX = Add. Official Forms  
 April 2-3, 2013

2XX = Non-Individual Filing Package  
 XXXX = director's forms

3XX = Orders and Court Notices



No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date
	Debtor Family Farmer		12 Bankruptcy Case			2014
<a href="#">B 9H</a>	Chapter 12 Corporation/Partnership Family Farmer	B 309H	(For Corporations or Partnerships) Notice of Chapter 12 Bankruptcy Case	Yes	Fall 2013	August 2014
<a href="#">B 9I</a>	Chapter 13 Case	B 309I	Notice of Chapter 13 Bankruptcy Case	Yes	Fall 2013	August 2014
<a href="#">B 10</a>	Proof Of Claim	B 410	Proof Of Claim		Fall 2013	August 2014
<a href="#">B 10A</a>	Proof Of Claim, Attachment A	B 410A	Proof Of Claim, Attachment A		Fall 2013	August 2014
<a href="#">B 10S1</a>	Proof Of Claim, Supplement 1	B 410S1	Proof Of Claim, Supplement 1		Fall 2013	August 2014
<a href="#">B 10S2</a>	Proof Of Claim, Supplement 2	B 410S2	Proof Of Claim, Supplement 2		Fall 2013	August 2014
<a href="#">B 11A</a>	General Power of Attorney	B 411-A				August 2014
<a href="#">B 11B</a>	Special Power of Attorney	B 411-B				August 2014
<a href="#">B 12</a>	Order and Notice for Hearing on Disclosure Statement	B 312				August 2014
<a href="#">B 13</a>	Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof	B 313				August 2014
<a href="#">B 14</a>	Ballot for Accepting or Rejecting Plan	B 414				August 2014
<a href="#">B 15</a>	Order Confirming Plan	B 315				August 2014
<a href="#">B 16A</a>	Caption	B 416A				August

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April 2-3, 2013

No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date
						2014
<a href="#">B 16B</a>	Caption (Short Title)	B 416B				August 2014
<a href="#">B 16C</a>	[Abrogated]	N/A				August 2014
<a href="#">B 16D</a>	Caption for Use in Adversary Proceeding other than for a Complaint Filed by a Debtor	B 416D				August 2014
<a href="#">B 17</a>	Notice of Appeal under 28 U.S.C. §158(a) or (b) from a Judgment, Order or Decree of a Bankruptcy Court	B 417				August 2014
<a href="#">B 18</a>	Discharge of Debtor	B 318	Discharge of Debtor in a Chapter 7 Case	Yes	Fall 2012	August 2013
<a href="#">B 19</a>	Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer	B119	Bankruptcy Petition Preparer's Notice, Declaration and Signature <i>(was B 113)</i>	Yes	Fall 2012	August 2013
<a href="#">B 20A</a>	Notice of Motion or Objection	B 420-A	Notice of Motion or Objection	Yes	Fall 2013	August 2014
<a href="#">B 20B</a>	Notice of Objection to Claim	B 420-B	Notice of Objection to Claim	Yes	Fall 2013	August 2014
<a href="#">B 21</a>	Statement of Social Security Number	B 121 <i>updated from B102</i>	Your Statement About Your Social Security Numbers	Yes	Fall 2012	August 2013
<a href="#">B 22A</a>	Statement of Current Monthly Income and Means Test Calculation (Chapter 7)	B 108-1	Chapter 7 Statement of Your Current Monthly Income and Means-Test Calculation	Yes	Spring 2011, spring 2013	August 2012, 2013
		B 108-2	Chapter 7 Means Test Calculation	Yes	Spring 2011, spring 2013	August 2012, 2013
<a href="#">B 22B</a>	Statement of Current Monthly Income (Chapter 11)	B 109	Chapter 11 Statement of Your Current Monthly Income	Yes	Spring 2011, spring 2013	August 2012, 2013
<a href="#">B 22C</a>	Statement of Current Monthly Income and Calculation of	B 110-1	Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period	Yes	Spring 2011, spring 2013	August 2012, 2013

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No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date
	Commitment Period and Disposable Income (Chapter 13)	B 110-2	Chapter 13 Calculation of Your Disposable Income	Yes	Spring 2011, spring 2013	August 2012, 2013
<a href="#">B 23</a>	Debtor's Certification of Completion of Instructional Course Concerning Financial Management	B 423	Certification About a Financial Management Course (was B 113)	Yes	Fall 2012	August 2013
<a href="#">B 24</a>	Certification to Court of Appeals	B 424				August 2014
<a href="#">B 25A</a>	Plan of Reorganization in Small Business Case under Chapter 11	B 425-A				
<a href="#">B 25B</a>	Disclosure Statement in Small Business Case under Chapter 11	B 425-B				
<a href="#">B 25C</a>	Small Business Monthly Operating Report	B 425-C				
<a href="#">B 26</a>	Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest	B 426				
<a href="#">B 27</a>	Reaffirmation Agreement Cover Sheet	B427	Cover Sheet for Reaffirmation Agreement	Yes	Fall 2012	August 2013
<b>DIRECTOR FORMS</b>						
<a href="#">B 13S</a>	Order Conditionally Approving Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of Plan, and Fixing	B 1300-S				

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No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date
	the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan, Combined with Notice Thereof and of the Hearing on Final Approval of the Disclosure Statement and the Hearing on Confirmation of the Plan					
<a href="#">B 15S</a>	Order Finally Approving Disclosure Statement and Confirming Plan	B 1500-S				
<a href="#">B 18F</a>	Discharge of Debtor After Completion of Chapter 12 Plan	B 1800-F				
<a href="#">B 18FH</a>	Discharge of Debtor Before Completion of Chapter 12 Plan	B 1800-FH				
<a href="#">B 18J</a>	Discharge of Joint Debtors (Chapter 7)	B 318	Order of Discharge ( <i>combined with Forms 18 and 18JO</i> )			
<a href="#">B 18JO</a>	Discharge of One Joint Debtor (Chapter 7)	B 318	Order of Discharge ( <i>combined with Forms 18 and 18J</i> )			
<a href="#">B 18RI</a>	Discharge of Individual Debtor in a Chapter 11 Case	B 1800-RI				
<a href="#">B 18W</a>	Discharge of Debtor After Completion of Chapter 13 Plan	B 1800-W				
<a href="#">B 18WH</a>	Order Discharging Debtor Before Completion of Chapter 13 Plan	B 1800-WH				
<a href="#">B 104</a>	Adversary Proceeding Cover Sheet	B 1040				
<a href="#">B 131</a>	Exemplification Certificate	B 1310				
<a href="#">B 132</a>	Application for Search of Bankruptcy Records	B 1320				
<a href="#">B 133</a>	Claims Register	B 1330				
<a href="#">B 200</a>	Required Lists, Schedules,	B 2000				

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April 2-3, 2013

No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date
	Statements and Fees					
<a href="#">B 201A</a>	Notice to Individual Consumer Debtor	B 2010				
<a href="#">B 201B</a>	Certification of Notice to Individual Consumer Debtor(s)	B 101	Not needed because certification is in petition			
<a href="#">B 202</a>	Statement of Military Service	B 2020				
<a href="#">B 203</a>	Disclosure of Compensation of Attorney for Debtor	B 2030	Attorney's Disclosure of Compensation			
<a href="#">B 204</a>	Notice of Need to File Proof of Claim Due to Recovery of Assets	B 2040				
<a href="#">B 205</a>	Notice to Creditors and Other Parties in Interest	B 2050				
<a href="#">B 206</a>	Certificate of Commencement of Case	B 2060				
<a href="#">B 207</a>	Certificate of Retention of Debtor In Possession	B 2070				
<a href="#">B 210A</a>	Transfer of Claim Other Than for Security	B 2100-A				
<a href="#">B 210B</a>	Notice of Transfer of Claim Other Than for Security	B 2100-B				
<a href="#">B 230A</a>	Order Confirming Chapter 12 Plan	B 2300-A				
<a href="#">B 230B</a>	Order Confirming Chapter 13 Plan	B 2300-B				
<a href="#">B 231A</a>	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	B 2310-A				
<a href="#">B 231B</a>	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 13 Plan	B 2310-B				
<a href="#">B 240A</a>	Reaffirmation Documents	B 2400-A				

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April 2-3, 2013

No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date
<a href="#">B 240B</a>	Motion for Approval of Reaffirmation Agreement	B 2400-B				
<a href="#">B 240C</a>	Order on Reaffirmation Agreement	B 2400-C				
<a href="#">B 240A/B ALT</a>	Reaffirmation Agreement	B 2400-A/B ALT				
<a href="#">B 240C ALT</a>	Order on Reaffirmation Agreement	B 2400-C ALT				
<a href="#">B 250A</a>	Summons in an Adversary Proceeding	B 2500-A				
<a href="#">B 250B</a>	Summons and Notice of Pretrial Conference in an Adversary Proceeding	B 2500-B				
<a href="#">B 250C</a>	Summons and Notice of Trial in an Adversary Proceeding	B 2500-C				
<a href="#">B 250D</a>	Third-Party Summons	B 2500-D				
<a href="#">B 250E</a>	Summons to Debtor in Involuntary Case	B 2500-E				
<a href="#">B 250F</a>	Summons in a Chapter 15 Case Seeking Recognition of a Foreign Nonmain Proceeding	B 2500-F				
<a href="#">B 253</a>	Order for Relief in an Involuntary Case	B 2530				
<a href="#">B 254</a>	Subpoena for Rule 2004 Examination	B 2540				
<a href="#">B 255</a>	Subpoena in an Adversary Proceeding	B 2550				
<a href="#">B 256</a>	Subpoena in a Case Under the Bankruptcy Code	B 2560				
<a href="#">B 260</a>	Entry of Default	B 2600				
<a href="#">B 261A</a>	Judgment by Default	B 2610-A				

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No.	Current title	New No.*	New title	Drafted?	Date to BK Comm.	Publication Date
<a href="#">B 261B</a>	Judgment by Default	B 2610-B				
<a href="#">B 261C</a>	Judgment in an Adversary Proceeding	B 2610-C				
<a href="#">B 262</a>	Notice of Entry of Judgment	B 2620				
<a href="#">B 263</a>	Bill of Costs	B 2630				
<a href="#">B 264</a>	Writ of Execution to the United States Marshal	B 2640				
<a href="#">B 265</a>	Certification of Judgment for Registration in Another District	B 2650				
<a href="#">B 270</a>	Notice of Filing of Final Report of Trustee, of Hearing on Applications for Compensation [and of Hearing on Abandonment of Property by the Trustee]	B 2700				
<a href="#">B 271</a>	Final Decree	B 2710				
<a href="#">B 280</a>	Disclosure of Compensation of Bankruptcy Petition Preparer	B 2800	Disclosure of Compensation of Bankruptcy Petition Preparer			
<a href="#">B 281</a>	Appearance of Child Support Creditor or Representative	B 2810				
<a href="#">B 283</a>	Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q)	B 283				

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# Instructions

## Bankruptcy Forms for Individuals

U.S. Bankruptcy Court

|

January 2015

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# About this Booklet of Instructions

This booklet provides instructions for completing selected forms that individuals filing for bankruptcy must submit to the U.S. Bankruptcy Court. You can download all of the required forms without charge from:

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

The instructions are designed to accompany the forms and are intended to help you understand what information is required to properly file.

Completing the forms is only a part of the bankruptcy process. You are strongly encouraged to hire a qualified attorney not only to help you complete the forms but also to give you general advice about bankruptcy and to represent you in your bankruptcy case. If you cannot afford to pay an attorney, you might qualify for free legal services if they are provided in your area. Contact your state or local bar association for help in obtaining free

legal services or in hiring an attorney. **Note: It is particularly difficult to succeed in a chapter 11, 12, or 13 case without an attorney.**

If an attorney represents you, you must provide information so the attorney can prepare your forms. Once the attorney prepares the forms, you must make sure that the forms are accurate and complete. These instructions may help you perform those tasks. If you are filing for bankruptcy without the help of an attorney, this booklet tells you which forms must be filed and provides information about them.

You should carefully read this booklet and keep it with your records. Review the individual forms as you read the instructions for each.

Although bankruptcy petition preparers can help you type the bankruptcy forms, they cannot file the documents for you and cannot give you legal advice. Court employees cannot give you legal advice either.

## Read This Important Warning

**Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. Only an attorney can give you legal advice about what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions.**

**Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it difficult to represent themselves successfully. The rules are technical, and a misstep or inaction may harm you. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.**

**You may not file bankruptcy if you are not eligible to file or if you do not intend to file the documents necessary to complete the bankruptcy.**

**Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. If you deliberately make a false statement, you could be fined up to \$250,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.**

## About the bankruptcy forms and filing bankruptcy

Use the forms that are numbered in the 100 series to file bankruptcy for individuals or married couples. Use the forms that are numbered in the 200 series if you are preparing a bankruptcy on behalf of a non-individual, such as a corporation, partnership, or limited liability company (LLC). Sole proprietors must use the forms that are numbered in the 100 series.

When a bankruptcy is filed, the U.S. Bankruptcy Court opens a case. It is important that the answers to the questions on the forms be complete and accurate so that the case proceeds smoothly. A person filing bankruptcy who gives false information could be charged with a federal crime or could lose all the benefits of filing for bankruptcy.

You should understand that filing a bankruptcy case is not private. Anyone has a right to see your bankruptcy forms after you file them. However, in some circumstances, if a court issues a protective order to keep your address, telephone number, or other information from being disclosed to the public, it may be possible to protect your information under 11 U.S.C. § 107 and Bankruptcy Rule 9037.

## Understand the terms used in the forms

The forms for individuals 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 forms use *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.

To understand other terms used in the forms and the instructions, see the *Glossary* at the end of this booklet.

## Things to remember when filling out these forms

- Do not file these instructions with the bankruptcy forms that you file with the court.
- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to the form. On the top of any additional pages, write your name and case number (if known). Also identify the form and line number to which the additional information applies.
- If two married people are filing together, both are equally responsible for supplying correct information.
- Do not list a minor child’s full name. Instead, fill in only the child’s initials and the full name and address of the child’s parent or guardian. For example, write A.B., a minor child (*John Doe, parent, 123 Main St., City, State*). 11 U.S.C. § 112; Bankruptcy Rule 1007(m) and 9037.
- For your records, be sure to keep a copy of your bankruptcy documents and all attachments that you file.

On what date was a debt incurred?

When a debt was incurred on a single date, fill in the actual date that the debt was incurred.

When a debt was incurred on multiple dates, fill in the range of dates. For example, if the debt is from a credit card, fill in the month and year of the first and last transaction, if known.

# About the Process for Filing a Bankruptcy Case for Individuals

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## Before you file your bankruptcy case

Before you file for bankruptcy, you must do several things:

- ❑ **Receive a briefing about credit counseling from an approved agency** within 180 days before you file. (If you and your spouse are filing together, each of you must receive a briefing before you file. Failure to do so will almost certainly result in the dismissal of your case.) You may have a briefing about credit counseling one-on-one or in a group, by telephone, or by internet.

For a list of approved providers, go to:  
[http://www.justice.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm)

In Alabama and North Carolina, go to:  
<http://www.uscourts.gov>.

After you finish the briefing, you will receive a certificate that you will need to file in your bankruptcy case.

- ❑ **Find out in which bankruptcy court you must file your bankruptcy case.** It is important that you file in the correct district within your state. To find out which district you are in, go to:  
<http://www.uscourts.gov/courtlinks>

- ❑ **Check the court's local website** for any specific local requirements that you might have to meet. Go to:

<http://www.uscourts.gov/courtlinks>

- ❑ **Find out which chapters of the Bankruptcy Code you are eligible for.** For descriptions of each chapter, review the information contained in the notice, *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form B2010), which is included in this booklet.

**Note: It is particularly difficult to succeed in a chapter 11, 12, or 13 case without an attorney.**

To file for bankruptcy, you must give the court several forms and documents. Some must be filed at the time you file the case. Others may be filed up to 14 days later.



## When you file your bankruptcy case

You must file the forms listed below on the date you open your bankruptcy case. For copies of the forms listed here, go to <http://www.uscourts.gov>. (The list continues on the next page.):

- ❑ *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). This form opens the case. Directions for filling it out are included in the form itself.
- ❑ *Statement About Your Social Security Numbers* (Official Form 121). This form gives the court your full Social Security number or federal Individual Taxpayer Identification number. To protect your privacy, the court will make only the last four digits of your number known to the general public. However, the court will make your full number available to your creditors, the U.S. trustee or bankruptcy administrator, and the trustee assigned to your case. This form has no separate instructions.
- ❑ Your filing fee. If you cannot pay the entire filing fee, you must also include:
  - ❑ *Application for Individuals to Pay the Filing Fee in Installments* (Official Form B103A), or
  - ❑ *Application to Have the Chapter 7 Filing Fee Waived* (Official Form B103B). Use this form only if you are filing under chapter 7 and you meet the criteria to have the chapter 7 filing fee waived.
- ❑ A list of names and addresses of all of your creditors, formatted as a mailing list according to instructions from the bankruptcy court in which you file. (Your court may call this a *creditor matrix* or *mailing matrix*.)
- ❑ Your credit counseling certificate from an approved credit counseling agency. (See *Before you file your bankruptcy case*, above). If you have received the briefing about credit counseling but have not yet received the certificate, file it when you receive it. If you have not already received the briefing and believe you are entitled to a temporary waiver from receiving it or that you are not required to receive the briefing, see line 15 of the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). Waivers are rare and if you do not qualify for a waiver, your case will be dismissed.
- ❑ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders* (Official Form 404). Fill out this form only if you file under chapters 11 or 9.
- ❑ *Initial Statement About an Eviction Judgment Against You* (Official Form 101A) and *Statement About Payment of an Eviction Judgment Against You* (Official Form 101B). Use these forms if your landlord has an eviction judgment against you and you want to stay in your residence after you file your forms to open your bankruptcy case.
- ❑ *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119) and *Disclosure of Compensation of Bankruptcy Petition Preparer* (Form 2800). Use these forms if a bankruptcy petition preparer helped you fill out your forms.

## When you file your bankruptcy case or within 14 days after you file

You must file the forms listed below either when you file your bankruptcy case or within 14 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). If you do not do so, your case may be dismissed. Although it is possible to open your case by submitting only the documents that are listed under *When you file your bankruptcy case*, you should file the entire set of forms at one time to help your case proceed smoothly.

Although some forms may ask you similar questions, you must fill out all of the forms completely to protect your legal rights.

The list below shows the forms that all individuals must file as well as the forms that are specific to each chapter. For copies of the official forms listed here, go to <http://www.uscourts.gov>.

### All individuals who file for bankruptcy must file these forms and the forms for the specific chapter:

- ❑ *Schedules of Assets and Liabilities* (Official Form 106) which includes these forms:
  - ❑ *Schedule A: Property* (Official Form 106A)
  - ❑ *Schedule B: Creditors Who Hold Claims Secured by Your Property* (Official Form 106B)
  - ❑ *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C)
  - ❑ *Schedule D: The Property You Claim as Exempt* (Official Form 106D)
  - ❑ *Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106E)
  - ❑ *Schedule F: Your Codebtors* (Official Form 106F)
  - ❑ *Schedule G: Your Income* (Official Form 106G)
  - ❑ *Schedule H: Your Expenses* (Official Form 106H)
- ❑ *Summary of Your Schedules for Individuals Filing for Bankruptcy* (Official Form 106Sum). This form gives an overview of the totals on the schedules
- ❑ *Declaration About an Individual Debtor's Schedules* (Official Form 106Dec)
- ❑ *Statement of Financial Affairs for Individuals Filing for Bankruptcy* (Official Form 107)
- ❑ *Disclosure of Compensation to Debtor's Attorney* — Unless local rules provide otherwise, Director's Form 2030 may be used.
- ❑ Credit counseling certificate that you received from an approved credit counseling agency
- ❑ Copies of all payment advices (*pay stubs*) or other evidence of payment that you received within 60 days before you filed your bankruptcy case. Some local courts may require that you submit these documents to the trustee assigned to your case rather than filing them with the court. Check the court's local website to find out if local requirements apply. Go to <http://www.uscourts.gov/courtlinks>.

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**If you file under chapter 7, you must also file:**

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- Statement of Intention for Individuals Filing Under Chapter 7* (Official Form 112)
- Chapter 7 Statement of Your Current Monthly Income* (Official Form 108-1)
- If necessary, *Chapter 7 Means Test Calculation* (Official Form 108-2).

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**If you file under chapter 11, you must also file:**

---

- Chapter 11 Statement of Your Current Monthly Income* (Official Form 109)

If you file under chapter 11 and are a small business debtor (that is, if you are self-employed and your debts are less than \$2,343,300\*), within 7 days after you file your bankruptcy forms to open your case, you must also file your most recent:

- Balance sheet
- Statement of operations
- Cash-flow statement
- Federal income tax return

If you do not have these documents, you must file a statement made under penalty of perjury that you have not prepared either a balance sheet, statement of operations, or cash-flow statement or you have not filed a federal tax return.

If you file under chapter 11, you must also file additional documents.

\* Subject to adjustment on 4/01/13, and every 3 years after that for cases begun on or after the date of adjustment.

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**If you file under chapter 12, you must also file:**

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- Chapter 12 Plan (within 90 days after you file your bankruptcy forms to open your case)

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**If you file under chapter 13, you must also file:**

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- Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110-1)
- If necessary, *Chapter 13 Calculation of Your Disposable Income* (Official Form 110-2)
- Chapter 13 Plan (Many bankruptcy courts require you to use a local form plan. Check the court's local website for any specific form that you might have to use. Go to <http://www.uscourts.gov/courtlinks>.)

# Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)

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**This notice is for you if:**

**You are an individual filing for bankruptcy,**  
and

**Your debts are 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.”

The types of bankruptcy that are  
available to individuals

Individuals who meet the qualifications may file  
under one of four different chapters of the  
Bankruptcy Code:

- Chapter 7 — Liquidation
- Chapter 11— Reorganization
- Chapter 12— Voluntary repayment plan  
for family farmers or  
fishermen
- Chapter 13— Voluntary repayment plan  
for individuals with regular  
income

**You should have an attorney review your  
decision to file for bankruptcy and the choice of  
chapter.**

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## Chapter 7: Liquidation

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	\$245	filing fee
	\$46	administrative fee
+	\$15	trustee surcharge
	\$306	total fee

Chapter 7 is for individuals who have financial  
difficulty and cannot pay their debts. The  
primary purpose for a debtor to file under  
chapter 7 is to have your debts discharged. The  
bankruptcy discharge relieves you from having  
to pay any of your pre-bankruptcy debts unless  
an exception to discharge applies to particular  
debts.

However, if the court finds that you have  
committed certain kinds of improper conduct  
described in the Bankruptcy Code, the court  
may deny your discharge.

You should know that even if you receive a  
discharge, some debts are not discharged under  
the law. Therefore, you may still be  
responsible to pay:

- most taxes;
- most student loans;
- domestic support and property settlement  
obligations;
- most fines, penalties, forfeitures, and  
criminal restitution obligations; and
- certain debts that are not properly listed in  
your bankruptcy papers.

You may also be required to pay debts arising from:

- fraud or theft;
- breach of fiduciary duty;
- intentional injuries that you inflicted; and
- death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs.

If your debts are primarily consumer debts, the court can dismiss your chapter 7 case if it finds that you have income to repay creditors a certain amount. You must file *Chapter 7 Statement of Your Current Monthly Income* (Official Form 108–1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income that applies in your state.

If your income is not above the median for your state, you will not have to fill out the second form *Chapter 7 Means Test Calculation* (Official Form 108–2).

If your income is above the median for your state, you must file that form. The calculations on the form—sometimes called the *Means Test*—deduct from your income living expenses and payments on certain debts to determine any amount available to pay unsecured creditors. If your income is more than the median income for your state of residence and family size, depending on the results of the *Means Test*, the U.S. trustee, bankruptcy administrator, or creditors can file a motion to dismiss your case under § 707(b) of the Bankruptcy Code. If a motion is filed, the court will decide if your case should be

dismissed. To avoid dismissal, you may choose to proceed under another chapter of the Bankruptcy Code.

If you are an individual filing for bankruptcy, the law may allow you to keep some property, or it may entitle you to part of the proceeds if the property is sold after your case is filed. Property that the law permits you to keep is called *exempt property*. For example, exemptions may enable you to keep your home, a car, clothing, and household items.

Exemptions are not automatic. To be considered exempt, you must list the property on *Schedule D: The Property You Claim as Exempt* (Official Form 106D). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

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## Chapter 11: Reorganization

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	\$1,167	filing fee
+	\$46	administrative fee
	\$1,213	total fee

Chapter 11 is for reorganizing a business but is also available to individuals. The provisions of chapter 11 are too complicated to summarize briefly.

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## Chapter 12: Repayment plan for family farmers or fishermen

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	\$200	filing fee
+	\$46	administrative fee
	\$246	total fee

Similar to chapter 13, chapter 12 permits family farmers and fishermen to repay their debts over a period of time using future earnings.

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### Chapter 13: Repayment plan for individuals with regular income

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	\$235	filing fee
+	\$46	administrative fee
	\$281	total fee

Chapter 13 is for individuals who have regular income and would like to pay all or part of their debts in installments over a period of time. You are only eligible for chapter 13 if your debts are not more than certain dollar amounts set in 11 U.S.C. § 109.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, using your future earnings. The court must approve your plan and may allow you to repay your debts within 3 years or 5 years, depending on your income and other factors.

After you make the payments under your plan, your debts are generally discharged. However, you may still be responsible to pay:

- domestic support obligations,
- most student loans,
- certain taxes,
- most criminal fines and restitution obligations,
- certain debts that are not properly listed in your bankruptcy papers,
- certain debts for acts that caused death or personal injury, and
- certain long-term secured obligations.

Bankruptcy crimes have serious consequences

- If you knowingly and fraudulently conceal assets or make a false oath or statement under penalty of perjury—either orally or in writing—in connection with a bankruptcy case, you may be fined, imprisoned, or both.
- All information you supply in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the U.S. Trustee, the Office of the U.S. Attorney, and other offices and employees of the U.S. Department of Justice.

#### Warning: File Your Forms on Time

Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information about your creditors, assets, liabilities, income, expenses and general financial condition. The court may dismiss your bankruptcy case if you do not file this information within the deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

For more information about the documents and their deadlines, go to:  
[http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#procedure](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#procedure).

Make sure the court has your mailing address

The bankruptcy court sends notices to the mailing address you list on *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). To ensure that you receive information about your case, Bankruptcy Rule 4002 requires that you notify the court of any changes in your address.

A married couple may file a bankruptcy case together—called a *joint case*. If you file a joint case and each spouse lists the same mailing address on the bankruptcy petition, the bankruptcy court generally will mail you and your spouse one copy of each notice, unless you file a statement with the court asking that each spouse receive separate copies.

Understand which services you could receive from credit counseling agencies

The law generally requires that you receive a credit counseling briefing from an approved credit counseling agency. 11 U.S.C. § 109(h). With limited exceptions, you must receive it within the 180 days **before** you file your bankruptcy petition. This briefing is usually conducted by telephone or on the Internet.

The clerk of the bankruptcy court has a list of approved agencies. If you are filing a joint case, both spouses must receive the briefing.

In addition, after filing a bankruptcy case, you generally must complete a financial management instructional course before you can receive a discharge. The clerk also has a list of approved financial management instructional courses. If you are filing a joint case, both spouses must complete the course.

### Read This Warning

**Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. An attorney can explain to you what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions. Bankruptcy petition preparers can only help you type the forms required; they cannot give you legal advice of any kind.**

**Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it extremely difficult to represent themselves successfully. The rules are very technical, and a misstep or inaction may affect your rights. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.**

**You may not file bankruptcy if you are not eligible to file or if you do not intend to file the documents necessary to complete the bankruptcy.**

**Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. If you make a false statement, you could be fined up to \$250,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.**

# Instructions for Selected Forms



## Schedule A: Property (Official Form 106A)

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*Schedule A: Property* (Official Form 106A) lists property interests that are involved in a bankruptcy case. All individuals filing for bankruptcy must honestly list everything they own or have a legal or equitable interest in. *Legal or equitable interest* is a broad term and includes all kinds of property interests in both tangible and intangible property, whether or not anyone else has an interest in that property.

The information in this form is grouped by category and includes several examples for many items. Note that those examples are meant to give you an idea of what to include in the categories. They are not intended to be complete lists of everything within that category. Make sure you list everything you own or have an interest in.

You must verify under penalty of perjury that the information you provide is complete and accurate. If you fail to list any property, you may lose the property, lose your bankruptcy discharge, be fined up to \$250,000, and be imprisoned for up to 5 years. 11 U.S.C. §§ 554, 727; 18 U.S.C. §§ 152, 157, 3559, 3571, and 3581.

### Understand the terms used in this form

**Community property** — Type of property ownership available in certain states for property owned by spouses and, in some instances, legal equivalents of spouses. Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.

**Current value** — In this form, report the *current value* of the property that you own in each category. *Current value* is sometimes called *fair market value* and, for this form, is the fair market value as of the date of the filing of the petition. *Current value* is how much the property is worth, which may be more or less than when you purchased the property. *Property you own* includes property you have purchased, even if you owe money on it, such as a home with a mortgage or an automobile with a lien.

### Report the current value of the portion you own

For each question, report the current value of the portion of the property that you own. To do this, you would usually determine the current value of the entire property and the percentage of the property that you own. Multiply the current value of the property by the percentage that you own. Report the result where the form asks for *Current value of the portion you own*. For example:

- If you own a house by yourself, you own 100% of that house. Report the entire current value of the house.
- If you and a sister own the house equally, report 50% of the value of the house (or half of the value of the house).

In certain categories, current value may be difficult to figure out. When you cannot find the value from a reputable source (such as a pricing guide for your car), estimate the value and be prepared to explain how you determined it.

### **List items once on this form**

List items only once on this form; do not list them in more than one category. List all real estate in Part 1 and other property in the other parts of the form.

Where you list similar items of minimal value (such as clothing), add the value of the items and report a total.

Be specific when you describe each item. If you have an item that you think could fit into more than one category, select the most suitable category and list the item there.

Separately describe and list individual items worth more than \$500.

### **Match the values to the other schedules**

Make sure that the values you report on this form match the values you report on *Schedule B: Creditors Who Hold Claims Secured by Your Property* (Official Form 106B) and *Schedule D: The Property You Claim as Exempt* (Official Form 106D).

On this form, do not list any interests you may have in executory contracts (for example, an unexpired lease for your apartment, a contract for improvements or repairs for your home, a real estate listing agreement, or a lease for your car). List those contracts or leases on *Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106E).

## Schedule B: Creditors Who Hold Claims Secured by Property (Official Form 106B)

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The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. When you file for bankruptcy, the court needs to know who all your creditors are and what types of claims they have against you.

Typically in bankruptcy cases, there are more debts than assets to pay those debts. The court must know as much as possible about your creditors to make sure that their claims are properly treated according to the rules.

Creditors may have different types of claims:

- **Secured claims.** Report these on *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B).
- **Unsecured claims.** Report these on *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C).

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. That property is sometimes called *collateral* for your debt and could include items such as your house, your car, or your furniture. Creditors with unsecured claims do not have rights against specific property.

Many claims have a specific amount, and you clearly owe them. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must list all claims in your schedules, even if the claims are contingent, unliquidated, or disputed.

### Claims may be contingent, unliquidated, or disputed

Claims may be:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you disagree about whether you owe the debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

A single claim can have one, more than one, or none of these characteristics.

On *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B), list all creditors who have a claim that is secured by your property.

## Do not leave out any secured creditors

In alphabetical order, list anyone who has judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests against your property. When listing creditors who hold secured claims, be sure to include all of them. For example, include the following:

- Your relatives or friends who hold a lien or security interest in your property;
- Car or truck lenders, stores, banks, credit unions, and others who made loans to enable you to finance the purchase of property and who have a lien against that property;
- Anyone who holds a mortgage or deed of trust on real estate that you own;
- Contractors or mechanics who have liens on property you own because they did work on the property and were not paid;
- Someone who won a lawsuit against you and has a judgment lien;
- Another parent or a government agency that has a lien for unpaid child support;
- Doctors or attorneys who have liens on the outcome of a lawsuit;
- Federal, state, or local government agencies such as the IRS that have tax liens against property for unpaid taxes; and
- Anyone who is trying to collect a secured debt from you, such as collection agencies and attorneys.

List the debt in Part 1 only once and list any others that should be notified about that debt in Part 2. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the person to whom you owe the debt in Part 1, and list the collection agency in Part 2. If you are not sure who the creditor is, list the person you are paying in Part 1 and list anyone else who has contacted you about this debt in Part 2.

If a creditor's full claim is more than the value of your property securing that claim—for instance, a car loan in an amount greater than the value of the car—the creditor's claim may be partly secured and partly unsecured. In that situation, list the claim only once on *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B). Do not repeat it on *Schedule C: Creditors Who Hold Unsecured Claims* (Official Form 106C). List a creditor in *Schedule B* even if it appears that there is no value to support that creditor's secured claim.

## Determine the unsecured portion of secured claims

To determine the amount of a secured claim, compare the amount of the claim to the value of your portion of the property that supports the claim. If that value is greater than the amount of the claim, then the entire amount of the claim is secured. But if that value is less than the amount of the claim, the difference is an *unsecured portion*. For example, if the outstanding balance of a car loan is \$10,000 and the car is worth \$8,000, the car loan has a \$2,000 unsecured portion.

If there is more than one secured claim against the same property, the claim that is entitled to be paid first must be subtracted from the property value to determine how much value remains for the next claim. For example, if a home worth \$300,000 has a first mortgage of \$200,000 and a second mortgage of \$150,000, the first mortgage would be fully secured, and there would be \$100,000 of property value for the second mortgage, which would have an unsecured portion of \$50,000.

\$300,000	value of a home
- \$200,000	<u>first mortgage</u>
\$100,000	remaining property value
\$150,000	second mortgage
- \$100,000	<u>remaining property value</u>
\$ 50,000	unsecured portion of second mortgage

## Schedule C: Creditors Who Have Unsecured Claims (Official Form 106C)

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The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. When you file for bankruptcy, the court needs to know who all your creditors are and what types of claims they have against you.

Typically in bankruptcy cases, there are more debts than assets to pay those debts. The court must know as much as possible about your creditors to make sure that their claims are properly treated according to the rules.

Use *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C) to identify everyone who holds an unsecured claim against you when you file your bankruptcy petition, unless you have already listed them on *Schedule B: Creditors Who Hold Claims Secured by Your Property* (Official Form 106B).

Creditors may have different types of claims:

- **Secured claims.** Report these on *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B).
- **Unsecured claims.** Report these on *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C).

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. That property is sometimes called *collateral* for your debt and could include items such as your house, your car, or your furniture. Creditors

with unsecured claims do not have rights against specific property.

Many claims have a specific amount, and you clearly owe them. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must list all claims in your schedules, even if the claims are contingent, unliquidated, or disputed.

### **Claims may be contingent, unliquidated, or disputed**

Claims may be:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you disagree about whether you owe the debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

A single claim can have one, more than one, or none of these characteristics.

Creditors with unsecured claims do not have liens on or other security interests in your property. Secured creditors have a right to take property if you do not pay them. Common examples are lenders for your car, your home, or your furniture.

### **Do not leave out any unsecured creditors**

List all unsecured creditors in each part of the form in alphabetical order. Even if you plan to pay a creditor, you must list that creditor. When listing creditors who hold unsecured claims, be sure to include all of them. For instance, include the following:

- Your relatives or friends to whom you owe money;
- Your ex-spouse, if you are still obligated under a divorce decree or settlement agreement to pay joint debts;
- A credit card company, even if you intend to fully pay your credit card bill;
- A lender, even if the loan is cosigned;
- Anyone who holds a loan or promissory note that you cosigned for someone else;
- Anyone who has sued or may sue you because of an accident, dispute, or similar event that has occurred; or
- Anyone who is trying to collect a debt from you such as a bill collector or attorney.

## **Unsecured claims could be priority or nonpriority claims**

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### **What are priority unsecured claims?**

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In bankruptcy cases, *priority unsecured claims* are those debts that the Bankruptcy Code requires to be paid before most other unsecured claims are paid. The most common priority unsecured claims are certain income tax debts and past due alimony or child support. Priority unsecured claims include those you owe for:

- **Domestic support obligations**—If you owe domestic support to a spouse or former spouse; a child or the parent, legal guardian, or responsible relative of a child; or a governmental unit to whom such a domestic support claim has been assigned.  
11 U.S.C. § 507(a)(1).
- **Taxes and certain other debts you owe the government**—If you owe certain federal, state, or local government taxes, customs duties, or penalties.  
11 U.S.C. § 507(a)(8).
- **Claims for death or personal injury that you caused while you were intoxicated**—If you have a claim against you for death or personal injury that resulted from your unlawfully operating a motor vehicle or vessel while you were unlawfully intoxicated from alcohol, drugs, or another substance. This priority does not apply to claims for property damage.  
11 U.S.C. § 507(a)(10).

■ **Other:**

- ❑ **Deposits by individuals**—If you took money from someone who planned to purchase, lease, or rent your property or use your services but you never delivered or performed. For the debt to have priority, the property or services must have been intended for personal, family, or household use (only the first \$2,600 per person is a priority debt). 11 U.S.C. § 507(a)(7).
- ❑ **Wages, salaries, and commissions**—If you owe wages, salaries, and commissions, including vacation, severance, and sick leave pay and those amounts were earned within 180 days before you open your bankruptcy case or ceased business. In either instance, only the first \$11,775 per claim is a priority debt. 11 U.S.C. § 507(a)(4).
- ❑ **Contributions to employee benefit plans**—If you owe contributions to an employee benefit plan for services an employee rendered within 180 days before you file your bankruptcy petition, or within 180 days before your business ends. Count only the first \$11,775 per employee, less any amounts owed for wages, salaries, and commissions. 11 U.S.C. § 507(a)(5).
- ❑ **Certain claims of farmers and fishermen**—Only the first \$5,775 per farmer or fisherman is a priority debt. 11 U.S.C. § 507(a)(6).

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**What are nonpriority unsecured claims?**

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*Nonpriority unsecured claims* are those debts that generally will be paid after priority unsecured claims are paid. The most common examples of nonpriority unsecured claims are credit card bills, medical bills, and educational loans.

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**What if a claim has both priority and nonpriority amounts?**

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If a claim has both priority and nonpriority amounts, list that claim in Part 2 and show both priority and nonpriority amounts. Do not list it again in Part 3.

In Part 3, list all of the creditors you have not listed before. You must list every creditor that you owe, regardless of the amount you owe and even if you plan to pay a particular debt. If you do not list a debt, it may not be discharged.

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**What is needed for statistical purposes?**

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For statistical reasons, the court must collect information about some specific categories of unsecured claims.

The categories for priority unsecured claims are:

- **Domestic support obligations**
- **Taxes and certain other debts you owe the government**
- **Claims for death or personal injury that you caused while you were intoxicated**



The categories for nonpriority unsecured claims are:

- **Student loans**—If you owe money for any loans that you used to pay for your education;
- **Obligations arising out of a separation agreement or divorce that you did not report**

**as priority claims**—If you owe debts for separation or divorce agreements or for domestic support and you did not report those debts in Part 2; and

- **Debts to pension or profit-sharing plans and other similar debts**—If you owe money to a pension or profit-sharing plan.

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

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## How exemptions work

If you are an individual filing for bankruptcy, the law may allow you to keep some property, or it may entitle you to part of the proceeds if the property is sold after your case is filed. Property that the law permits you to keep is called *exempt* property. For example, exemptions may enable you to keep your home, a car, clothing, and household items.

Exemptions are not automatic. To be considered exempt, you must list the property on *Schedule D: The Property You Claim as Exempt* (Official Form 106D). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

**You may unnecessarily lose property if you do not claim exemptions to which you are entitled. You are strongly encouraged to hire a qualified attorney to advise you.**

## Determine which set of exemptions you will use

Before you fill out this form, you must learn which set of exemptions you can use. In general, exemptions are determined on a state-by-state basis. Some states permit you to use the exemptions provided by the Bankruptcy Code. 11 U.S.C. § 522.

The Bankruptcy Code provides that you use the exemptions in the law of the state where you had your legal home for 730 days before you file for bankruptcy. Special rules may apply if you did

not have the same home state for 730 days before you file.

You may lose property if you do not use the best set of exemptions for your situation.

If your spouse is filing with you and you are filing in a state in which you may choose between state and federal sets of bankruptcy exemptions, you both must use the same set of exemptions.

## Claiming exemptions

Using the property and values that you listed on *Schedule A: Property* (Official Form 106A) as your source, list on this form the property that you claim as exempt.

## Listing the amount of each exemption

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. Usually, a specific dollar amount is claimed as exempt, but in some circumstances, the amount of the exemption claimed might be indicated as 100% of fair market value. For example, a debtor might claim 100% of fair market value for an exemption that is unlimited in dollar amount, such as some exemptions for health aids.

## Listing which laws apply

In the last column of the form, you must identify the laws that allow you to claim the property as exempt. If you have questions about exemptions, consult a qualified attorney.

## Schedule E: Executory Contracts and Unexpired Leases (Official Form 106E)

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Use *Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106E) to identify your ongoing leases and certain contracts. List all of your executory contracts and unexpired leases.

*Executory contracts* are contracts between you and someone else in which neither you nor the other party has performed all of the requirements by the time you file for bankruptcy. *Unexpired leases* are leases that are still in effect; the lease period has not yet ended.

You must list all agreements that may be executory contracts or unexpired leases, even if they are listed on *Schedule A: Property* (Official Form 206A), including the following:

- Residential leases (for example, a rental agreement for a place where you live or vacation, even if it is only a verbal or month-to-month arrangement);
- Service provider agreements (for example, contracts for cell phones and personal electronic devices);
- Internet and cable contracts;
- Vehicle leases;
- Supplier or service contracts (for example, contracts for lawn care or home alarm or security systems);
- Timeshare contracts or leases;
- Rent-to-own contracts;
- Employment contracts;
- Real estate listing agreements;
- Contracts to sell a residence, building, land, or other real property;
- Equipment leases;
- Leases for business or investment property;
- Supplier and service contracts for your business;
- Copyright and patent license agreements; and
- Development contracts.

## Schedule F: Your Codebtors (Official Form 106F)

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If you have any debts that someone else may also be responsible for paying, these people or entities are called *codebtors*. Use *Schedule F: Your Codebtors* (Official Form 106F) to list any codebtors who are responsible for any debts you have listed on the other schedules.

To help fill out this form, use both *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B) and *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C).

List all of your codebtors and the creditors to whom you owe the debt. For example, if someone cosigned for the car loan that you owe, you must list that person on this form.

**If you are filing a joint case, do not list either spouse as a codebtor.**

Other codebtors could include the following:

- Cosigner;
- Guarantor;
- Former spouse;
- Unmarried partner;
- Joint contractor; or
- Nonfiling spouse—even if not the spouse a cosigner—where the debt is for necessities (such as food or medical care) if state law makes the nonfiling spouse legally responsible for debts for necessities.

# Schedule G: Your Income (Official Form 106G)

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In *Schedule G: Your Income* (Official Form 106G), you will give the details about your employment and monthly income as of the date you file this form. If you are married and your spouse is living with you, include information about your spouse even if your spouse is not filing with you. If you are separated and your spouse is not filing with you, do not include information about your spouse.

## How to report employment and income

If you have nothing to report for a line, write \$0.

In Part 1, line 1, fill in employment information for you and, if appropriate, for a nonfiling spouse. If either person has more than one employer, attach a separate page with information about the additional employment.

In Part 2, give details about the monthly income you currently expect to receive. Show all totals as monthly payments, even if income is not received in monthly payments.

If your income is received in another time period, such as daily, weekly, quarterly, annually, or irregularly, calculate how much income would be by month, as described below.

If either you or a nonfiling spouse has more than one employer, calculate the monthly amount for each employer separately, and then combine the income information for all employers for that person on lines 2-7.

If all or part of your income is sporadic, such as overtime or commissions, include your best estimate of the monthly amount you expect to receive.

One easy way to calculate how much income you receive per month is to total the payments earned in a year, then divide by 12 to get a monthly figure. For example, if you are paid annually, you would simply divide your annual salary by 12 to get the monthly amount.

Below are other examples of how to calculate monthly amount.

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### Example for weekly payments:

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If you are paid \$1,000 every week, figure your monthly income in this way:

$$\begin{array}{r} \$1,000 \quad \text{income every week} \\ \times \quad 52 \quad \text{number of pay periods in the year} \\ \hline \$52,000 \quad \text{total income for the year} \end{array}$$

$$\frac{\$52,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$4,333 \text{ monthly income}$$

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### Example for bi-weekly payments:

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If you are paid \$2,500 every other week, figure your monthly income in this way:

$$\begin{array}{r} \$2,500 \quad \text{income every other week} \\ \times \quad 26 \quad \text{number of pay periods in the year} \\ \hline \$65,000 \quad \text{total income for the year} \end{array}$$

$$\frac{\$65,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$5,417 \text{ monthly income}$$

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**Example for daily payments:**

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If you are paid \$75 a day and you work about 8 days a month, figure your monthly income in this way:

	\$75	income a day
X	96	days a year
	\$7,200	total income for the year

$\frac{\$7,200 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$600 \text{ monthly income}$

or this way:

	\$75	income a day
X	8	payments a month
	\$600	income for the month

---

**Example for quarterly payments:**

---

If you are paid \$15,000 every quarter, figure your monthly income in this way:

	\$15,000	income every quarter
X	4	pay periods in the year
	\$60,000	total income for the year

$\frac{\$60,000 \text{ (income for year)}}{12} = \$5,000 \text{ (number of months in year) monthly income}$

---

**Example for irregular payments:**

---

If you are paid \$4,000 8 times a year, figure your monthly income in this way:

	\$4,000	income a payment
X	8	payments a year
	\$32,000	income for the year

$\frac{\$32,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$2,667 \text{ monthly income}$

In Part 2, line 11, fill in amounts that other people provide to pay the expenses you list on *Schedule H: Your Expenses*. For example, if you and a person to whom you are not married deposit the income from both of your jobs into a single bank account and pay all household expenses and you list all your joint household expenses on *Schedule H*, you must list the amounts that person contributes monthly to pay the household expenses on line 11. If you have a roommate and you divide the rent and utilities, do not list the amounts your roommate pays on line 11 if you have listed only your share of those expenses on *Schedule H*. However, if you have listed the cost of the rent and utilities for your entire house or apartment on *Schedule H*, you must list your roommate's contribution to those expenses on *Schedule G*, line 14. Do not list line 11 contributions that you already disclosed on line 5.

Note that the income you report on *Schedule G* may be different from the income you report on other bankruptcy forms. For example, the *Chapter 7 Statement of Your Current Monthly Income* (Official Form 108-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 109), and the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110-1) all use a different definition of income and apply that definition to a different period of time. *Schedule G* asks about the income that you are now receiving and expect to receive, while the other forms ask about income you received in the applicable time period before filing. So the amount of income reported in any of those forms may be different from the amount reported here.

## Schedule H: Your Expenses (Official Form 106H)

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Use Column A of *Schedule H: Your Expenses* (Official Form 106H) to estimate the monthly expenses, as of the date you file for bankruptcy, for you, your dependents, and the other people in your household whose income is included on *Schedule G: Your Income* (Official Form 106G).

If you are filing under chapter 13, you must also complete Column B. In Column B, itemize what your monthly expenses would be under the plan that you are submitting with this schedule or, if no plan is being submitted now, under the most recent plan you previously submitted.

Include your nonfiling spouse's expenses unless you are separated. If both spouses are filing but one of you keeps a separate household, fill out separate *Schedule H* for Debtor 1 and Debtor 2 and write *Debtor 1* or *Debtor 2* at the top of page 1 of the form.

Do not include expenses that other members of your household pay directly from their income if you did not include that income on *Schedule G*. For example, if you have a roommate and you divide the rent and utilities and you have not

listed your roommate's contribution to household expenses in line 11 of *Schedule G*, you would list only your share of these expenses on *Schedule H*.

Show all totals as monthly payments. If you have weekly, quarterly, or annual payments, calculate how much you would spend on those items every month.

Do not list as expenses any payments on credit card debts incurred before filing bankruptcy.

Do not include business expenses on this form. You have already accounted for those expenses as part of determining net business income on *Schedule G*.

On line 20, do not include expenses for your residence or for any rental or business property. You have already listed expenses for your residence on lines 4 and 5 of this form. You listed the expenses for your rental and business property as part of the process of determining your net income from that property on *Schedule G* (line 8a).

If you have nothing to report for a line, write \$0.

## Summary of Your Assets and Liabilities and Certain Statistical Information (Official Form 106Sum)

---

When you file for bankruptcy, you must summarize certain information from the following forms:

- *Schedule A: Property* (Official Form 106A)
- *Schedule B: Creditors Who Have Claims Secured by Property* (Official Form 106B)
- *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C)
- *Schedule G: Your Income* (Official Form 106G)
- *Schedule H: Your Expenses* (Official Form 106H)
- *Chapter 7 Statement of Your Current Monthly Income* (Official Form 108-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 109), or *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110-1)

After you fill out all of the forms, complete *Summary of Your Assets and Liabilities and Certain Statistical Information* (Official Form 106Sum) to report the totals of certain information that you listed in the forms.

If you are filing an amended version of any of these forms at some time after you file your original forms, you must fill out a new *Summary* to ensure that your information is up to date and you must check the box at the top.



# Your Statement of Financial Affairs if You Are an Individual Filing for Bankruptcy (Official Form 107)

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*Your Statement of Financial Affairs* provides a summary of your financial history over certain periods of time before you file for bankruptcy. If you are an individual in a bankruptcy case, you must fill out this statement. 11 U.S.C. § 521(a) and Bankruptcy Rule 1007(b)(1).

If you are married and your spouse is not filing this case with you, you need only provide information on this form about your spouse if you are filing under chapter 12 or chapter 13 and are not separated from your spouse.

If you are in business as a sole proprietor, partner, family farmer, or self-employed professional, you must provide the information

about all of your business and personal financial activities.

Although this statement may ask you questions that are similar to some questions on the schedules, you must fill out all of the forms completely to protect your legal rights.

## **Understand the terms used in this form**

**Legal equivalent of a spouse** — A person whom applicable nonfederal law recognizes as having a relationship with the debtor that grants legal rights and responsibilities equivalent, in whole or in part, to those granted to a spouse.

# Chapter 7 Statement of Your Current Monthly Income and Means Test Calculation (Official Forms 108-1 and 108-2)

---

**If you are filing under chapter 11, 12, or 13, do not fill out this form.**

Official Forms 108-1 and 108-2 determine whether your income and expenses create a presumption of abuse that may prevent you from obtaining relief from your debts under chapter 7 of the Bankruptcy Code. Chapter 7 relief can be denied to a person who has primarily consumer debts if the court finds that the person has enough income to repay creditors a portion of their claims according to a formula set out in the Bankruptcy Code.

You must file Official Form 108-1, the *Chapter 7 Statement of Your Current Monthly Income* if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income for households of the same size in your state. If your income is not above the median, there is no presumption of abuse and you will not have to fill out the second form.

If your income is above the median, you must file the second form, Official Form 108-2, *Chapter 7 Means Test Calculation*. The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay other debts. If this amount is high enough, it will

give rise to a *presumption of abuse*. A presumption of abuse does not mean you are actually trying to abuse the bankruptcy system. Rather, the presumption simply means that you are presumed to have enough income that you should not be granted relief under chapter 7. You may overcome the presumption by showing special circumstances that reduce your income or increase your expenses.

If you cannot obtain relief under chapter 7, you may be eligible to continue under another chapter of the Bankruptcy Code and pay creditors over a period of time.

Read each question carefully. You may not be required to answer every question on this form. For example, your military status may determine whether you must fill out the entire form. The instructions will alert you if you may skip questions.

If you have nothing to report for a line, write \$0.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

If you and your spouse are filing together, you and your spouse may file a single statement. However, if an exclusion in Parts 1 or 2 applies to either of you, separate statements may be required. 11 U.S.C. § 707(b)(2)(C).

## Chapter 11 Statement of Your Current Monthly Income (Official Form 109)

---

**If you are filing under chapter 7, 12, or 13, do not fill out this form.**

You must file the *Chapter 11 Statement of Your Current Monthly Income* (Official Form 109) if you are an individual filing for bankruptcy under chapter 11.

If you have nothing to report for a line, write \$0.

# Chapter 13 Statement of Your Current Monthly Income, Calculation of Commitment Period and Chapter 13 Calculation of Your Disposable Income (Official Forms 110–1 and 110–2)

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**If you are filing under chapter 7, 11, or 12, do not fill out this form.**

Official Forms 110–1 and 110–2 determine the commitment period for your payments to creditors, how the amount you may be required to pay to creditors is established, and, in some situations, how much you must pay.

You must file 110–1, the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110–1) if you are an individual and you are filing under chapter 13. This form will report your current monthly income and determine whether your income is at or below the median income for households of the same size in your state. If your income is equal to or less than the median, you will not have to fill out the second form. Form 110-1 also will determine your applicable commitment period—the time period for making payments to your creditors.

If your income is above the median, you must file the second form, 110–2, *Chapter 13 Calculation of Your Disposable Income*. The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay unsecured debts. Your chapter 13 plan may be required to provide for payment of this amount toward unsecured debts.

Read each question carefully. You may not be required to answer every question on this form. The instructions will alert you if you may skip questions.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

Generally, if you and your spouse are filing together, you should file one statement together.

# Statement of Intention for Individuals Filing Under Chapter 7 (Official Form 112)

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**If you are filing under chapter 11, 12, or 13, do not fill out this form.**

You must fill out the *Statement of Intention for Individuals Filing Under Chapter 7* (Official Form 112) if you are an individual filing under chapter 7 or if your case has been converted to chapter 7 and creditors have claims secured by your property or you have any unexpired leases of personal property. The Bankruptcy Code requires you to state your intentions about such claims and provides for early termination of the automatic stay as to personal property if the statement is not timely filed. The same early termination of the automatic stay applies to any unexpired lease of personal property unless you state that you intend to assume the unexpired lease if the trustee does not do so.

To help fill out this form, use the information you have already provided on the following forms:

- *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B),
- *Schedule D: The Property You Claim as Exempt* (Official Form 106D), and
- *Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106E).

## **Explain what you intend to do with your property that is collateral for a claim**

If you have property that is collateral (or security) for a claim, you must state what you intend to do with that property.

You may choose to either give the property to the creditor, or keep the property. Below is more information about each of these options.

**You may give the property to the creditor.** If you give the property to the creditor (*you surrender the property*), your bankruptcy discharge will protect you from any claim for a deficiency if the property is worth less than what you owe the creditor, unless the court determines that the debt is non-dischargeable.

**You may want to keep the property.** If you want to keep your secured personal property, you may be able to reaffirm the debt, redeem the property, or take other action (for example, avoid a lien using 11 U.S.C. 522(f)).

- **You may be able to reaffirm the debt.** You may decide to remain legally obligated to pay a debt so that you can keep the property securing the debt. This is called *reaffirming a debt*. You may reaffirm the debt in full on its original terms or you and the creditor may agree to change the terms. For example, if you want to keep your car, you may reaffirm a car loan, stating that you will continue to make monthly payments for it. **Only reaffirm those debts that you are confident you can repay.** You may seek to reaffirm the debt if you sign a *Reaffirmation Agreement*, which is a contract between you and a creditor and you follow the proper

procedure for the *Reaffirmation Agreement*. 11 U.S.C. § 524. The procedure is explained in greater detail in the Disclosures that are part of the reaffirmation documents.

- **You may be able to redeem your property.** 11 U.S.C. § 722. You can redeem property only if all of the following apply:
  - The property secures a debt that is a *consumer debt* — you incurred the debt primarily for personal, family, or household use.
  - The property is *tangible personal property* — the property is physical, such as furniture, appliances, and cars.
  - You are either claiming the property as exempt or the trustee has abandoned it.

To obtain court authorization to redeem your property, you must file a motion to redeem. If the court grants your motion, you pay the creditor the value of the property or the amount of the claim, whichever is less. The payment will be a single lump-sum payment.

## **Explain what you intend to do with your leased personal property**

If you lease personal property such as your car, you may be able to continue your lease if the trustee does not assume the lease. To continue your lease, you can write to the lessor that you want to assume your lease. The creditor may respond by telling you whether it agrees that you may assume the lease and may require you to pay any past-due amounts before you can do so. If the lessor agrees to your request to assume the lease, you must write to the lessor within 30 days stating that you assume the lease.

11 U.S.C. § 365(p)(2).

## **File the *Statement of Intention* before the deadline**

You must file this form either within 30 days after you file your bankruptcy petition or by the date set for the meeting of creditors, whichever is earlier. You must also deliver copies of this statement to the creditors and lessors you listed on the form. Bankruptcy Rule 1007(b)(2).

If two married people are filing together in a joint case, both are equally responsible for supplying correct information. Both debtors must sign and date the form.

## Application for Individuals to Pay the Filing Fee in Installments (Official Form 103A)

---

If you cannot afford to pay the full filing fee when you first file for bankruptcy, you may pay the fee in installments. However, in most cases, you must pay the entire fee within 120 days after you file, and the court must approve your payment timetable. Your debts will not be discharged until you pay your entire fee.

Do not file this form if you can afford to pay your full fee when you file.

If you are filing under chapter 7 and cannot afford to pay the full filing fee at all, you may be qualified to ask the court to waive your filing fee.

See *Application to Have Your Chapter 7 Filing Fee Waived* (Official Form 103B).

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out the *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 113); include a copy of it when you file this application.

# Application to Have the Chapter 7 Filing Fee Waived (Official Form 103B)

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The fee for filing a bankruptcy case under chapter 7 is \$306. If you cannot afford to pay the entire fee now in full or in installments within 120 days, use this form. If you can afford to pay your filing fee in installments, see *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 103A).

If you file this form, you are asking the court to waive your fee. After reviewing your application, the court may waive your fee, set a hearing for further investigation, or require you to pay the fee in installments or in full.

**For your fee to be waived, all of these statements must be true:**

- You are filing for bankruptcy under chapter 7.
- You are an individual.
- The total combined monthly income for your family is less than 150% of the official poverty guideline last published by the U.S. Department of Health and Human Services (DHHS). (For more information about the guidelines, go to <http://www.uscourts.gov>.)
- You cannot afford to pay the fee in installments.

*Your family* includes you, your spouse, and any dependents listed on *Schedule H*. Your family may be different from your *household*, referenced on *Schedules G* and *H*. Your household may include your unmarried partner and others who live with you and with whom you share income and expenses.

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 113); include a copy of it when you file this application.

If you have already completed the following forms, the information on them may help you when you fill out this application:

- *Schedule A: Property* (Official Form 106A)
- *Schedule G: Your Income* (Official Form 106G)
- *Schedule H: Your Expenses* (Official Form 106H)



# Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders (Official Form 404)

---

**If you are filing under chapter 7, 12, or 13, do not fill out this form.**

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. If you are an individual filing for bankruptcy under chapter 11, you must fill out the *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders* (Official Form 404).

Creditors may have different types of claims:

- Secured claims, or
- Unsecured claims.

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. If a creditor has security in your property, but the value of the security available to pay the creditor is less than the amount you owe the creditor, the creditor has both a secured and unsecured claim against you. The amount of the unsecured claim is the total claim minus the value of the security that is available to pay the creditor.

Generally, creditors with unsecured claims do not have rights against specific property, or the specific property in which the creditor has rights is not worth enough to pay the creditor in

full. For example, if you owe a creditor \$30,000 for your car and the creditor has a security interest in your car but the car is worth only \$20,000, the creditor has a \$20,000 secured claim and a \$10,000 unsecured claim.

\$30,000	Total amount you owe creditor
– \$20,000	Amount your car is worth (amount of secured claim)
<hr/>	
\$10,000	Amount of unsecured claim

Many claims have a specific amount, and you clearly owe them. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must include such claims when listing your 20 largest unsecured claims on this list.

## **Claims may be contingent, unliquidated, or disputed.**

The form asks you to identify claims that are:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the amount has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you do not agree that you owe the debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

A single claim can have one, more than one, or none of these characteristics.

### **On this form, list the creditors with the 20 largest unsecured claims who are not insiders**

You must file this form when you file your chapter 11 bankruptcy case with the court.

When you list the 20 largest unsecured creditors, include all unsecured creditors, except for the following two types of creditors, even if you plan to pay them. Do not include:

- Anyone who is an *insider*. *Insiders* include relatives; general partners of you or your relatives; corporations of which you are an officer, director, or person in control; and any managing agent. 11 U.S.C. § 101(31).
- Secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Make sure that all of the creditors listed on this form are also listed on either *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B) or *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C).

On the form, you will fill in what the claim is for. Examples include trade debts, bank loans, professional services, and government contracts.

# Glossary

## Definitions Used in the Forms for Individuals Filing for Bankruptcy

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Here are definitions for some of the important terms used in the forms for individuals who are filing for bankruptcy. See *Bankruptcy Basics* (<http://www.uscourts.gov/FederalCourts>) for more information about filing for bankruptcy and other important terms you should know.

**Annuity** — A contract for the periodic payment of money to you, either for life or for a number of years.

**Bankruptcy petition preparer** — Any person or business, other than a lawyer or someone who works for a lawyer, that charges a fee to prepare bankruptcy documents. Under your direction and control, the bankruptcy petition preparer generates bankruptcy forms for you to file by typing them. Because they are not attorneys, they cannot give legal advice or represent you in bankruptcy court. Also called *typing services*.

**Business debt** — Debt that you incurred to obtain money for a business or investment or through the operation of the business or investment.

**Claim** — A creditor's right to payment, even if contingent, disputed, unliquidated, or unmatured.

**Codebtor** — A person or entity that may also be responsible for paying a claim against the debtor.

**Collateral for your debt** — If your debts are not paid, creditors with secured claims such as a mortgage or a lien may be able to get paid from specific property in which that creditor has an interest.

**Community property** — Type of property ownership available in certain states for property owned by spouses and, in some instances, legal equivalents of spouses. Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.

**Consumer debt** — Debt incurred by an individual primarily for a personal, family, or household purpose.

**Contingent claim** — Debt you are not obligated to pay unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

**Creditor matrix or mailing matrix** — A list of names and addresses of all of your creditors, formatted as a mailing list according to instructions from the bankruptcy court in which you file.

**Creditor** — The person or organization to whom you owe money.

**Creditor with secured claims** — Creditors who have a right to take property if you do not pay them. Common examples are lenders for your car, your home, or your furniture.

**Creditor with unsecured claims** — Creditor who does not have lien on or other security interest in your property.

**Current value, fair market value, or value** — Generally, the fair market value as of the date of the filing of the petition. It is how much the property is worth, which may be more or less than when you purchased the property. See the instructions for specific forms regarding whether the value requested is as of the date of the filing of the petition, the date you complete the form, or some other date.

**Debtor 1** — A debtor filing alone or one person in married couple who is filing a bankruptcy case with a spouse.

**Debtor 2** — The second person in a married couple who is filing a bankruptcy case with a spouse.

**Dependent** — The term *dependent* generally means people who are economically dependent on the debtor regardless of whether they can be claimed as a dependent on the debtor's federal tax return. However, *Chapter 7 Means Test Calculation*, (Official Form 108-2) and *Chapter 13 Calculation of Your Disposable Income*, (Official Form 110-2) use the term in a more limited way. See the instructions on those forms.

**Discharge** — A discharge in bankruptcy relieves you from having to pay debts that you owed before you filed your bankruptcy case. Most debts are covered by the discharge, but not all. (The instruction booklet explains more about common debts that are excepted from discharge.)

Only your personal liability is removed by the discharge; creditors with discharged debts cannot sue you, garnish your wages, assert a deficiency against you, or otherwise try to collect from you personally.

But a discharge does not stop creditors from collecting debts from any property in which they have a security interest—such as foreclosing a home mortgage or repossessing an auto. Similarly, a discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as a relative who cosigned or guaranteed a loan.

Even if a debt has been discharged, you can choose to repay it by either *reaffirming the debt* (see the definition below) or by voluntarily paying the debt. The creditor may negotiate a reaffirmation agreement with you, but may not suggest that you make voluntary payments.

**Disputed claim** — If you disagree about whether you owe a debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

**Eviction judgment** — Your landlord has obtained a judgment for possession in an eviction, unlawful detainer action, or similar proceeding.

**Executory contract** — Contract between you and someone else in which neither you nor the other party has performed all of the requirements by the time you file for bankruptcy.

**Exempt property** — Property that the law permits you to keep.

**Individual debtor** — You are a person who is filing for bankruptcy by yourself or with your spouse.

**Joint case** — A single case filed by a married couple.

**Legal equivalent of a spouse** — A person whom applicable nonfederal law recognizes as having a relationship with the debtor that grants legal rights and responsibilities equivalent, in whole or in part, to those granted to a spouse.

**Legal or equitable interest** — A broad term that includes all kinds of property interests in both tangible and intangible property, whether or not anyone else has an interest in that property.

**Negotiable instrument** — Include personal checks, cashiers' checks, promissory notes, and money orders.

**Non-individual debtor** — You are filing for bankruptcy on behalf of a non-individual, such as a corporation, partnership, or limited liability company (LLC).

**Non-negotiable instrument** — Financial instrument that you cannot transfer to someone by signing or delivering it.

**Nonpriority unsecured claim** — Debt that generally will be paid after priority unsecured claims are paid. The most common examples are credit card bills, medical bills, and educational loans.

**Payment advice** — A statement such as a pay stub or earnings statement from your employer that shows all earnings and deductions from your pay.

**Presumption of abuse** — A legal determination meaning you may have too much income to be granted relief under chapter 7. You may overcome the presumption by showing special circumstances that reduce your income or increase your expenses.

**Priority unsecured claim** — Debt that the Bankruptcy Code requires to be paid before most other unsecured claims are paid. The most common examples are certain income tax debts and past due alimony or child support.

**Property you own** — Includes property you have purchased, even if you owe money on it, such as a home with a mortgage or an automobile with a lien.

**Reaffirming a debt** — You may agree to repay a debt that would otherwise be discharged by entering into a reaffirmation agreement with the creditor. A reaffirmation agreement may allow you to keep property that a creditor has the right to take from you because it secures the debt being reaffirmed. For a reaffirmation agreement to be effective, you must enter into it before discharge. You may ask the court to delay your discharge if you need more time to complete your reaffirmation agreement. The court may have to find that the agreement is not an undue burden on you before it can become effective.

**Secured claim** — A claim that may be satisfied in whole or in part either

- through a charge against or an interest in the debtor's property, or
- through a right of setoff.

**Sole proprietorship** — A business you own as an individual, rather than a separate legal entity such as a corporation, partnership, or LLC. Sole proprietors must use the bankruptcy forms that are numbered in the 100 series.

**Unexpired lease** — Unexpired leases are leases that are in effect at the time of the bankruptcy filing.

**Unliquidated claim** — If the amount of a debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

**You** — A debtor filing alone or one person in married couple who is filing a bankruptcy case with a spouse.

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# TAB 7A.5

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**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**

12/14

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):
<p><b>1. Your full name</b></p> <p>Write the name that is on your government-issued picture identification (for example, your driver's license or passport).</p> <p>Bring your picture identification to your meeting with the trustee.</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p> <p>_____</p> <p>Suffix (Sr., Jr., II, III)</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p> <p>_____</p> <p>Suffix (Sr., Jr., II, III)</p>
<p><b>2. All other names you have used in the last 8 years</b></p> <p>Include your married or maiden names.</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p> <p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p> <p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p>
<p><b>3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)</b></p>	<p>XXX - XX - _____</p> <p>OR</p> <p><b>9</b> XX - XX - _____</p>	<p>XXX - XX - _____</p> <p>OR</p> <p><b>9</b> XX - XX - _____</p>

About Debtor 1:

About Debtor 2 (Spouse Only in a Joint Case):

4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years

Include trade names and doing business as names

I have not used any business names or EINs.

Business name

Business name

EIN

EIN

I have not used any business names or EINs.

Business name

Business name

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 bankruptcy filing package, I have lived in this district longer than in any other district.

I have another reason. Explain. (See 28 U.S.C. § 1408.)

Explaination lines

Check one:

Over the last 180 days before filing this bankruptcy filing package, I have lived in this district longer than in any other district.

I have another reason. Explain. (See 28 U.S.C. § 1408.)

Explaination lines

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 B2010)). 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

Table with 2 columns: If you file under Chapter ... and Your total fee is... with rows for chapters 7, 11, 12, and 13.

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.

I need to pay the fee in installments. If you choose this option, sign and attach the Application for Individuals to Pay Your 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 waive your fee 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).

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

- No
Yes. District When Case number MM / DD / YYYY

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

- No
Yes. Debtor Relationship to you
District When Case number, if known MM / DD / YYYY

11. Do you rent your residence?

- No. Go to line 12.
Yes. Has your landlord obtained an eviction judgment against you and do you want to stay in your residence?
No. Go to line 12.
Yes. Fill out Initial Statement About an Eviction Judgment Against You (Form 101A) and file it with 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 own as an individual, rather than 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 package.

- 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.

- 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 and I am a small business debtor according to the definition in the Bankruptcy Code.

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?

- 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 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 file this bankruptcy filing package.

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 file this bankruptcy filing package.

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?

No. I am not filing under Chapter 7. Go to line 18.

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?

- 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 Here

For you

I declare under penalty of perjury that the information provided in this petition is true and correct. I understand that if I make a false statement, I could be fined up to \$250,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

If I have chosen to file under Chapter 7, I am aware that I may proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and 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.

X

Signature of Debtor 1

Date MM / DD / YYYY

X

Signature of Debtor 2

Date MM / DD / YYYY



Debtor 1

\_\_\_\_\_  
First Name Middle Name Last Name

Case number (if known) \_\_\_\_\_

**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.

**X**

\_\_\_\_\_  
Signature of Attorney for Debtor Date  
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 filing package 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 misstep 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 filing package is 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 this bankruptcy filing package?

- 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.

**X**

\_\_\_\_\_  
Signature of Debtor 1

Date \_\_\_\_\_  
MM / DD / YYYY

Contact phone \_\_\_\_\_

Cell phone \_\_\_\_\_

Email address \_\_\_\_\_

**X**

\_\_\_\_\_  
Signature of Debtor 2

Date \_\_\_\_\_  
MM / DD / YYYY

Contact phone \_\_\_\_\_

Cell phone \_\_\_\_\_

Email address \_\_\_\_\_

## COMMITTEE NOTE

Official Form 101, *Voluntary Petition for Individuals Filing for Bankruptcy*, applies only in cases of individual debtors. Form 101 replaces Official Form 1, Voluntary Petition. It is renumbered to distinguish it from the forms used by non-individual debtors, such as corporations, and includes stylistic changes throughout the form. It is revised as part of the Forms Modernization Project, making it easier to read and, as a result, likely to generate more complete and accurate responses. Because the goals of the Forms Modernization Project include improving the interface between technology and the forms so as to increase efficiency and reduce the need to produce the same information in multiple formats, many of the open-ended questions and multiple-part instructions have been replaced with more specific questions.

Official Form 101 has been substantially reorganized. References to Exhibits A, B, C, and D, and the exhibits themselves, have been eliminated because the requested information is now asked in the form or is not applicable to individual debtors.

Part 1, *Identify Yourself*, line 6, replaces the venue box from page 2 of Official Form 1 and deletes venue questions that pertain only to non-individuals.

Part 2, *Tell the Court About Your Bankruptcy Case*, line 7, removes choices for chapters 9 and 15 filings because they do not pertain to individuals. Additionally, Part 2 adds at line 8 a table that lists the applicable filing fees for chapters 7, 11, 12, and 13. The status of “being filed” is added to the question regarding bankruptcy cases pending or filed by a spouse, business partner, or affiliate (line 10). Lastly, the question “Do you rent your residence?” (line 11) and Official Forms 101A, *Initial Statement About an Eviction Judgment Against You*, and 101B, *Statement About Payment of An Eviction Judgment Against You*, replace “certification by a debtor who resides as a tenant of residential property,” on page 2 of Official Form 1.

Part 3, *Report About Any Businesses You Own as a Sole Proprietor*, line 12, incorporates options from the “nature of business” box from page 1 of Official Form 1 that would apply to individual debtors, thus eliminating checkboxes for railroads and clearing banks. Part 3, line 13, also eliminates a checkbox to report whether a plan was filed with the petition, or if plan acceptances were solicited prepetition. Additionally, line 13 rephrases the question relating to whether a debtor filing under Chapter 11 is a small business debtor.

Part 4, *Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention*, line 14, replaces Exhibit C from Official Form 1 and adds the category of “property that needs immediate attention.”

Part 5, *Explain Your Efforts to Receive Credit Counseling* (line 15), replaces Exhibit D from Official Form 1. Additionally, this part describes incapacity and disability using a simplified definition, tells the debtor of the ability to file a motion for a waiver, and eliminates statutory reference about districts where credit counseling does not apply because such districts are rare.

Part 6, *Answer These Questions for Reporting Purposes* (line 16c), provides a text field for the debtor to describe the type of debts owed if the debtor believes they are neither primarily consumer nor business debts.

Part 7, *Sign Here*, deletes from the debtor’s declaration the phrase “to the best of my knowledge, information, and belief” in order to conform to the language of 28 U.S.C. § 1746. *See* Rule 1008. This part combines the two attorney signature blocks into one certification and eliminates signature lines for corporations/partnerships and chapter 15 Foreign Representative. The declaration and signature section for a non-attorney bankruptcy petition preparer (BPP) has also been removed as unnecessary. The same declaration, required under 11 U.S.C. § 110, is contained in Official Form 119. That form must be completed and signed by the BPP and filed with each document prepared by a BPP.

Fill in this information to identify your case:

Draft March 8, 2013

Debtor 1 \_\_\_\_\_  
 First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
 (State)

Case number \_\_\_\_\_  
 (If known)

Official Form 101A

Initial Statement About an Eviction Judgment Against You

12/14

Fill out this form only if:

- you rent your residence; and
- your landlord has obtained a judgment for possession in an eviction, unlawful detainer action, or similar proceeding (called *eviction judgment*) against you to possess your residence; and
- you want to stay in your rented residence after you file your case for bankruptcy.

See 11 U.S.C. §§ 362(b)(2) and 362(l)

File this form with the court when you first file your bankruptcy filing package.

You must serve your landlord with a copy of this form. Check the Bankruptcy Rules (www.uscourts.gov/rules) and the court's local website (go to www.uscourts.gov/courtlinks to find your court's website) for any specific requirements that you might have to meet to serve this statement.

Certification About Applicable Law and Deposit of Rent

Landlord's name \_\_\_\_\_

Landlord's address \_\_\_\_\_  
 Number Street

City State ZIP Code

I certify under penalty of perjury that:

- Under the state or other nonbankruptcy law that applies to the judgment for possession (*eviction judgment*), I have the right to stay in my residence by paying my landlord the entire amount I owe.
- I have given the bankruptcy court clerk a deposit for the rent that would be due during the 30 days after I file the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).

X \_\_\_\_\_  
Signature of Debtor 1

X \_\_\_\_\_  
Signature of Debtor 2

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

If you checked both boxes above, signed the form to certify that both apply, and served your landlord a copy of this statement, the automatic stay under 11 U.S.C. § 362(a)(3) will apply to the continuation of the eviction against you for 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).

You must serve your landlord with a copy of this form.

If you wish to stay in your residence after that 30-day period and continue to receive the protection of the automatic stay under 11 U.S.C. § 362(a)(3), you must pay the entire amount you owe to your landlord as stated in the eviction judgment before the 30-day period ends. You must also fill out Official Form 101B, file it with the bankruptcy court, and serve your landlord a copy of it before the 30-day period ends.

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**Fill in this information to identify your case:**

Draft March 8, 2013

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(if known)

**Official Form 101B**

**Statement About Payment of an Eviction Judgment Against You**

12/14

**Fill out this form only if:**

- you filed **Official Form 101A**; and
- you served a copy of **Official Form 101A** on your landlord; and
- you want to stay in your rented residence for more than 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (**Official Form 101**).

File this form within 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (**Official Form 101**). Also serve a copy on your landlord within that same time period.

**Certification About Applicable Law and Payment of Eviction Judgment**

**I certify under penalty of perjury that** (*Check all that apply*):

- Under the state or other nonbankruptcy law that applies to the judgment for possession (*eviction judgment*), I have the right to stay in my residence by paying my landlord the entire amount I owe.
- Within 30 days after I filed my *Voluntary Petition for Individuals Filing for Bankruptcy* (**Official Form 101**), I have paid my landlord the entire amount I owe as stated in the judgment for possession (*eviction judgment*).

**X** \_\_\_\_\_  
Signature of Debtor 1

**X** \_\_\_\_\_  
Signature of Debtor 2

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

**You must serve your landlord with a copy of this form.**

Check the Bankruptcy Rules ([www.uscourts.gov/rules](http://www.uscourts.gov/rules)) and the court's local website (go to [www.uscourts.gov/courtlinks](http://www.uscourts.gov/courtlinks) to find your court's website) for any specific requirements that you might have to meet to serve this statement.

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## COMMITTEE NOTE

Official Form 101A, *Initial Statement About an Eviction Judgment Against You*, and Official Form 101B, *Statement About Payment of an Eviction Judgment Against You*, are new forms promulgated as part of the Forms Modernization Project. They replace the “*Certification by a Debtor Who Resides as a Tenant of Residential Property*” section on Official Form 1, *Voluntary Petition*. The forms apply only in cases of individual debtors.

**Official Form 101A** explains that debtors need to complete and file the form only if their landlord has a judgment for possession or an eviction judgment against them and they wish to stay in their residence for 30 days after filing their bankruptcy petition. The form adds references to the provisions in the Bankruptcy Code that specify when debtor-tenants subject to eviction may remain in their residence after filing for bankruptcy.

The form eliminates the checkboxes that the debtor has served the landlord with the certification and paid the court the rent that would be due during the 30 days after the filing of the bankruptcy petition. Instead, debtors are required to certify under penalty of perjury that the rent has been paid to the court, and the instructions direct debtors to serve a copy of the statement on the landlord.

The form eliminates the checkbox that the debtor claims there are circumstances under applicable nonbankruptcy law under which the debtor would be permitted to cure the monetary default that gave rise to the judgment for possession (or eviction judgment) and remain in residence. Instead, debtors are required to certify under penalty of perjury that they have the right to stay in their residence under state law or other nonbankruptcy law by paying their landlord the entire amount they owe.

**Official Form 101B** is new. If debtors wish to stay in their residence for more than 30 days after filing the petition, they must complete, file, and serve the form within 30 days after the petition is filed. Under Official Form 101B, debtors certify under penalty of perjury that they have the right to stay in their residence under state law or other

nonbankruptcy law by paying their landlord the entire amount they owe and that they have paid their landlord the entire amount owed as stated in the judgment for possession or in the eviction judgment.

“Missing” Forms Modernization Project (FMP) Forms for Individuals

Nine FMP Official Bankruptcy Forms are not included in this proposed publication package because they were already published for public comment in 2012–13 under the current two-digit forms numbering scheme. The forms will be updated with their projected three-digit number designations listed below when this publication package is approved for implementation.

Projected three digit form number	Form Title	Form number as published for comment in 2012
103A	Application for Individuals to Pay the Filing Fee in Installments	3A
103B	Application to Have the Chapter 7 Filing Fee Waived	3B
106G	Schedule G: Your Income	6I
106H	Schedule H: Your Expenses	6J
108-1	Chapter 7 Statement of Your Current Monthly Income and Means-Test Calculation	22A-1
108-2	Chapter 7 Means Test Calculation	22A-2
109	Chapter 11 Statement of Your Current Monthly Income	22B
110-2	Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period	22C-1
110-2	Chapter 13 Calculation of Your Disposable Income	22C-2

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**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(If known)

Check if this is an amended filing

**Official Form 104**

**For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders**

12/14

If you are an individual filing for bankruptcy under Chapter 11, you must fill out this form. If you are filing under Chapter 7, Chapter 12, or Chapter 13, do not fill out this form. Do not include claims by anyone who is an *insider*. Insiders include your relatives; any general partners; relatives of any general partners; corporations of which you are an officer, director, person in control, or owner of 20 percent or more of their voting securities; and any managing agent. 11 U.S.C. § 101. Also, do not include claims by secured creditors unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information.

**Part 1:** List the 20 Unsecured Claims in Order from Largest to Smallest. Do Not Include Claims by Insiders.

		Unsecured claim
<b>1</b>	<p><b>What is the nature of the claim?</b> _____ \$ _____</p> <p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p>Contact _____</p> <p>Contact phone _____</p>	<p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a lien on your property?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____</p> <p>Value of security: - \$ _____</p> <p>Unsecured claim \$ _____</p>
<b>2</b>	<p><b>What is the nature of the claim?</b> _____ \$ _____</p> <p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p>Contact _____</p> <p>Contact phone _____</p>	<p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a lien on your property?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____</p> <p>Value of security: - \$ _____</p> <p>Unsecured claim \$ _____</p>

Unsecured claim

3

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?
Value of security:
Unsecured claim

4

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?
Value of security:
Unsecured claim

5

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?
Value of security:
Unsecured claim

6

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?
Value of security:
Unsecured claim

7

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?
Value of security:
Unsecured claim

Unsecured claim

8

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?

9

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?

10

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?

11

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?

12

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?

Unsecured claim

**13** \_\_\_\_\_ **What is the nature of the claim?** \_\_\_\_\_ \$ \_\_\_\_\_

Creditor's Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Contact \_\_\_\_\_

Contact phone \_\_\_\_\_

**As of the date you file, the claim is:** Check all that apply.

Contingent

Unliquidated

Disputed

None of the above apply

**Does the creditor have a lien on your property?**

No

Yes. Total claim (secured and unsecured): \$ \_\_\_\_\_

Value of security: - \$ \_\_\_\_\_

Unsecured claim \$ \_\_\_\_\_

**14** \_\_\_\_\_ **What is the nature of the claim?** \_\_\_\_\_ \$ \_\_\_\_\_

Creditor's Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Contact \_\_\_\_\_

Contact phone \_\_\_\_\_

**As of the date you file, the claim is:** Check all that apply.

Contingent

Unliquidated

Disputed

None of the above apply

**Does the creditor have a lien on your property?**

No

Yes. Total claim (secured and unsecured): \$ \_\_\_\_\_

Value of security: - \$ \_\_\_\_\_

Unsecured claim \$ \_\_\_\_\_

**15** \_\_\_\_\_ **What is the nature of the claim?** \_\_\_\_\_ \$ \_\_\_\_\_

Creditor's Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Contact \_\_\_\_\_

Contact phone \_\_\_\_\_

**As of the date you file, the claim is:** Check all that apply.

Contingent

Unliquidated

Disputed

None of the above apply

**Does the creditor have a lien on your property?**

No

Yes. Total claim (secured and unsecured): \$ \_\_\_\_\_

Value of security: - \$ \_\_\_\_\_

Unsecured claim \$ \_\_\_\_\_

**16** \_\_\_\_\_ **What is the nature of the claim?** \_\_\_\_\_ \$ \_\_\_\_\_

Creditor's Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Contact \_\_\_\_\_

Contact phone \_\_\_\_\_

**As of the date you file, the claim is:** Check all that apply.

Contingent

Unliquidated

Disputed

None of the above apply

**Does the creditor have a lien on your property?**

No

Yes. Total claim (secured and unsecured): \$ \_\_\_\_\_

Value of security: - \$ \_\_\_\_\_

Unsecured claim \$ \_\_\_\_\_

**17** \_\_\_\_\_ **What is the nature of the claim?** \_\_\_\_\_ \$ \_\_\_\_\_

Creditor's Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Contact \_\_\_\_\_

Contact phone \_\_\_\_\_

**As of the date you file, the claim is:** Check all that apply.

Contingent

Unliquidated

Disputed

None of the above apply

**Does the creditor have a lien on your property?**

No

Yes. Total claim (secured and unsecured): \$ \_\_\_\_\_

Value of security: - \$ \_\_\_\_\_

Unsecured claim \$ \_\_\_\_\_



Unsecured claim

18

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?
Value of security:
Unsecured claim

19

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?
Value of security:
Unsecured claim

20

Creditor's Name
Number Street
City State ZIP Code
Contact
Contact phone

What is the nature of the claim?
As of the date you file, the claim is: Check all that apply.
Does the creditor have a lien on your property?
Value of security:
Unsecured claim

Part 2: Sign Here

Under penalty of perjury, I declare that the information provided in this form is true and correct.

X Signature of Debtor 1

X Signature of Debtor 2

Date MM / DD / YYYY

Date MM / DD / YYYY

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## COMMITTEE NOTE

Official Form 104, *For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders*, is revised as part of the Forms Modernization Project. It replaces Official Form 4, *List of Creditors Holding 20 Largest Unsecured Claims* in chapter 11 cases filed by individuals or joint debtors. The form is renumbered to distinguish it from the version to be used in chapter 11 cases filed by non-individuals, such as corporations and partnerships, and in chapter 9 cases.

Form 104 is reformatted to make it easier to complete and understand and to be more visually appealing. Blanks and checkboxes are provided for specific information about each claim, replacing columns for listing information. A separate, numbered section is provided for each of the 20 claims.

The instruction not to include fully secured claims is restated in less technical terms. Debtors are instructed to include a secured creditor only if the creditor has an unsecured claim resulting from inadequate collateral value that is among the 20 largest unsecured claims. Blanks are provided to calculate the value of the unsecured portion of a partially secured claim.

Examples of “insiders” are provided in addition to the statutory reference. The form adds an explicit instruction not to file the form in a chapter 7, chapter 12, or chapter 13 case. An instruction to be as complete and accurate as possible is added, along with a warning that, if two married people are filing jointly, both are equally responsible for supplying correct information.

With respect to children who may be creditors, the direction to state only the initials of a minor child and the name and address of the child's parent or guardian, rather than the child's full name, is moved to the general instruction booklet for the forms because it applies to all of the forms.

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**Fill in this information to identify the case:**

United States Bankruptcy Court for the:  
 \_\_\_\_\_ District of \_\_\_\_\_  
 (State)  
 Case number (if known): \_\_\_\_\_ Chapter \_\_\_\_\_

Check if this is an amended filing

**Official Form 105**

**Involuntary Petition Against an Individual**

12/14

Use this form to begin a bankruptcy case against an individual you allege to be a debtor subject to an involuntary case. If you want to begin a case against a non-individual, use the *Involuntary Petition Against a Non-individual* (Official Form 205). Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write name and case number (if known).

**Part 1: Identify the Chapter of the Bankruptcy Code Under Which Petition Is Filed**

- 1. Chapter of the Bankruptcy Code** *Check one:*
- Chapter 7
- Chapter 11

**Part 2: Identify the Debtor**

**2. Debtor's full name**

\_\_\_\_\_ First name

\_\_\_\_\_ Middle name

\_\_\_\_\_ Last name

\_\_\_\_\_ Suffix (Sr., Jr., II, III)

**3. Other names you know the debtor has used in the last 8 years**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Include any assumed, married, maiden, or trade names, or *doing business as* names.

**4. Only the last 4 digits of debtor's Social Security Number or federal Individual Taxpayer Identification Number (ITIN)**

Unknown

XXX - XX - \_\_\_\_\_ OR 9 XX - XX - \_\_\_\_\_

**5. Any Employer Identification Numbers (EINs) used in the last 8 years**

Unknown

\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ EIN

\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ EIN

6. Debtor's address

Principal residence

Number \_\_\_\_\_ Street \_\_\_\_\_

\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

County \_\_\_\_\_

Mailing address, if different from residence

Number \_\_\_\_\_ Street \_\_\_\_\_

\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Principal place of business

Number \_\_\_\_\_ Street \_\_\_\_\_

\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

County \_\_\_\_\_

7. Type of business

Debtor does not operate a business

Check one if the debtor operates a 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

8. Type of debt

Each petitioner believes:

- Debts are 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."
- Debts are primarily business debts.** Business debts are debts that were incurred to obtain money for a business or investment or through the operation of the business or investment.

9. Do you know of any bankruptcy cases pending by or against any partner, spouse, or affiliate of this debtor?

- No
- Yes. Debtor \_\_\_\_\_ Relationship \_\_\_\_\_  
District \_\_\_\_\_ Date filed \_\_\_\_\_ Case number, if known \_\_\_\_\_  
MM / DD / YYYY
- Debtor \_\_\_\_\_ Relationship \_\_\_\_\_  
District \_\_\_\_\_ Date filed \_\_\_\_\_ Case number, if known \_\_\_\_\_  
MM / DD / YYYY

**Part 3: Report About the Case**

**10. Venue**

*Check one:*

Reason for filing in this court.

- Over the last 180 days before the filing of this bankruptcy, the debtor has resided, had the principal place of business, or had principal assets in this district longer than in any other district.
- A bankruptcy case concerning debtor's affiliates, general partner, or partnership is pending in this district.
- Other reason. Explain. (See 28 U.S.C. § 1408.) \_\_\_\_\_

**11. Allegations**

Each petitioner is eligible to file this petition under 11 U.S.C. § 303(b).

The debtor may be the subject of an involuntary case under 11 U.S.C. § 303(a).

*At least one box must be checked.*

- The debtor is generally not paying such debts as they become due, unless they are the subject of a bona fide dispute as to liability or amount.
- Within 120 days before the filing of this petition, a custodian, other than a trustee receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

**12. Has there been a transfer of any claim against the debtor by or to any petitioner?**

- No
- Yes. Attach all documents that evidence the transfer and any statements required under Bankruptcy Rule 1003(a).

**13. Each petitioner's claim**

Name of petitioner	Nature of petitioner's claim	Amount of the claim above the value of any lien
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
<b>Total</b>		\$ _____

**If more than 3 petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's (or representative's) signature under the statement, along with the signature of the petitioner's attorney, and the information on the petitioning creditor, the petitioner's claim, the petitioner's representative, and the attorney following the format on this form.**

**Part 4:** Request for Relief

Petitioners request that an order for relief be entered against the debtor under the chapter specified in Part 1 of this petition. If a petitioning creditor is a corporation, attach the corporate ownership statement required by Bankruptcy Rule 1010(b). If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.

Petitioners declare under penalty of perjury that the information provided in this petition is true and correct to the best of their knowledge, information, and belief. Petitioners understand that if they make a false statement, they could be fined up to \$250,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571. If relief is not ordered, the court may award attorneys' fees, costs, damages, and punitive damages. 11 U.S.C. § 303(i).

**Petitioners or Petitioners' Representative**

**X**

\_\_\_\_\_  
Signature of petitioner or representative, including representative's title

\_\_\_\_\_  
Printed name of petitioner

Date signed \_\_\_\_\_  
MM / DD / YYYY

**Mailing address of petitioner**

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**If petitioner is an individual and is not represented by an attorney:**

Contact phone \_\_\_\_\_

Email \_\_\_\_\_

**Name and mailing address of petitioner's representative, if any**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**Attorneys**

**X**

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Firm name, if any

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

Date signed \_\_\_\_\_  
MM / DD / YYYY

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



**X**

\_\_\_\_\_  
Signature of petitioner or representative, including representative's title

\_\_\_\_\_  
Printed name of petitioner

Date signed \_\_\_\_\_  
MM / DD / YYYY

**Mailing address of petitioner**

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**Name and mailing address of petitioner's representative, if any**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**X**

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Firm name, if any

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

Date signed \_\_\_\_\_  
MM / DD / YYYY

Contact phone \_\_\_\_\_ Email \_\_\_\_\_

**X**

\_\_\_\_\_  
Signature of petitioner or representative, including representative's title

\_\_\_\_\_  
Printed name of petitioner

Date signed \_\_\_\_\_  
MM / DD / YYYY

**Mailing address of petitioner**

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**Name and mailing address of petitioner's representative, if any**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**X**

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Firm name, if any

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

Date signed \_\_\_\_\_  
MM / DD / YYYY

Contact phone \_\_\_\_\_ Email \_\_\_\_\_

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## COMMITTEE NOTE

Official Form 105, *Involuntary Petition Against an Individual*, which is used only in cases of individual debtors, is revised in its entirety as part of the Forms Modernization Project, making it easier to read and, as a result, likely to generate more complete and accurate responses. In addition, the form is renumbered to distinguish it from the version to be used in non-individual cases, and stylistic changes were made throughout the form.

The form is derived from Official Form 5, *Involuntary Petition*. The new form separates questions into four parts likely to be more familiar to non-lawyers, groups questions of a similar nature together, and eliminates questions unrelated to individual debtors.

Part 1, *Identify the Chapter of the Bankruptcy Code Under Which Petition is Filed*, moves to the beginning of the form the question regarding the chapter of the Bankruptcy Code under which the petition is filed.

Part 2, *Identify the Debtor*, includes the questions regarding the debtor's name, prior names, Social Security Number, Individual Taxpayer Identification Number and Employer Identification Number. Petitioners must list the address for the debtor's principal residence, mailing address (if different), and principal place of business. Petitioners must indicate whether the debtor operates a business, and, if so, use checkboxes to indicate whether the business falls into certain categories. The statutory definition of "consumer debts" is provided, as well as a definition of "business debts."

Part 3, *Report About the Case*, amends the question regarding venue to advise that venue is "the reason to file in this court" and amends the choices for venue. The first option is revised to read: "Over the last 180 days before the filing of this bankruptcy, the debtor has resided, had the principal place of business, or had principal assets in this district longer than any other district." Also, the form adds an option for "Other reason."

Explain,” with a statutory reference. The filing fee amounts are provided. In the question for Allegations, the exact citation to the Bankruptcy Code is provided for the second allegation, and checkboxes are provided for the last allegation. Petitioners must check “yes” or “no” to answer whether there has been any transfer of any claim against the debtor by or to a petitioner. The information regarding the petitioner’s claims is moved to this part of the form, and the portion listing the amount of the claim is amended to ask about the amount of the claim that exceeds the value of the lien, if any.

Part 4, *Request for Relief*, amends the instructions to include a warning about making a false statement, and adds a separate requirement for each petitioner’s mailing address. Also, petitioners’ attorneys must provide their email addresses, or if a petitioner is an individual and not represented by an attorney, the contact phone and email address of that petitioner must be provided.

**Fill in this information to identify your case and this filing:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_

Check if this is an amended filing

**Official Form 106A**  
**Schedule A: Property**

12/14

In each category, separately list and describe items worth more than \$500. List an asset only once. If an asset fits in more than one category, list the asset in the category where you think it fits best. 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: Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest In**

**1. Do you own or have any legal or equitable interest in any residence, building, land, or similar property?**

- No
- Yes. Where is the property?

1.1. \_\_\_\_\_  
Street address, if available, or other description

\_\_\_\_\_

\_\_\_\_\_

City State ZIP Code

\_\_\_\_\_

County

**What is the property?** Check all that apply.

- Single-family home
- Duplex or multi-unit building
- Condominium or cooperative
- Manufactured or mobile home
- Land
- Investment property
- Timeshare
- Other \_\_\_\_\_

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

<b>Current value of the entire property?</b>	<b>Current value of the portion you own?</b>
\$ _____	\$ _____

**Who is an owner of the property?** Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

**Check if this is community property** (see instructions)

**Other information you wish to add about this item, such as local property identification number:** \_\_\_\_\_

If you own or have more than one, list here:

1.2. \_\_\_\_\_  
Street address, if available, or other description

\_\_\_\_\_

\_\_\_\_\_

City State ZIP Code

\_\_\_\_\_

County

**What is the property?** Check all that apply.

- Single-family home
- Duplex or multi-unit building
- Condominium or cooperative
- Manufactured or mobile home
- Land
- Investment property
- Timeshare
- Other \_\_\_\_\_

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

<b>Current value of the entire property?</b>	<b>Current value of the portion you own?</b>
\$ _____	\$ _____

**Who is an owner of the property?** Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

**Check if this is community property** (see instructions)

**Other information you wish to add about this item, such as local property identification number:** \_\_\_\_\_

1.3. \_\_\_\_\_  
 Street address, if available, or other description  
 \_\_\_\_\_  
 \_\_\_\_\_  
 City State ZIP Code  
 \_\_\_\_\_  
 County

**What is the property?** Check all that apply.

- Single-family home
- Duplex or multi-unit building
- Condominium or cooperative
- Manufactured or mobile home
- Land
- Investment property
- Timeshare
- Other \_\_\_\_\_

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

**Current value of the entire property?**      **Current value of the portion you own?**

\$ \_\_\_\_\_ \$ \_\_\_\_\_

**Who is an owner of the property?** Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

**Check if this is community property**  
 (see instructions)

**Other information you wish to add about this item, such as local property identification number:** \_\_\_\_\_

2. Add the dollar value of the portion you own for all of your entries from Part 1, including any entries for pages you have attached for Part 1. Write that number here. ....>

\$ \_\_\_\_\_

**Part 2: Describe Your Vehicles**

**Do you own or have legal or equitable interest in any vehicles, whether they are registered or not?** Include any vehicles you own that someone else drives. Do not report leased vehicles here. If you lease a vehicle, fill out *Schedule G: Executory Contracts and Unexpired Leases*.

**3. Cars, vans, trucks, tractors, sport utility vehicles, motorcycles**

- No
- Yes

3.1. Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Year: \_\_\_\_\_  
 Mileage:  0-24,999  
 25,000-49,999  
 50,000-74,999  
 75,000 or more

**Who is an owner of the property?** Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

**Current value of the entire property?**      **Current value of the portion you own?**

\$ \_\_\_\_\_ \$ \_\_\_\_\_

**Check if this is community property**  
 (see instructions)

Other information:  
 \_\_\_\_\_

If you own or have more than one, describe here:

3.2. Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Year: \_\_\_\_\_  
 Mileage:  0-24,999  
 25,000-49,999  
 50,000-74,999  
 75,000 or more

**Who is an owner of the property?** Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

**Current value of the entire property?**      **Current value of the portion you own?**

\$ \_\_\_\_\_ \$ \_\_\_\_\_

**Check if this is community property**  
 (see instructions)

Other information:  
 \_\_\_\_\_

3.3. Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Year: \_\_\_\_\_  
 Mileage:  0-24,999  
 25,000-49,999  
 50,000-74,999  
 75,000 or more

Other information:

[Empty box for other information]

Who is an owner of the property? Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Check if this is community property (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on Schedule B: Creditors Who Hold Claims Secured by Property.

**Current value of the entire property?**      **Current value of the portion you own?**

\$ \_\_\_\_\_ \$ \_\_\_\_\_

3.4. Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Year: \_\_\_\_\_  
 Mileage:  0-24,999  
 25,000-49,999  
 50,000-74,999  
 75,000 or more

Other information:

[Empty box for other information]

Who is an owner of the property? Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Check if this is community property (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on Schedule B: Creditors Who Hold Claims Secured by Property.

**Current value of the entire property?**      **Current value of the portion you own?**

\$ \_\_\_\_\_ \$ \_\_\_\_\_

4. Watercraft, aircraft, motor homes, ATVs and other recreational vehicles, other vehicles, and accessories

Examples: Boats, trailers, motors, personal watercraft, fishing vessels, snow mobiles, motorcycles, accessories

- No
- Yes

4.1. Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Year: \_\_\_\_\_

Other information:

[Empty box for other information]

Who is an owner of the property? Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Check if this is community property (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on Schedule B: Creditors Who Hold Claims Secured by Property.

**Current value of the entire property?**      **Current value of the portion you own?**

\$ \_\_\_\_\_ \$ \_\_\_\_\_

If you own or have more than one, list here:

4.2. Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Year: \_\_\_\_\_

Other information:

[Empty box for other information]

Who is an owner of the property? Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Check if this is community property (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on Schedule B: Creditors Who Hold Claims Secured by Property.

**Current value of the entire property?**      **Current value of the portion you own?**

\$ \_\_\_\_\_ \$ \_\_\_\_\_

5. Add the dollar value of the portion you own for all of your entries from Part 2, including any entries for pages you have attached for Part 2. Write that number here



\$ \_\_\_\_\_

**Part 3:** Describe Your Personal and Household Items

**Do you own or have any legal or equitable interest in any of the following items?** **Current value of the portion you own?**  
Do not deduct secured claims or exemptions.

**6. Household goods and furnishings**

Examples: Major appliances, furniture, linens, china, kitchenware

No  
 Yes. Describe.....  \$ \_\_\_\_\_

**7. Electronics**

Examples: Televisions and radios; audio, video, stereo, and digital equipment; computers, printers, scanners; music collections; electronic devices including cell phones, cameras, media players, games

No  
 Yes. Describe.....  \$ \_\_\_\_\_

**8. Collectibles of value**

Examples: Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; stamp, coin, or baseball card collections; other collections, memorabilia, collectibles

No  
 Yes. Describe.....  \$ \_\_\_\_\_

**9. Equipment for sports and hobbies**

Examples: Sports, photographic, exercise, and other hobby equipment; bicycles, pool tables, golf clubs, skis; canoes and kayaks; carpentry tools; musical instruments

No  
 Yes. Describe.....  \$ \_\_\_\_\_

**10. Firearms**

Examples: Pistols, rifles, shot guns, ammunition, and related equipment

No  
 Yes. Describe.....  \$ \_\_\_\_\_

**11. Clothes**

Examples: Everyday clothes, furs, leather coats, designer wear, shoes, accessories

No  
 Yes. Describe.....  \$ \_\_\_\_\_

**12. Jewelry**

Examples: Everyday jewelry, costume jewelry, engagement rings, wedding rings, heirloom jewelry, watches, gems, gold, silver

No  
 Yes. Describe.....  \$ \_\_\_\_\_

**13. Non-farm animals**

Examples: Dogs, cats, birds, horses

No  
 Yes. Describe.....  \$ \_\_\_\_\_

**14. Any other personal and household items you did not already list, including any health aids you did not list**

No  
 Yes. Give specific information.....  \$ \_\_\_\_\_

**15. Add the dollar value of all of your entries from Part 3, including any entries for pages you have attached for Part 3. Write that number here** ..... **→**



Part 4: Describe Your Financial Assets

Do you own or have any legal or equitable interest in any of the following?

Current value of the portion you own? Do not deduct secured claims or exemptions.

16. Cash

Examples: Money you have in your wallet, in your home, in a safe deposit box, and on hand when you file your petition

No

Yes Cash: \$

17. Deposits of money

Examples: Checking, savings, or other financial accounts; certificates of deposit; shares in credit unions, brokerage houses, and other similar institutions. If you have multiple accounts with the same institution, list each.

No

Yes Institution name:

- 17.1. Checking account: \$
17.2. Checking account: \$
17.3. Savings account: \$
17.4. Savings account: \$
17.5. Certificates of deposit: \$
17.6. Other financial account: \$
17.7. Other financial account: \$
17.8. Other financial account: \$
17.9. Other financial account: \$

18. Bonds, mutual funds, or publicly traded stocks

Examples: Bond funds, investment accounts with brokerage firms, money market accounts

No

Yes Institution name: \$

19. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture

No

Yes. Give specific information about them Name of entity: % of ownership: \$

20. Government and corporate bonds and other negotiable and non-negotiable instruments

Negotiable instruments include personal checks, cashiers' checks, promissory notes, and money orders. Non-negotiable instruments are those you cannot transfer to someone by signing or delivering them.

Form for section 20 with checkboxes for 'No' and 'Yes. Give specific information about them...' and lines for issuer name and dollar amounts.

21. Retirement or pension accounts

Examples: Interests in IRA, ERISA, Keogh, 401(k), 403(b), thrift savings accounts, or other pension or profit-sharing plans

Form for section 21 with checkboxes for 'No' and 'Yes. List each account separately.' and lines for account types and dollar amounts.

22. Security deposits and pre-payments

Your share of all unused deposits you have made so that you may continue service or use from a company. Examples: Agreements with landlords, prepaid rent, public utilities (electric, gas, water), telecommunications companies, or others

Form for section 22 with checkboxes for 'No' and 'Yes...' and lines for institution name and various categories like Electric, Gas, Heating oil, etc.

23. Annuities (A contract for a periodic payment of money to you, either for life or for a number of years)

Form for section 23 with checkboxes for 'No' and 'Yes...' and lines for issuer name and description and dollar amounts.

24. **Interests in an education IRA** as defined in 26 U.S.C. § 530(b)(1) or under a qualified state tuition plan as defined in 26 U.S.C. § 529(b)(1).

No

Yes ..... Institution name and description. Separately file the records of any interests. 11 U.S.C. § 521(c):

\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_

25. **Trusts, equitable or future interests in property (other than anything listed in line 1), and rights or powers exercisable for your benefit**

No

Yes. Give specific information about them....

\_\_\_\_\_ \$ \_\_\_\_\_

26. **Patents, copyrights, trademarks, trade secrets, and other intellectual property**

*Examples:* Internet domain names, websites, proceeds from royalties and licensing agreements

No

Yes. Give specific information about them....

\_\_\_\_\_ \$ \_\_\_\_\_

27. **Licenses, franchises, and other general intangibles**

*Examples:* Building permits, exclusive licenses, cooperative association holdings, liquor licenses, professional licenses

No

Yes. Give specific information about them....

\_\_\_\_\_ \$ \_\_\_\_\_

**Money or property owed to you?**

**Current value of the portion you own?**  
Do not deduct secured claims or exemptions.

28. **Tax refunds owed to you**

No

Yes. Give specific information about them, including whether you already filed the returns and the tax years. ....

\_\_\_\_\_

Federal: \$ \_\_\_\_\_  
State: \$ \_\_\_\_\_  
Local: \$ \_\_\_\_\_

29. **Family support**

*Examples:* Past due or lump sum alimony, spousal support, child support, maintenance, divorce settlement, property settlement

No

Yes. Give specific information.....

\_\_\_\_\_

Alimony: \$ \_\_\_\_\_  
Maintenance: \$ \_\_\_\_\_  
Support: \$ \_\_\_\_\_  
Divorce settlement: \$ \_\_\_\_\_  
Property settlement: \$ \_\_\_\_\_

30. **Other amounts someone owes you**

*Examples:* Unpaid wages, disability insurance payments, disability benefits, sick pay, vacation pay, workers' compensation, Social Security benefits; unpaid loans you made to someone else

No

Yes. Give specific information.....

\_\_\_\_\_ \$ \_\_\_\_\_

31. Interests in insurance policies

Examples: Health, disability, or life insurance; health savings account (HSA); credit, homeowner's, or renter's insurance

No

Yes. Name the insurance company of each policy and list its value. ... Company name: Beneficiary: Surrender or refund value: \$

32. Any interest in property that is due you from someone who has died

If you are the beneficiary of a living trust, expect proceeds from a life insurance policy, have inherited something from an existing estate

No

Yes. Give specific information..... \$

33. Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment

Examples: Accidents, employment disputes, insurance claims, or rights to sue

No

Yes. Describe each claim. .... \$

34. Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims

No

Yes. Describe each claim. .... \$

35. Any financial assets you did not already list

No

Yes. Give specific information..... \$

36. Add the dollar value of all of your entries from Part 4, including any entries for pages you have attached for Part 4. Write that number here



\$

Part 5: Describe Any Business-Related Property You Own or Have an Interest In. List any real estate in Part 1.

37. Do you own or have any legal or equitable interest in any business-related property?

- No. Go to Part 6.
Yes. Go to line 38.

Current value of the portion you own? Do not deduct secured claims or exemptions.

38. Accounts receivable or commissions you already earned

No

Yes. Describe..... \$

39. Office equipment, furnishings, and supplies

Examples: Business-related computers, software, modems, printers, copiers, fax machines, rugs, telephones, desks, chairs, electronic devices

No

Yes. Describe..... \$

40. Machinery, fixtures, equipment, supplies you use in business, and tools of your trade

No
Yes. Describe..... \$

41. Inventory

No
Yes. Describe..... \$

42. Interests in partnerships or joint ventures

No
Yes. Describe..... Name of entity: % of ownership: \$

43. Customer lists, mailing lists, or other compilations

No
Yes. Do your lists include personally identifiable information (as defined in 11 U.S.C. § 101(41A))?
No
Yes. Describe..... \$

44. Any business-related property you did not already list

No
Yes. Give specific information ..... \$

45. Add the dollar value of all of your entries from Part 5, including any entries for pages you have attached for Part 5. Write that number here

\$

Part 6: Describe Any Farm- and Commercial Fishing-Related Property You Own or Have an Interest In. If you own or have an interest in farmland, fill out question 1.

46. Do you own or have any legal or equitable interest in any farm- or commercial fishing-related property?

No. Go to Part 7.
Yes. Go to line 47.

Current value of the portion you own? Do not deduct secured claims or exemptions.

47. Farm animals

Examples: Livestock, poultry, farm-raised fish

No
Yes..... \$

48. Crops—either growing or harvested

No Yes. Give specific information. \$

49. Farm and fishing equipment and implements

No Yes \$

50. Farm and fishing supplies, chemicals, and feed

No Yes \$

51. Any farm- and commercial fishing-related property you did not already list

No Yes. Give specific information. \$

52. Add the dollar value of all of your entries from Part 6, including any entries for pages you have attached for Part 6. Write that number here \$

Part 7: Describe All Property You Own or Have an Interest in That You Did Not List Above

53. Do you have other property of any kind you did not already list?

Examples: Season tickets, country club membership

No Yes. Give specific information. \$ \$ \$

54. Add the dollar value of all of your entries from Part 7. Write that number here \$

Part 8: List the Totals of Each Part of this Form

55. Part 1: Total real estate, line 2 \$

56. Part 2: Total vehicles, line 5 \$

57. Part 3: Total personal and household items, line 15 \$

58. Part 4: Total financial assets, line 36 \$

59. Part 5: Total business-related property, line 45 \$

60. Part 6: Total farm- and fishing-related property, line 52 \$

61. Part 7: Total other property not listed, line 54 + \$

62. Total personal property. Add lines 56 through 61. \$ Copy personal property total + \$

63. Total of all property on Schedule A. Add line 55 + line 62. \$

Fill in this information to identify your case:

Debtor 1 First Name Middle Name Last Name
Debtor 2 (Spouse, if filing) First Name Middle Name Last Name
United States Bankruptcy Court for the: District of (State)
Case number (If known)

Check if this is an amended filing

Official Form 106B

Schedule B: Creditors Who Hold Claims Secured by Property

12/14

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, copy the Additional Page, fill it out, number the entries, and attach it to this form. On the top of any additional pages, write your name and case number (if known).

1. Do any creditors hold claims secured by your property?

- No. Check this box and submit this form to the court with your other schedules. You have nothing else to report on this form.
Yes. Fill in all of the information below.

Part 1: List Your Secured Claims

2. List all of your secured claims in the alphabetical order of the major creditor who holds each claim. If a creditor has more than one secured claim, list the creditor separately for each claim. If more than one creditor holds a particular claim, list the other creditors in Part 2.

Table with 3 columns: Column A Amount of claim, Column B Value of collateral that supports this claim, Column C Unsecured portion If any

1

Creditor's Name
Number Street
City State ZIP Code

Describe the property that is collateral: \$ \$ \$

As of the date you file, the claim is: Check all that apply.

- Contingent
Unliquidated
Disputed
None of the above apply

Nature of lien. Check all that apply.

- An agreement you made (such as mortgage or secured car loan)
Statutory lien (such as tax lien, mechanic's lien)
Judgment lien from a lawsuit
Other

Who owes the debt? Check one.

- Debtor 1 only
Debtor 2 only
Debtor 1 and Debtor 2 only
At least one of the debtors and another

Check if this is a community claim

Date debt was incurred

Last 4 digits of account number

2

Creditor's Name
Number Street
City State ZIP Code

Describe the property that is collateral: \$ \$ \$

As of the date you file, the claim is: Check all that apply.

- Contingent
Unliquidated
Disputed
None of the above apply

Nature of lien. Check all that apply.

- An agreement you made (such as mortgage or secured car loan)
Statutory lien (such as tax lien, mechanic's lien)
Judgment lien from a lawsuit
Other

Who owes the debt? Check one.

- Debtor 1 only
Debtor 2 only
Debtor 1 and Debtor 2 only
At least one of the debtors and another

Check if this is a community claim

Date debt was incurred

Last 4 digits of account number

Add the dollar value of your entries in column A on this page. Write that number here:

\$

Part 1: Additional Page	Column A Amount of claim Do not deduct the value of collateral.	Column B Value of collateral that supports this claim	Column C Unsecured portion If any
-------------------------	---	--	---

<input type="checkbox"/> <p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>_____</p> <p>City _____ State _____ ZIP Code _____</p> <p><b>Who owes the debt?</b> Check one.</p> <p><input type="checkbox"/> Debtor 1 only</p> <p><input type="checkbox"/> Debtor 2 only</p> <p><input type="checkbox"/> Debtor 1 and Debtor 2 only</p> <p><input type="checkbox"/> At least one of the debtors and another</p> <p><input type="checkbox"/> <b>Check if this is a community claim</b></p> <p>Date debt was incurred _____</p>	<p><b>Describe the property that is collateral:</b> _____ \$ _____ \$ _____ \$ _____</p> <div style="border: 1px solid black; height: 40px; margin: 5px 0;"></div> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Nature of lien.</b> Check all that apply.</p> <p><input type="checkbox"/> An agreement you made (such as mortgage or secured car loan)</p> <p><input type="checkbox"/> Statutory lien (such as tax lien, mechanic's lien)</p> <p><input type="checkbox"/> Judgment lien from a lawsuit</p> <p><input type="checkbox"/> Other _____</p> <p>Last 4 digits of account number _____</p>	
---	--	--

<input type="checkbox"/> <p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>_____</p> <p>City _____ State _____ ZIP Code _____</p> <p><b>Who owes the debt?</b> Check one.</p> <p><input type="checkbox"/> Debtor 1 only</p> <p><input type="checkbox"/> Debtor 2 only</p> <p><input type="checkbox"/> Debtor 1 and Debtor 2 only</p> <p><input type="checkbox"/> At least one of the debtors and another</p> <p><input type="checkbox"/> <b>Check if this is a community claim</b></p> <p>Date debt was incurred _____</p>	<p><b>Describe the property that is collateral:</b> _____ \$ _____ \$ _____ \$ _____</p> <div style="border: 1px solid black; height: 40px; margin: 5px 0;"></div> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Nature of lien.</b> Check all that apply.</p> <p><input type="checkbox"/> An agreement you made (such as mortgage or secured car loan)</p> <p><input type="checkbox"/> Statutory lien (such as tax lien, mechanic's lien)</p> <p><input type="checkbox"/> Judgment lien from a lawsuit</p> <p><input type="checkbox"/> Other _____</p> <p>Last 4 digits of account number _____</p>	
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<input type="checkbox"/> <p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>_____</p> <p>City _____ State _____ ZIP Code _____</p> <p><b>Who owes the debt?</b> Check one.</p> <p><input type="checkbox"/> Debtor 1 only</p> <p><input type="checkbox"/> Debtor 2 only</p> <p><input type="checkbox"/> Debtor 1 and Debtor 2 only</p> <p><input type="checkbox"/> At least one of the debtors and another</p> <p><input type="checkbox"/> <b>Check if this is a community claim</b></p> <p>Date debt was incurred _____</p>	<p><b>Describe the property that is collateral:</b> _____ \$ _____ \$ _____ \$ _____</p> <div style="border: 1px solid black; height: 40px; margin: 5px 0;"></div> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Nature of lien.</b> Check all that apply.</p> <p><input type="checkbox"/> An agreement you made (such as mortgage or secured car loan)</p> <p><input type="checkbox"/> Statutory lien (such as tax lien, mechanic's lien)</p> <p><input type="checkbox"/> Judgment lien from a lawsuit</p> <p><input type="checkbox"/> Other _____</p> <p>Last 4 digits of account number _____</p>	
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<p><b>Add the dollar value of your entries in column A on this page. Write that number here:</b></p>	<p>\$ _____</p>
<p><b>If this is the last page of your form, add the dollar value totals from all pages. Write that number here:</b></p>	<p>\$ _____</p>



**Part 2:** List Others to Be Notified for a Debt That You Already Listed

Use this page only if you have others to be notified about your bankruptcy for a debt that you already listed in Part 1. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the creditor in Part 1, and then list the collection agency here. Similarly, if you have more than one creditor for any of the debts that you listed in Part 1, list the additional creditors here. If you do not have additional persons to be notified for any debts in Part 1, do not fill out or submit this page.

<input type="checkbox"/>	Name _____ Number Street _____ City State ZIP Code _____	On which line in Part 1 did you enter the creditor? _____ Last 4 digits of account number _____
<input type="checkbox"/>	Name _____ Number Street _____ City State ZIP Code _____	On which line in Part 1 did you enter the creditor? _____ Last 4 digits of account number _____
<input type="checkbox"/>	Name _____ Number Street _____ City State ZIP Code _____	On which line in Part 1 did you enter the creditor? _____ Last 4 digits of account number _____
<input type="checkbox"/>	Name _____ Number Street _____ City State ZIP Code _____	On which line in Part 1 did you enter the creditor? _____ Last 4 digits of account number _____
<input type="checkbox"/>	Name _____ Number Street _____ City State ZIP Code _____	On which line in Part 1 did you enter the creditor? _____ Last 4 digits of account number _____
<input type="checkbox"/>	Name _____ Number Street _____ City State ZIP Code _____	On which line in Part 1 did you enter the creditor? _____ Last 4 digits of account number _____

**THIS PAGE INTENTIONALLY BLANK**

Fill in this information to identify your case:

Debtor 1 First Name Middle Name Last Name
Debtor 2 (Spouse, if filing) First Name Middle Name Last Name
United States Bankruptcy Court for the: District of (State)
Case number (If known)

Check if this is an amended filing

Official Form 106C

Schedule C: Creditors Who Have Unsecured Claims

12/14

Be as complete and accurate as possible. Use Part 1 for creditors with PRIORITY claims and Part 2 for creditors with NONPRIORITY claims. Do not include any creditors with partially secured claims that are listed in Schedule B. If more space is needed, copy the Part you need, fill it out, number the entries in the boxes on the left. Attach the Continuation Page to this page. If you have no information to report in a Part, do not file that Part. On the top of any additional pages, write your name and case number (if known).

Part 1: List All of Your PRIORITY Unsecured Claims

1. Do any creditors have priority unsecured claims against you?

- No. Go to Part 2.
Yes.

2. List all of your priority unsecured claims in the alphabetical order of the creditor who holds each claim. If a creditor has more than one priority unsecured claim, list the creditor separately for each claim. For each claim listed, identify what type of claim it is. If you have more than two priority unsecured claims, fill out the Continuation Page of Part 1. If more than one creditor holds a particular claim, list the other creditors in Part 3. (For an explanation of each type of claim, see the instructions for this form in the instruction booklet.)

2.1

Table with 3 columns: Total claim, Priority amount, Nonpriority amount

Priority Creditor's Name, Last 4 digits of account number, When was the debt incurred?, As of the date you file, the claim is: Check all that apply. (Contingent, Unliquidated, Disputed, None of the above apply), Type of PRIORITY unsecured claim: (Domestic support obligations, Taxes and certain other debts you owe the government, Claims for death or personal injury while you were intoxicated, Other. Specify)

2.2

Priority Creditor's Name, Last 4 digits of account number, When was the debt incurred?, As of the date you file, the claim is: Check all that apply. (Contingent, Unliquidated, Disputed, None of the above apply), Type of PRIORITY unsecured claim: (Domestic support obligations, Taxes and certain other debts you owe the government, Claims for death or personal injury while you were intoxicated, Other. Specify)

Part 1: Your PRIORITY Unsecured Claims – Continuation Page

After listing any entries on this page, number them beginning with 2.3, followed by 2.4, and so forth. Total claim Priority amount Nonpriority amount

Form entry 1: Priority Creditor's Name, Last 4 digits of account number, When was the debt incurred?, As of the date you file, the claim is: Check all that apply. Who incurred the debt? Check one. Type of PRIORITY unsecured claim:

Form entry 2: Priority Creditor's Name, Last 4 digits of account number, When was the debt incurred?, As of the date you file, the claim is: Check all that apply. Who incurred the debt? Check one. Type of PRIORITY unsecured claim:

Form entry 3: Priority Creditor's Name, Last 4 digits of account number, When was the debt incurred?, As of the date you file, the claim is: Check all that apply. Who incurred the debt? Check one. Type of PRIORITY unsecured claim:

Form entry 4: Priority Creditor's Name, Last 4 digits of account number, When was the debt incurred?, As of the date you file, the claim is: Check all that apply. Who incurred the debt? Check one. Type of PRIORITY unsecured claim:

Part 2: List All of Your NONPRIORITY Unsecured Claims

3. Do any creditors have nonpriority unsecured claims against you?

- No. You have nothing to report in this part. Submit this form to the court with your other schedules.
Yes

4. List all of your nonpriority unsecured claims in the alphabetical order of the creditor who holds each claim. If a creditor has more than one priority unsecured claim, list the creditor separately for each claim. For each claim listed, identify what type of claim it is. If you have more than four priority unsecured claims fill out the Continuation Page of Part 2. If more than one creditor holds a particular claim, list the other creditors in Part 3.

Form with 4 sections (4.1-4.4) for listing nonpriority unsecured claims. Each section includes fields for creditor name, address, account number, debt date, and type of claim.

Part 2: Your NONPRIORITY Unsecured Claims – Continuation Page

After listing any entries on this page, number them beginning with 4.5, followed by 4.6, and so forth.

Total claim

Nonpriority Creditor's Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Who incurred the debt?** Check one.

Debtor 1 only

Debtor 2 only

Debtor 1 and Debtor 2 only

At least one of the debtors and another

**Check if this is a community debt**

**Last 4 digits of account number** \_\_\_\_\_

**When was the debt incurred?** \_\_\_\_\_ \$ \_\_\_\_\_

**As of the date you file, the claim is:** Check all that apply.

Contingent

Unliquidated

Disputed

None of the above apply

**Type of NONPRIORITY unsecured claim:**

Student loans

Obligations arising out of a separation agreement or divorce that you did not report as priority claims

Debts to pension or profit-sharing plans, and other similar debts

Other. Specify \_\_\_\_\_

Nonpriority Creditor's Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Who incurred the debt?** Check one.

Debtor 1 only

Debtor 2 only

Debtor 1 and Debtor 2 only

At least one of the debtors and another

**Check if this is a community debt**

**Last 4 digits of account number** \_\_\_\_\_

**When was the debt incurred?** \_\_\_\_\_ \$ \_\_\_\_\_

**As of the date you file, the claim is:** Check all that apply.

Contingent

Unliquidated

Disputed

None of the above apply

**Type of NONPRIORITY unsecured claim:**

Student loans

Obligations arising out of a separation agreement or divorce that you did not report as priority claims

Debts to pension or profit-sharing plans, and other similar debts

Other. Specify \_\_\_\_\_

Nonpriority Creditor's Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Who incurred the debt?** Check one.

Debtor 1 only

Debtor 2 only

Debtor 1 and Debtor 2 only

At least one of the debtors and another

**Check if this is a community debt**

**Last 4 digits of account number** \_\_\_\_\_

**When was the debt incurred?** \_\_\_\_\_ \$ \_\_\_\_\_

**As of the date you file, the claim is:** Check all that apply.

Contingent

Unliquidated

Disputed

None of the above apply

**Type of NONPRIORITY unsecured claim:**

Student loans

Obligations arising out of a separation agreement or divorce that you did not report as priority claims

Debts to pension or profit-sharing plans, and other similar debts

Other. Specify \_\_\_\_\_

Nonpriority Creditor's Name \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Who incurred the debt?** Check one.

Debtor 1 only

Debtor 2 only

Debtor 1 and Debtor 2 only

At least one of the debtors and another

**Check if this is a community debt**

**Last 4 digits of account number** \_\_\_\_\_

**When was the debt incurred?** \_\_\_\_\_ \$ \_\_\_\_\_

**As of the date you file, the claim is:** Check all that apply.

Contingent

Unliquidated

Disputed

None of the above apply

**Type of NONPRIORITY unsecured claim:**

Student loans

Obligations arising out of a separation agreement or divorce that you did not report as priority claims

Debts to pension or profit-sharing plans, and other similar debts

Other. Specify \_\_\_\_\_

Part 3: List Others to Be Notified for a Debt That You Already Listed

5. Use this page only if you have others to be notified about your bankruptcy, for a debt that you already listed in Parts 1 or 2. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the original creditor in Parts 1 or 2, then list the collection agency here. Similarly, if you have more than one creditor for any of the debts that you listed in Parts 1 or 2, list the additional creditors here. If you do not have additional persons to be notified for any debts in Parts 1 or 2, do not fill out or submit this page.

Name
Number Street
City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

- Line \_\_\_ of (Check one): [ ] Part 1: Creditors with Priority Unsecured Claims
[ ] Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number \_ \_ \_ \_

Name
Number Street
City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

- Line \_\_\_ of (Check one): [ ] Part 1: Creditors with Priority Unsecured Claims
[ ] Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number \_ \_ \_ \_

Name
Number Street
City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

- Line \_\_\_ of (Check one): [ ] Part 1: Creditors with Priority Unsecured Claims
[ ] Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number \_ \_ \_ \_

Name
Number Street
City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

- Line \_\_\_ of (Check one): [ ] Part 1: Creditors with Priority Unsecured Claims
[ ] Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number \_ \_ \_ \_

Name
Number Street
City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

- Line \_\_\_ of (Check one): [ ] Part 1: Creditors with Priority Unsecured Claims
[ ] Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number \_ \_ \_ \_

Name
Number Street
City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

- Line \_\_\_ of (Check one): [ ] Part 1: Creditors with Priority Unsecured Claims
[ ] Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number \_ \_ \_ \_

Name
Number Street
City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

- Line \_\_\_ of (Check one): [ ] Part 1: Creditors with Priority Unsecured Claims
[ ] Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number \_ \_ \_ \_

Part 4: Add the Amounts for Each Type of Unsecured Claim

6. Total the amounts of certain types of unsecured claims for statistical reporting purposes. For reporting purposes, add the amounts for each type of unsecured claim.

		<b>Total claim</b>
<b>Total claims from Part 1</b>	6a. Domestic support obligations	6a. \$ _____
	6b. Taxes and certain other debts you owe the government	6b. \$ _____
	6c. Claims for death or personal injury while you were intoxicated	6c. \$ _____
	6d. Other. Add all other priority unsecured claims. Write that amount here.	6d. + \$ _____
	6e. Total. Add lines 6a through 6d.	6e. <div style="border: 1px solid black; padding: 2px;">\$ _____</div>

		<b>Total claim</b>
<b>Total claims from Part 2</b>	6f. Student loans	6f. \$ _____
	6g. Obligations arising out of a separation agreement or divorce that you did not report as priority claims	6g. \$ _____
	6h. Debts to pension or profit-sharing plans, and other similar debts	6h. \$ _____
	6i. Other. Add all other nonpriority unsecured claims. Write that amount here.	6i. + \$ _____
	6j. Total. Add lines 6f through 6i.	6j. <div style="border: 1px solid black; padding: 2px;">\$ _____</div>



**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
 (if known)

Check if this is an amended filing

**Official Form 106D**

**Schedule D: The Property You Claim as Exempt**

12/14

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

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

**Part 1: Identify the Property You Claim as Exempt**

1. Which set of exemptions are you claiming? Check one only, even if your spouse is filing with you.

- You are claiming state and federal non-bankruptcy exemptions. 11 U.S.C. § 522(b)(3)
- You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

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

Brief description of the property and line on <i>Schedule A</i> that lists this property	Current value of the portion you own	Amount of the exemption you claim	Specific laws that allow exemption
	Copy the value from <i>Schedule A</i>	Check only one box for each exemption.	
Brief description: _____ Line from <i>Schedule A</i> : _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from <i>Schedule A</i> : _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from <i>Schedule A</i> : _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____

3. Are you claiming a homestead exemption of more than \$155,675?

(Subject to adjustment on 4/01/16 and every 3 years after that for cases filed on or after the date of adjustment.)

- No
- Yes. Did you acquire the property covered by the exemption within 1,215 days before you filed this case?
  - No
  - Yes

Part 2: Additional Page

Brief description of the property and line on Schedule A that lists this property	Current value of the portion you own	Amount of the exemption you claim	Specific laws that allow exemption
	Copy the value from Schedule A	Check only one box for each exemption	
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____
Brief description: _____ Line from Schedule A: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____ _____ _____

**Fill in this information to identify your case:**

Debtor \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
 (Spouse If filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
 (If known)

Check if this is an amended filing

**Official Form 106E**

**Schedule E: Executory Contracts and Unexpired Leases**

12/14

**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, copy the additional page, fill it out, number the entries, and attach it to this page. On the top of any additional pages, write your name and case number (if known).**

**1. Do you have any executory contracts or unexpired leases?**

- No. Check this box and file this form with the court with your other schedules. You have nothing else to report on this form.
- Yes. Fill in all of the information below even if the contracts or leases are listed on *Schedule A: Property* (Official Form 106A).

**2. List separately each person or company with whom you have the contract or lease. Then state what each contract or lease is for (for example, rent, vehicle lease, cell phone). See the instructions for this form in the instruction booklet for more examples of executory contracts and unexpired leases.**

Person or company with whom you have the contract or lease	State what the contract or lease is for
<p><b>1</b></p> <p>_____</p> <p>Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p>	
<p><b>2</b></p> <p>_____</p> <p>Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p>	
<p><b>3</b></p> <p>_____</p> <p>Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p>	
<p><b>4</b></p> <p>_____</p> <p>Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p>	
<p><b>5</b></p> <p>_____</p> <p>Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p>	

**Additional Page if You Have More Contracts or Leases**

Person or company with whom you have the contract or lease	What the contract or lease is for
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
 First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
 (State)

Case number \_\_\_\_\_  
 (If known)

Check if this is an amended filing

**Official Form 106F**

**Schedule F: Your Codebtors**

12/14

**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, copy the Additional Page, fill it out, and number the entries in the boxes on the left. Attach the Additional Page to this page. On the top of any Additional Pages, write your name and case number (if known). Answer every question.**

**1. Do you have any codebtors?** (If you are filing a joint case, do not list either spouse as a codebtor.)

- No
- Yes

**2. Within the last 8 years, have you lived in a community property state or territory?** (*Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.*)

- No. Go to line 3.
- Yes. Did your spouse, former spouse, or legal equivalent live with you at the time?
  - No
  - Yes. In which community state or territory did you live? \_\_\_\_\_. Fill in the name and current address of that person.

\_\_\_\_\_  
 Name of your spouse

\_\_\_\_\_  
 Number Street

\_\_\_\_\_  
 City State ZIP Code

**3. In Column 1, list as codebtors all of the people or entities who are also liable for any debts you may have. Include all guarantors and co-signers; do not include your spouse as a codebtor if your spouse is filing with you. List the person shown in line 2 again as a codebtor only if that person is a guarantor or co-signer. Make sure you have listed the creditor on *Schedule B* (Official Form 106B) or *Schedule C* (Official Form 106C). Use *Schedule B* or *Schedule C* to fill out Column 2.**

*Column 1: Your codebtor*

*Column 2: The creditor to whom you owe the debt*

**1**

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Number Street

\_\_\_\_\_  
 City State ZIP Code

Line from *Schedule B*: \_\_\_\_\_  
 OR  
 Line from *Schedule C*: \_\_\_\_\_

**2**

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Number Street

\_\_\_\_\_  
 City State ZIP Code

Line from *Schedule B*: \_\_\_\_\_  
 OR  
 Line from *Schedule C*: \_\_\_\_\_

**3**

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Number Street

\_\_\_\_\_  
 City State ZIP Code

Line from *Schedule B*: \_\_\_\_\_  
 OR  
 Line from *Schedule C*: \_\_\_\_\_

Additional Page to List More Codebtors

*Column 1: Your codebtor*

*Column 2: The creditor to whom you owe the debt*

□	<p>_____</p> <p>Name</p> <p>_____</p> <p>Number Street</p> <p>_____</p> <p>City State ZIP Code</p>	<p>Line from <i>Schedule B</i>: _____</p> <p>OR</p> <p>Line from <i>Schedule C</i>: _____</p>
□	<p>_____</p> <p>Name</p> <p>_____</p> <p>Number Street</p> <p>_____</p> <p>City State ZIP Code</p>	<p>Line from <i>Schedule B</i>: _____</p> <p>OR</p> <p>Line from <i>Schedule C</i>: _____</p>
□	<p>_____</p> <p>Name</p> <p>_____</p> <p>Number Street</p> <p>_____</p> <p>City State ZIP Code</p>	<p>Line from <i>Schedule B</i>: _____</p> <p>OR</p> <p>Line from <i>Schedule C</i>: _____</p>
□	<p>_____</p> <p>Name</p> <p>_____</p> <p>Number Street</p> <p>_____</p> <p>City State ZIP Code</p>	<p>Line from <i>Schedule B</i>: _____</p> <p>OR</p> <p>Line from <i>Schedule C</i>: _____</p>
□	<p>_____</p> <p>Name</p> <p>_____</p> <p>Number Street</p> <p>_____</p> <p>City State ZIP Code</p>	<p>Line from <i>Schedule B</i>: _____</p> <p>OR</p> <p>Line from <i>Schedule C</i>: _____</p>
□	<p>_____</p> <p>Name</p> <p>_____</p> <p>Number Street</p> <p>_____</p> <p>City State ZIP Code</p>	<p>Line from <i>Schedule B</i>: _____</p> <p>OR</p> <p>Line from <i>Schedule C</i>: _____</p>
□	<p>_____</p> <p>Name</p> <p>_____</p> <p>Number Street</p> <p>_____</p> <p>City State ZIP Code</p>	<p>Line from <i>Schedule B</i>: _____</p> <p>OR</p> <p>Line from <i>Schedule C</i>: _____</p>
□	<p>_____</p> <p>Name</p> <p>_____</p> <p>Number Street</p> <p>_____</p> <p>City State ZIP Code</p>	<p>Line from <i>Schedule B</i>: _____</p> <p>OR</p> <p>Line from <i>Schedule C</i>: _____</p>

“Missing” Forms Modernization Project (FMP) Forms for Individuals

Nine FMP Official Bankruptcy Forms are not included in this proposed publication package because they were already published for public comment in 2012–13 under the current two-digit forms numbering scheme. The forms will be updated with their projected three-digit number designations listed below when this publication package is approved for implementation.

Projected three digit form number	Form Title	Form number as published for comment in 2012
103A	Application for Individuals to Pay the Filing Fee in Installments	3A
103B	Application to Have the Chapter 7 Filing Fee Waived	3B
106G	Schedule G: Your Income	6I
106H	Schedule H: Your Expenses	6J
108-1	Chapter 7 Statement of Your Current Monthly Income and Means-Test Calculation	22A-1
108-2	Chapter 7 Means Test Calculation	22A-2
109	Chapter 11 Statement of Your Current Monthly Income	22B
110-2	Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period	22C-1
110-2	Chapter 13 Calculation of Your Disposable Income	22C-2

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**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(If known)

Check if this is an amended filing

**Official Form 106Dec**

**Declaration About an Individual Debtor's Schedules**

12/14

If two married people are filing together, both are equally responsible for supplying correct information.

You must file this form whenever you file bankruptcy schedules or amended schedules. If you make a false statement, you could be fined up to \$500,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

 Sign Here

**Did you pay or agree to pay someone who is NOT an attorney to help you fill out this bankruptcy filing package?**

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

**Under penalty of perjury, I declare that I have read the forms filed with this declaration and that they are true and correct.**

**x** \_\_\_\_\_  
Signature of Debtor 1

**x** \_\_\_\_\_  
Signature of Debtor 2

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

**THIS PAGE INTENTIONALLY BLANK**

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(If known)

Check if this is an amended filing

**Official Form 106Sum**

**Summary of Your Assets and Liabilities and Certain Statistical Information 12/14**

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Fill out all of your schedules first; then complete the information on this form. If you are filing amended schedules after you file your original forms, you must fill out a new *Summary* and check the box at the top of this page.

**Part 1: Summarize Your Assets**

		<b>Your assets</b>
		Value of what you own
1. <b>Schedule A: Property</b> (Official Form 106A).		
1a. Copy line 55, Total real estate, from <i>Schedule A</i> .....		\$ _____
1b. Copy line 62, Total personal property, from <i>Schedule A</i> .....		\$ _____
1c. Copy line 63, Total of all property on <i>Schedule A</i> .....		\$ _____

**Part 2: Summarize Your Liabilities**

		<b>Your liabilities</b>
		Amount you owe
2. <b>Schedule B: Creditors Who Have Claims Secured by Your Property</b> (Official Form 106B)		
2a. Copy the total you listed in Column A, <i>Amount of claim</i> , at the bottom of the last page of Part 1 of <i>Schedule B</i> .....		\$ _____
3. <b>Schedule C: Creditors Who Have Unsecured Claims</b> (Official Form 106C)		
3a. Copy the total claims from Part 1 (priority unsecured claims) from line 6e of <i>Schedule C</i> .....		\$ _____
3b. Copy the total claims from Part 2 (nonpriority unsecured claims) from line 6j of <i>Schedule C</i> .....		+ \$ _____
<b>Your total liabilities</b>		\$ _____

**Part 3: Summarize Your Income and Expenses**

4. <b>Schedule G: Your Income</b> (Official Form 106G)	
Copy your combined monthly income from line 12 of <i>Schedule G</i> .....	\$ _____
5. <b>Schedule H: Your Expenses</b> (Official Form 106H)	
Copy your monthly expenses from line 22, Column A, of <i>Schedule H</i> .....	\$ _____

**Part 4:** Answer These Questions for Administrative and Statistical Records**6. Are you filing for bankruptcy under Chapters 7, 11, or 13?**

- No. You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.
- Yes

**7. What kind of debt do you have?**

- Your debts are primarily consumer debts.** *Consumer debts* are those "incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). Fill out lines 8-10 for statistical purposes. 28 U.S.C. § 159.
- Your debts are not primarily consumer debts.** You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.

**8. From the *Statement of Your Current Monthly Income* (Official Form 108-1, 109, or 110-1):**

Copy your total current monthly income from line 14 of 108-1, line 11 of 109, or line 11 of 110-1.

\$ \_\_\_\_\_

**9. Copy the following special categories of claims from Part 4, line 6 of *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C):**

	Total claim
<b>From Part 4 on <i>Schedule C</i>, copy the following:</b>	
9a. Domestic support obligations (Copy line 6a.)	\$ _____
9b. Taxes and certain other debts you owe the government. (Copy line 6b.)	\$ _____
9c. Claims for death or personal injury while you were intoxicated. (Copy line 6c.)	\$ _____
9d. Student loans. (Copy line 6f.)	\$ _____
9e. Obligations arising out of a separation agreement or divorce that you did not report as priority claims. (Copy line 6g.)	\$ _____
9f. Debts to pension or profit-sharing plans, and other similar debts. (Copy line 6h.)	+ \$ _____
9g. <b>Total.</b> Add lines 9a through 9f.	\$ _____

## COMMITTEE NOTE

The schedules to be used in cases of individual debtors are revised as part of the Forms Modernization Project, making them easier to read and, as a result, likely to generate more complete and accurate responses. The goals of the Forms Modernization Project include improving the interface between technology and the forms so as to increase efficiency and reduce the need to produce the same information in multiple formats. Therefore, many of the open-ended questions and multiple-part instructions have been replaced with more specific questions. The individual debtor schedules are also renumbered, starting with the number 106 and followed by the letter or name of the schedule to distinguish them from the versions to be used in non-individual cases.

**Official Form 106Sum–**, *Summary of Your Assets and Liabilities and Certain Statistical Information*, replaces Official Form 6, *Summary of Schedules and Statistical Summary of Certain Liability and Related Data (28 U.S.C. § 159)*, in cases of individual debtors.

The form is reformatted and updated with cross-references indicating the line numbers of specific schedules from which the summary information is to be gathered. In addition, because most filings are now done electronically, the form no longer requires the debtor to indicate which schedules are attached or to state the number of sheets of paper used for the schedules.

**Official Form 106A**, *Schedule A: Property*, consolidates information about an individual debtor's real and personal property into a single form. It replaces Official Form 6A, *Real Property Schedule*, and Official Form 6B, *Personal Property*, in cases of individual debtors. In addition to specific questions about the assets, the form also includes open text fields for providing additional information regarding particular assets when appropriate.

The layout and categories of property on Official Form 106A have changed. Instead of dividing property interests into two categories (real or personal property), the new form uses seven categories likely to be more familiar to non-lawyers: real estate, vehicles, personal household items, financial assets, business-related property, farm- and commercial fishing-related property, and a catch-all category for property that was not listed elsewhere in the form. Although the new form categories and the examples provided in many of the categories are designed to prompt debtors to be thorough and list all of their interests in property, the prompts are not intended to require a detailed description of items of little value that are unlikely to be administered by the case trustee. For example, the debtor is directed to separately describe and list individual items of property only if they are worth more than \$500. The debtor may describe generally items of minimal value (such as children's clothes) by adding the value of the items and reporting the total.

Although a particular item of property may fit into more than one category, the instructions for the form explain that it should be listed only once.

In addition, because property that falls within a particular category may not be specifically elicited by the particular line items on the form, the debtor is asked in Parts 3–6 (lines 14, 35, 44, and 51) to specifically identify and value any other property in the category.

Part 1, *Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest In*, avoids legal terms such as “life estate” or “joint tenancy,” because many individual debtors do not fully understand the nature of their ownership interest in real property. Instead, the debtor is asked to state the “current value of the portion you own,” and to also state whether ownership is shared with someone else. Furthermore, instead of asking an open-ended description of the property, the form guides the debtor in answering the description question by providing eight options from which to choose: single-family home, duplex or multi-unit building, condominium or cooperative, manufactured or mobile home, land, investment property, time share, and other.

Part 2, *Describe Your Vehicles*, also guides the debtor in answering the question, asking for the make, model, year, and mileage of the car or other vehicle. Because mileage is just a general indication of vehicle value, the debtor is not required to list the exact mileage, but instead is prompted to provide the approximate mileage by selecting from four checkboxes.

Part 3, *Describe Your Personal and Household Items*, simplifies wording, updates categories, and uses more common terms. For example, “Wearing apparel” is changed to “Clothes” and examples include furs, which were previously grouped with jewelry. Firearms, on the other hand, which were previously grouped with sports and other hobbies, are now set out as a separate category. Additionally, because a new Part 6 has been added to separately describe farm related property, Part 3 includes a category for “Non-farm animals.”

Part 4, *Describe Your Financial Assets*, prompts a listing of the debtor’s financial assets through several questions providing separate space, after each listed type of account or deposit, for the institution name and the value of the debtor’s interest in the asset. Two new categories of financial assets are added: “Bonds, mutual funds, or publicly traded stocks” and “Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment.”

Part 5, *Describe Any Business-Related Property You Own or Have an Interest In*, provides prompts for listing business-related property such as accounts receivable, inventory, and machinery, and includes a direction to list business-related real estate in Part 1, to avoid listing real estate twice.

Part 6, *Describe Any Farm- and Commercial Fishing-Related Property You Own or Have an Interest In*, provides prompts for listing farm- or commercial fishing-related property, such as farm animals, crops, and feed. It also includes a direction to list any farm- or commercial fishing-related real estate in Part 1.

Part 7, *Describe All Property You Own or Have an Interest In That You Did Not List Above*, is a catch-all provision that allows the debtor to report property that is difficult to categorize.

Part 8, *List the Totals of Each Part of This Form*, tabulates the total value of the debtor's interest in the listed property. The tabulation includes two subtotals, one for real estate, which corresponds to the real property total that was reported on former Official Form 6A. The second subtotal is of Parts 2-7, which corresponds to the personal property total that was reported on former Official Form 6B.

**Official Form 106B**, *Schedule B: Creditors Who Hold Claims Secured by Property*, replaces Official Form 6D, *Creditors Holding Secured Claims*, in cases of individual debtors.

Part 1, *List Your Creditors Who Hold Secured Claims*, now directs the debtor to list only the last four digits of the account number. Part 1 also adds four checkboxes with which to describe the nature of the lien: an agreement the debtor made (such as mortgage or secured car loan); statutory lien (such as tax lien, mechanic's lien); judgment lien from a lawsuit; and other.

The form adds Part 2, *List Others to Be Notified for a Debt That You Already Listed*. The debtor is instructed to use Part 2 if there is a need to notify someone about the bankruptcy filing other than the creditor for a debt listed in Part 1. For example, if a collection agency is trying to collect for a creditor listed in Part 1, the collection agency would be listed in Part 2.

**Official Form 106C**, *Schedule C: Creditors Who Have Unsecured Claims*, consolidates information about priority and nonpriority unsecured claims into a single form. It replaces Official Form 6E, *Creditors Holding Unsecured Priority Claims*, and Official Form 6F, *Creditors Holding Unsecured Nonpriority Claims*, in cases of individual debtors.

Although both priority and non-priority unsecured claims are reported in Official Form 106C, the two types of claims are separately grouped so that the total for each type can be reported for case administration and statistical purposes. The form eliminates the question "consideration for claim" and instructs debtors to list claims in the alphabetical order of creditors.



Part 1, *List All of Your PRIORITY Unsecured Claims*, includes four checkboxes for identifying the type of priority that applies to the claim: domestic support obligations; taxes and certain other debts owed to the government; claims for death or personal injury while intoxicated; and “other.” The first three categories are required to be separately reported for statistical purposes. If the debtor selects “other,” the debtor must specify the basis of the priority, *e.g.* wages or employee benefit plan contribution.

Part 2, *List All of Your NONPRIORITY Unsecured Claims*, no longer asks whether the claim is subject to setoff. The form creates four checkboxes, including three for types of claims that must be separately reported for statistical purposes: student loans; obligations arising out of a separation agreement or divorce not listed as priority claims; debts to pension or profit-sharing plans and other similar debts. The remaining “other” checkbox treats claims not subject to separate reporting. If the debtor selects “other,” the debtor must specify the basis of the claim.

Part 3, *List Others to Be Notified for a Debt That You Already Listed*, is new. The debtor is instructed to use Part 3 only if there is a need to give notice of the bankruptcy to someone other than a creditor listed in Parts 1 and 2. For example, if a collection agency is trying to collect for a creditor listed in Part 1, the collection agency would be listed in Part 3.

Finally, Part 4, *Add the Amounts for Each Type of Unsecured Claim*, requires the debtor to provide the total amounts of particular types of unsecured claims for statistical reporting purposes and the overall totals of the priority and nonpriority unsecured claims reported in this form.

**Official Form 106D**, *Schedule D: The Property You Claim as Exempt*, replaces Official Form 6C, *Property Claimed as Exempt*, in cases of individual debtors.

Part 1, *Identify the Property You Claim as Exempt*, includes a table to list the property the debtor seeks to exempt, the value of the property owned by the debtor, the amount of the claimed exemption, and the law that allows the exemption. The first

column asks for a brief description of the exempt property, and it also asks for the line number where the property is listed on Schedule A. The second column asks for the value of the portion if the asset owned by the debtor, rather than the entire asset. The third column asks for the amount, rather than the value, of the exemption claim.

The form has also been changed in light of the Supreme Court's ruling in *Schwab v. Reilly*, 130 S.Ct. 2652 (2010). Entries in the "amount of the exemption you claim" column, may now be listed as either a dollar limited amount or as 100% of fair market value, not to exceed any applicable statutory limit. For example, a debtor might claim 100% of fair market value for a home covered by an exemption capped at \$15,000, and that limit would be applicable. This choice would impose no dollar limit where the exemption is unlimited in dollar amount, such as some exemptions for health aids, certain governmental benefits, and tax-exempt retirement funds.

**Official Form 106E**, *Schedule E: Executory Contracts and Unexpired Leases*, replaces Official Form 6G, *Executory Contracts and Unexpired Leases*, in cases of individual debtors.

The form is simplified. Instead of requiring the debtor to make multiple assertions about each potential executory contract or unexpired lease, the form simply requires the debtor to identify the name and address of the other party to the contract or lease, and to state what the contract or lease deals with. Definitions and examples of executory contracts and unexpired leases are included in the separate instructions for the form.

An additional page is provided in case the debtor has so many executory contracts and unexpired leases that the available page is not adequate. If the debtor needs to use the additional page, the debtor is required to fill in the entry number.

**Official Form 106F**, *Schedule F: Your Codebtors*, replaces Official Form 6H, *Codebtors*, in cases of individual debtors.

The form breaks out the questions about whether there are any codebtors, and whether the debtor has lived with a spouse or legal equivalent in a community property state in the prior eight

years. It also removes Alaska from the listed community property states. Finally, it asks the debtor to indicate where the debt is listed on Schedule B or Schedule C, thereby eliminating the need to list the name and address of the creditor.

**Official Form 106G**, *Schedule G: Your Income*, replaces Official Form 6I, *Your Income*, in cases of individual debtors.

The form is one of an initial set of forms that were published as part of the Forms Modernization Project in 2012. It is renumbered and internal cross references are updated to conform to the new numbering system now being introduced by the Forms Modernization Project.

**Official Form 106H**, *Schedule H: Your Expenses*, replaces Official Form 6J, *Your Expenses*, in cases of individual debtors.

The form is one of an initial set of forms that were published as part of the Forms Modernization Project in 2012. It is renumbered and internal cross references are updated to conform to the new numbering system now being introduced by the Forms Modernization Project.

**Official Form 106Dec** , *Declaration About an Individual Debtor's Schedules*, replaces Official Form 6, *Declaration Concerning Debtor's Schedules*, in cases of individual debtors.

The form, which is to be signed by the debtor and filed with the debtor's schedules, deletes the Declaration and Signature of Bankruptcy Petition Preparer (BBP). Instead, the debtor is directed to complete and file Official Form 119, *Bankruptcy Petition Preparer's Notice, Declaration, and Signature*, if a BBP helped fill out the bankruptcy forms.

Because the form applies only to individual debtors, it no longer contains the Declaration Under Penalty of Perjury on Behalf of a Corporation or Partnership. It also deletes from the declaration the phrase "to the best of my knowledge, information, and belief" in order to conform to the language of 28 U.S.C. § 1746. *See* Rule 1008.

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**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
 First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
 (State)

Case number \_\_\_\_\_  
 (If known)

Check if this is an amended filing

**Official Form 107**

**Statement of Financial Affairs for Individuals Filing for Bankruptcy**

12/14

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: Give Details About Where You Lived Before**

**1. During the last 3 years, have you lived anywhere other than where you live now?**

- No
- Yes. List all of the places you lived in the last 3 years. Do not include where you live now.

Debtor 1:	Dates Debtor 1 lived there	Debtor 2:	Dates Debtor 2 lived there
		<input type="checkbox"/> Same as Debtor 1	<input type="checkbox"/> Same as Debtor 1
Number _____ Street _____	From _____ To _____	Number _____ Street _____	From _____ To _____
_____		_____	
City _____ State _____ ZIP Code _____		City _____ State _____ ZIP Code _____	
		<input type="checkbox"/> Same as Debtor 1	<input type="checkbox"/> Same as Debtor 1
Number _____ Street _____	From _____ To _____	Number _____ Street _____	From _____ To _____
_____		_____	
City _____ State _____ ZIP Code _____		City _____ State _____ ZIP Code _____	

**2. Within the last 8 years, did you ever live with a spouse or legal equivalent in a community property state or territory?** (*Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.*)

- No
- Yes. Make sure you fill out Schedule F: *Your Codebtors* (Official Form 106F).

**Part 2: Explain the Sources of Your Income**

**3. Did you have any income from being employed or operating a business during this year or the two previous calendar years?**

Fill in a total amount for the income you received from all jobs and all businesses, including part-time activities. If you are filing a joint case and you have income that you receive together, list it only once under Debtor 1.

- No
- Yes. Fill in the details.

	Debtor 1		Debtor 2	
	Sources of income Check all that apply.	Gross income (before deductions and exclusions)	Sources of income Check all that apply.	Gross income (before deductions and exclusions)
<b>From January 1 of current year until the date you filed for bankruptcy:</b>	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____
<b>For last calendar year:</b> (January 1 to December 31, _____) YYYY	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____
<b>For the calendar year before that:</b> (January 1 to December 31, _____) YYYY	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____

**4. Did you receive any other income during this year or the two previous calendar years?**

Include income regardless of whether that income is taxable. Examples of *other income* are alimony; child support; Social Security, unemployment, and other public benefit payments; pensions; rental income; interest; dividends; money collected from lawsuits; royalties; and gambling and lottery winnings. If you are filing a joint case and you have income that you received together, list it only once under Debtor 1.

List each source and the gross income from each source separately. Do not include income that you listed in line 3.

- No
- Yes. Fill in the details.

	Debtor 1		Debtor 2	
	Sources of income Describe below.	Gross income from each source (before deductions and exclusions)	Sources of income Describe below.	Gross income from each source (before deductions and exclusions)
<b>From January 1 of current year until the date you filed for bankruptcy:</b>	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
<b>For last calendar year:</b> (January 1 to December 31, _____) YYYY	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
<b>For the calendar year before that:</b> (January 1 to December 31, _____) YYYY	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____

**Part 3:** List Certain Payments You Made Before You Filed for Bankruptcy

**5. Are either Debtor 1's or Debtor 2's debts primarily consumer debts?**

No. **My debts are not 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."

During the 90 days before you filed for bankruptcy, did you pay any creditor a total of \$6,225\* or more?

No. Go to line 6.

Yes. List below each creditor to whom you paid a total of \$6,225\* or more in one or more payments and the total amount you paid that creditor. Do not include payments for domestic support obligations, such as child support and alimony. Also, do not include payments to an attorney for this bankruptcy case.

\* Subject to adjustment on 4/01/16 and every 3 years after that for cases filed on or after the date of adjustment.

Yes. **My debts are primarily consumer debts.**

During the 90 days before you filed for bankruptcy, did you pay any creditor a total of \$600 or more?

No. Go to line 6.

Yes. List below each creditor to whom you paid a total of \$600 or more and the total amount you paid that creditor. Do not include payments for domestic support obligations, such as child support and alimony. Also, do not include payments to an attorney for this bankruptcy case.

	Dates of payment	Total amount paid	Amount you still owe	Was this payment for...
_____ Creditor's Name  _____ Number Street  _____  _____ City State ZIP Code	_____	\$ _____	\$ _____	<input type="checkbox"/> Mortgage <input type="checkbox"/> Car <input type="checkbox"/> Credit card <input type="checkbox"/> Loan repayment <input type="checkbox"/> Suppliers or vendors <input type="checkbox"/> Other _____
_____ Creditor's Name  _____ Number Street  _____  _____ City State ZIP Code	_____	\$ _____	\$ _____	<input type="checkbox"/> Mortgage <input type="checkbox"/> Car <input type="checkbox"/> Credit card <input type="checkbox"/> Loan repayment <input type="checkbox"/> Suppliers or vendors <input type="checkbox"/> Other _____
_____ Creditor's Name  _____ Number Street  _____  _____ City State ZIP Code	_____	\$ _____	\$ _____	<input type="checkbox"/> Mortgage <input type="checkbox"/> Car <input type="checkbox"/> Credit card <input type="checkbox"/> Loan repayment <input type="checkbox"/> Suppliers or vendors <input type="checkbox"/> Other _____

**6. Within 1 year before you filed for bankruptcy, did you make a payment on a debt you owed anyone who was an insider?**

*Insiders* include your relatives; any general partners; relatives of any general partners; corporations of which you are an officer, director, person in control, or owner of 20 percent or more of their voting securities; and any managing agent. 11 U.S.C. § 101. Include payments for domestic support obligations, such as child support and alimony.

- No  
 Yes. List all payments to an insider.

	Dates of payment	Total amount paid	Amount you still owe	Reason for this payment
_____ Insider's Name  _____ Number Street  _____  _____ City State ZIP Code	_____	\$ _____	\$ _____	
_____ Insider's Name  _____ Number Street  _____  _____ City State ZIP Code	_____	\$ _____	\$ _____	

**7. Within 1 year before you filed for bankruptcy, did you make any payments or transfer any property on account of a debt that benefited an insider?**

Include payments on debts guaranteed or co-signed by an insider.

- No  
 Yes. List all payments that benefited an insider.

	Dates of payment	Total amount paid	Amount you still owe	Reason for this payment Include creditor's name
_____ Insider's Name  _____ Number Street  _____  _____ City State ZIP Code	_____	\$ _____	\$ _____	
_____ Insider's Name  _____ Number Street  _____  _____ City State ZIP Code	_____	\$ _____	\$ _____	



**Part 4:** Identify Legal Actions, Repossessions, and Foreclosures,

**8. Within 1 year before you filed for bankruptcy, were you a party in any lawsuit, court action, or administrative proceeding?**

List all such matters, including personal injury cases, small claims actions, divorces, collection suits, paternity actions, support or custody modifications, and contract disputes.

- No
- Yes. Fill in the details.

	Nature of the case	Court or agency	Status of the case
Case title _____ _____ Case number _____		Court Name _____ Number Street _____ City State ZIP Code _____	<input type="checkbox"/> Pending <input type="checkbox"/> On appeal <input type="checkbox"/> Concluded
Case title _____ _____ Case number _____		Court Name _____ Number Street _____ City State ZIP Code _____	<input type="checkbox"/> Pending <input type="checkbox"/> On appeal <input type="checkbox"/> Concluded

**9. Within 1 year before you filed for bankruptcy, was any of your property repossessed, foreclosed, garnished, attached, seized, or levied?**

Check all that apply and fill in the details below.

- No. Go to line 10.
- Yes. Fill in the information below.

Describe the property	Date	Value of the property
Creditor's Name _____ Number Street _____ City State ZIP Code _____	_____	\$ _____
Explain what happened		
<input type="checkbox"/> Property was repossessed. <input type="checkbox"/> Property was foreclosed. <input type="checkbox"/> Property was garnished. <input type="checkbox"/> Property was attached, seized or levied.		
Creditor's Name _____ Number Street _____ City State ZIP Code _____	_____	\$ _____
Explain what happened		
<input type="checkbox"/> Property was repossessed. <input type="checkbox"/> Property was foreclosed. <input type="checkbox"/> Property was garnished. <input type="checkbox"/> Property was attached, seized or levied.		

10. Within 90 days before you filed for bankruptcy, did any creditor, including a bank or financial institution, set off or otherwise take anything from your accounts without your permission or refuse to make a payment because you owed a debt?

- No  
 Yes. Fill in the details.

	Describe the action the creditor took	Date action was taken	Amount
Creditor's Name _____  Number Street _____  City State ZIP Code _____		_____	\$ _____
	Last 4 digits of account number: XXXX-__ __ __ __		

11. Within 1 year before you filed for bankruptcy, was any of your property in the possession of an assignee for the benefit of creditors, a court-appointed receiver, custodian, or other official?

- No  
 Yes. Fill in the details.

	Describe the property	Value
Custodian's Name _____  Number Street _____  City State ZIP Code _____		\$ _____
Case title _____ Case number _____ Date of order or assignment _____ <small>MM / DD / YYYY</small>	Court Name _____ Number Street _____ City State ZIP Code _____	

**Part 5: List Certain Gifts and Contributions**

12. Within 2 years before you filed for bankruptcy, did you give any gifts with a total value of more than \$600 per person?

- No  
 Yes. Fill in the details for each gift.

Gifts with a total value of more than \$600 per person	Describe the gifts	Dates you gave the gifts	Value
Person to Whom You Gave the Gift _____  Number Street _____  City State ZIP Code _____  Person's relationship to you _____		_____	\$ _____
		_____	\$ _____

Gifts with a total value of more than \$600 per person	Describe the gifts	Dates you gave the gifts	Value
Person to Whom You Gave the Gift		_____	\$ _____
_____		_____	\$ _____
Number Street			
City State ZIP Code			
Person's relationship to you _____			

**13. Within 2 years before you filed for bankruptcy, did you give any gifts or contributions with a total value of more than \$600 to any charity?**

- No
- Yes. Fill in the details for each gift or contribution.

Gifts or contributions to charities that total more than \$600	Describe what you contributed	Date you contributed	Value
Charity's Name		_____	\$ _____
_____		_____	\$ _____
Number Street			
City State ZIP Code			

**Part 6: List Certain Losses**

**14. Within 1 year before you filed for bankruptcy or since you filed for bankruptcy, did you lose anything because of theft, fire, other disaster, or gambling?**

- No
- Yes. Fill in the details.

Describe the property you lost and how the loss occurred	Describe any insurance coverage for the loss Include the amount that insurance has paid. List pending insurance claims on line 33 of <i>Schedule A: Property</i> .	Date of your loss	Value of property lost
		_____	\$ _____

**Part 7:** List Certain Payments or Transfers

**15. Within 1 year before you filed for bankruptcy, did you or anyone else acting on your behalf pay or transfer any property to anyone you consulted about seeking bankruptcy or preparing a bankruptcy petition?**

Include any attorneys, bankruptcy petition preparers, or credit counseling agencies for services required in your bankruptcy.

- No  
 Yes. Fill in the details.

	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
_____ Person Who Was Paid  _____ Number Street  _____  _____ City State ZIP Code  _____ Email or website address  _____ Person Who Made the Payment, if Not You		_____  _____	\$ _____  \$ _____

	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
_____ Person Who Was Paid  _____ Number Street  _____  _____ City State ZIP Code  _____ Email or website address  _____ Person Who Made the Payment, if Not You		_____  _____	\$ _____  \$ _____

**16. Within 1 year before you filed for bankruptcy, did you or anyone else acting on your behalf pay or transfer any property to anyone who promised to help you deal with your creditors or to make payments to your creditors?**

Do not include any payment or transfer that you listed on line 15.

- No  
 Yes. Fill in the details.

	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
_____ Person Who Was Paid  _____ Number Street  _____  _____ City State ZIP Code		_____  _____	\$ _____  \$ _____

**17. Within 2 years before you filed for bankruptcy, did you sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?**

Include both outright transfers and transfers made as security. Do not include gifts and transfers that you have already listed on this statement.

- No
- Yes. Fill in the details.

	Description and value of property transferred	Describe any property or payments received or debts paid in exchange	Date transfer was made
_____ Person Who Received Transfer  _____ Number Street  _____ _____ City State ZIP Code			_____
_____ Person's relationship to you _____			

_____ Person Who Received Transfer  _____ Number Street  _____ _____ City State ZIP Code			_____
_____ Person's relationship to you _____			

**18. Within 10 years before you filed for bankruptcy, did you transfer any property to a self-settled trust or similar device of which you are a beneficiary? (These are often called *asset-protection devices*.)**

- No
- Yes. Fill in the details.

	Date transfer was made
_____ Name of trust _____  _____	_____

**Part 8:** List Certain Financial Accounts, Safety Deposit Boxes, and Storage Units

**19. Within 1 year before you filed for bankruptcy, were any financial accounts or instruments held in your name, or for your benefit, closed, sold, moved, or transferred?**

Include checking, savings, money market, or other financial accounts; certificates of deposit; shares in banks, credit unions, brokerage houses, pension funds, cooperatives, associations, and other financial institutions.

- No
- Yes. Fill in the details.

	Last 4 digits of account number	Type of account	Date account was closed, sold, moved, or transferred	Last balance before closing or transfer
_____ Name of Financial Institution _____ Number Street _____ _____ City State ZIP Code	XXXX-____ _	<input type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> Money market <input type="checkbox"/> Brokerage <input type="checkbox"/> Other_____	_____	\$_____
_____ Name of Financial Institution _____ Number Street _____ _____ City State ZIP Code	XXXX-____ _	<input type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> Money market <input type="checkbox"/> Brokerage <input type="checkbox"/> Other_____	_____	\$_____

**20. Do you now have, or did you have within 1 year before you filed for bankruptcy, any safe deposit box or other depository for securities, cash, or other valuables?**

- No
- Yes. Fill in the details.

	Who else had access to it?	Describe the contents	Do you still have it?
_____ Name of Financial Institution _____ Number Street _____ _____ City State ZIP Code	_____ Name _____ Number Street _____ _____ City State ZIP Code		<input type="checkbox"/> No <input type="checkbox"/> Yes

**21. Do you store property in a storage unit, or have you stored property in a storage unit within 1 year before you filed for bankruptcy?**

Do not include storage units that are part of the building in which you live.

- No
- Yes. Fill in the details.

	Who else has or had access to it?	Describe the contents	Do you still have it?
_____ Name of Storage Facility _____ Number Street _____ _____ City State ZIP Code	_____ Name _____ Number Street _____ _____ City State ZIP Code		<input type="checkbox"/> No <input type="checkbox"/> Yes

**Part 9: Identify Property You Hold or Control for Someone Else**

22. **Do you hold or control any property that someone else owns?** Include any property you borrowed from, are storing for, or hold in trust for someone.

- No
- Yes. Fill in the details.

	Where is the property?	Describe the property	Value
Owner's Name _____  Number Street _____  City State ZIP Code _____	Number Street _____  City State ZIP Code _____		\$ _____

**Part 10: Give Details About Environmental Information**

For the purpose of Part 10, the following definitions apply:

- *Environmental law* means any federal, state, or local statute or regulation concerning pollution, contamination, releases of hazardous or toxic substances, wastes, or material into the air, land, soil, surface water, groundwater, or other medium, including statutes or regulations controlling the cleanup of these substances, wastes, or material.
- *Site* means any location, facility, or property as defined under any environmental law, whether you now own, operate, or utilize it or used to own, operate, or utilize it, including disposal sites.
- *Hazardous material* means anything an environmental law defines as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, contaminant, or similar term.

**Report all notices, releases, and proceedings that you know about, regardless of when they occurred.**

23. **Has any governmental unit notified you that you may be liable or potentially liable under or in violation of an environmental law?**

- No
- Yes. Fill in the details.

	Governmental unit	Environmental law, if you know it	Date of notice
Name of site _____  Number Street _____  City State ZIP Code _____	Governmental unit _____  Number Street _____  City State ZIP Code _____		_____

24. **Have you notified any governmental unit of any release of hazardous material?**

- No
- Yes. Fill in the details.

	Governmental unit	Environmental law, if you know it	Date of notice
Name of site _____  Number Street _____  City State ZIP Code _____	Governmental unit _____  Number Street _____  City State ZIP Code _____		_____

25. Have you been a party in any judicial or administrative proceeding under any environmental law? Include settlements and orders.

- No
- Yes. Fill in the details.

	Court or agency	Nature of the case	Status of the case
Case title _____ _____ _____	Court Name _____ Number Street _____ City State ZIP Code _____		<input type="checkbox"/> Pending
Case number _____			<input type="checkbox"/> On appeal
			<input type="checkbox"/> Concluded

**Part 11: Give Details About Your Business or Connections to Any Business**

26. Within 4 years before you filed for bankruptcy, did you own a business or have any of the following connections to any business?

- A sole proprietor or self-employed in a trade, profession, or other activity, either full-time or part-time
- Member of a limited liability company (LLC) or limited liability partnership (LLP)
- A partner in a partnership
- An officer, director, or managing executive of a corporation
- Owner of at least 5% of the voting or equity securities of a corporation
- No. None of the above applies. Go to Part 12.
- Yes. Check all that apply above and fill in the details below for each business.

Business Name _____ Number Street _____ City State ZIP Code _____	<b>Describe the nature of the business</b>	<b>Employer Identification number</b> Do not include Social Security number or ITIN. EIN: ____ - ____ - ____ - ____ - ____
	<b>Name of accountant or bookkeeper</b>	<b>Dates business existed</b> From _____ To _____
	<b>Describe the nature of the business</b>	<b>Employer Identification number</b> Do not include Social Security number or ITIN. EIN: ____ - ____ - ____ - ____ - ____
Business Name _____ Number Street _____ City State ZIP Code _____	<b>Name of accountant or bookkeeper</b>	<b>Dates business existed</b> From _____ To _____
	<b>Describe the nature of the business</b>	<b>Employer Identification number</b> Do not include Social Security number or ITIN. EIN: ____ - ____ - ____ - ____ - ____
	<b>Name of accountant or bookkeeper</b>	<b>Dates business existed</b> From _____ To _____
Business Name _____ Number Street _____ City State ZIP Code _____	<b>Describe the nature of the business</b>	<b>Employer Identification number</b> Do not include Social Security number or ITIN. EIN: ____ - ____ - ____ - ____ - ____
	<b>Name of accountant or bookkeeper</b>	<b>Dates business existed</b> From _____ To _____
	<b>Describe the nature of the business</b>	<b>Employer Identification number</b> Do not include Social Security number or ITIN. EIN: ____ - ____ - ____ - ____ - ____



27. **Within 2 years before you filed for bankruptcy, did you give a financial statement to anyone about your business?** Include all financial institutions, creditors, or other parties.

- No
- Yes. Fill in the details below.

Date issued

Name \_\_\_\_\_ MM / DD / YYYY

Number Street \_\_\_\_\_

City State ZIP Code \_\_\_\_\_

**Part 12: Sign Here**

I declare under penalty of perjury that I have read the answers on this *Statement of Financial Affairs* and any attachments and that the answers are true and correct.

**X** \_\_\_\_\_  
Signature of Debtor 1

**X** \_\_\_\_\_  
Signature of Debtor 2

Date \_\_\_\_\_

Date \_\_\_\_\_

**Did you attach additional pages to *Your Statement of Financial Affairs for Individuals Filing for Bankruptcy* (Official Form 107)?**

- No
- Yes

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## COMMITTEE NOTE

Official Form 107, *Statement of Financial Affairs for Individuals Filing for Bankruptcy*, which applies only in cases of individual debtors, is revised in its entirety as part of the Forms Modernization Project, making it easier to read and, as a result, likely to generate more complete and accurate responses. The goals of the Forms Modernization Project include improving the interface between technology and the forms so as to increase efficiency and reduce the need to produce the same information in multiple formats. Therefore, many of the open-ended questions and multiple-part instructions have been replaced with more specific questions. In addition, the form is renumbered to distinguish it from the version to be used in non-individual cases, and stylistic changes were made throughout the form.

The form is derived from former Official Form 7, *Statement of Financial Affairs*. The new form uses eleven sections likely to be more understandable to non-lawyers, groups questions of a similar nature together, and eliminates questions unrelated to individual debtors. The new form deletes the instruction, previously found in many questions, that married debtors filing under chapter 12 or chapter 13 must include information applicable to their spouse, even if their spouse is not filing with them, unless the spouses are separated. This change was made because a non-filing spouse's general financial affairs are not relevant to the debtor's bankruptcy case.

Part 1, *Give Details About Where You Lived Before*, moves the questions regarding the debtor's prior addresses, as well as residences in a community property state, to the beginning of the form. The form eliminates the "name used" question in reference to prior addresses. Also, the debtor is no longer required to list the name of a spouse or former spouse who lived with the debtor in a community property state since that information will be provided in Official Form 106F.

Part 2, *Explain the Sources of Your Income*, consolidates the questions regarding income, adding "wages, commissions, bonuses, tips" as a category for sources of income, and it

eliminates the option to report income on a fiscal year basis. In addition, the form provides examples of types of “other income.” The time period is clarified to indicate that the prior two years means two calendar years, plus the portion of the calendar year in which the bankruptcy is filed.

Part 3, *List Certain Payments You Made Before You Filed for Bankruptcy*, includes questions related to payments made in the 90 days prior to bankruptcy, with a separate question for payments made to insiders within one year before filing for bankruptcy. The statutory definition of consumer debt is provided. The question regarding the nature of the debtor’s debts requires the debtor to use checkboxes to indicate whether or not they are primarily consumer debts. The form instructs debtors to include payments for domestic support obligations in the section regarding insider payments. The form provides a separate question regarding payments or transfers on account of a debt that benefited an insider. For both questions regarding payments to insiders, the debtor is required to provide a reason for the payment.

Part 4, *Identify Legal Actions, Repossessions, and Foreclosures*, consolidates questions regarding actions against the debtor’s property. The form provides examples of types of legal actions, and requires the debtor to indicate the status of any action. The form adds the requirements that a debtor include any property levied on within a year of filing for bankruptcy and that the debtor provide the last four digits of any account number for any setoffs. Also, a debtor must list any assignment for the benefit of creditors made within one year of filing for bankruptcy.

Part 5, *List Certain Gifts and Contributions*, changes the reporting threshold to \$600 per person or charity and increases the look-back period from one to two years.

Part 6, *List Certain Losses*, clarifies how to report insurance coverage for losses. It provides that the debtor must include on this form amounts of insurance that have been paid, but must list pending insurance claims on Official Form 106A.

Part 7, *List Certain Payments or Transfers*, includes questions regarding payments or transfers of property by the

debtor. The question regarding payments or transfers to anyone who was consulted about seeking bankruptcy or preparing a bankruptcy petition requires the email or website address of the person who was paid, as well as the name of the person who made the payment if it was not the debtor. There is a separate question asked about payments or transfers to anyone who promised to help the debtor deal with creditors or make payments to creditors, reminding the debtor not to include any payments or transfers already listed. Also, the debtor must list any transfers of property, outright or for security purposes, made within two years of filing for bankruptcy, unless the transfer was made in the ordinary course of the debtor's business. There is a reminder not to list gifts or other transfers already included elsewhere on the form. The question regarding self-settled trusts adds an explanation that such trusts are often referred to as asset-protection devices.

Part 8, *List Certain Financial Accounts, Safety Deposit Boxes, and Storage Units*, adds money market accounts to the examples provided for the question regarding financial accounts or instruments and removes "other instruments" from the examples. Also, the form adds a question about whether the debtor has or had property stored in a storage unit within one year of filing for bankruptcy. The debtor must provide the name and address of the storage facility and anyone who has or had access to the unit, as well as a description of the contents and whether the debtor still has access to the storage unit. Storage units that are part of the building in which the debtor resides are excluded.

Part 9, *Identify Property You Hold or Control for Someone Else*, instructs that the debtor should include any property that the debtor borrowed from, is storing for, or is holding in trust for someone.

Part 10, *Give Details About Environmental Information*, requires the debtor to list the case title and nature of the case for any judicial or administrative proceeding under any environmental law and to indicate the status of the case.

Part 11, *Give Details About Your Business or Connections to Any Business*, eliminates instructions that apply only to corporations and partnerships. The debtor must indicate if, within

four years (previously six years) before filing for bankruptcy, the debtor owned a business or had certain connections to a business, with five categories of businesses provided as checkboxes. If the debtor has a connection to a business, the debtor must list the name, address, nature, and Employer Identification Number of the business, the dates of the business' existence, and the name of an accountant or bookkeeper for the business. Accounting information requested is truncated; the debtor is simply required to provide the name of the business bookkeeper or accountant.

Part 12, *Sign Here*, eliminates the signature boxes for a partnership or corporation and a non-attorney bankruptcy petition preparer. Also, the debtor is asked to indicate through checkboxes whether additional pages are attached to the form.

“Missing” Forms Modernization Project (FMP) Forms for Individuals

Nine FMP Official Bankruptcy Forms are not included in this proposed publication package because they were already published for public comment in 2012–13 under the current two-digit forms numbering scheme. The forms will be updated with their projected three-digit number designations listed below when this publication package is approved for implementation.

Projected three digit form number	Form Title	Form number as published for comment in 2012
103A	Application for Individuals to Pay the Filing Fee in Installments	3A
103B	Application to Have the Chapter 7 Filing Fee Waived	3B
106G	Schedule G: Your Income	6I
106H	Schedule H: Your Expenses	6J
108-1	Chapter 7 Statement of Your Current Monthly Income and Means-Test Calculation	22A-1
108-2	Chapter 7 Means Test Calculation	22A-2
109	Chapter 11 Statement of Your Current Monthly Income	22B
110-2	Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period	22C-1
110-2	Chapter 13 Calculation of Your Disposable Income	22C-2

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**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(if known)

Check if this is an amended filing

**Official Form 112**

**Statement of Intention for Individuals Filing Under Chapter 7**

12/14

If you are an individual filing under Chapter 7 and creditors have claims secured by your property or you have leased personal property and the lease has not expired, you must fill out this form. You must file this form with the court within 30 days after you file your bankruptcy petition or by the date set for the meeting of creditors, whichever is earlier, unless the court extends the time for cause. You must also deliver copies to the creditors and lessors you list on the form.

If two married people are filing together in a joint case, both are equally responsible for supplying correct information. Both debtors must sign and date the form.

Be as complete and accurate as possible. 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).

**Part 1: List Your Creditors Who Hold Secured Claims**

1. For any creditors that you listed in Part 1 of *Schedule B*, fill in the information below.

Identify the creditor and the property that is collateral	What do you intend to do with the property that secures a debt?	Did you claim the property as exempt on Schedule D?
Creditor's name: _____ Description of property securing debt: _____	<input type="checkbox"/> Give the property to the creditor. <input type="checkbox"/> Keep the property. <i>Check one:</i> <input type="checkbox"/> I will redeem the property. <input type="checkbox"/> I will sign a <i>Reaffirmation Agreement</i> . <input type="checkbox"/> Other. Explain: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Creditor's name: _____ Description of property securing debt: _____	<input type="checkbox"/> Give the property to the creditor. <input type="checkbox"/> Keep the property. <i>Check one:</i> <input type="checkbox"/> I will redeem the property. <input type="checkbox"/> I will sign a <i>Reaffirmation Agreement</i> . <input type="checkbox"/> Other. Explain: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Creditor's name: _____ Description of property securing debt: _____	<input type="checkbox"/> Give the property to the creditor. <input type="checkbox"/> Keep the property. <i>Check one:</i> <input type="checkbox"/> I will redeem the property. <input type="checkbox"/> I will sign a <i>Reaffirmation Agreement</i> . <input type="checkbox"/> Other. Explain: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Creditor's name: _____ Description of property securing debt: _____	<input type="checkbox"/> Give the property to the creditor. <input type="checkbox"/> Keep the property. <i>Check one:</i> <input type="checkbox"/> I will redeem the property. <input type="checkbox"/> I will sign a <i>Reaffirmation Agreement</i> . <input type="checkbox"/> Other. Explain: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes

**Part 2:** List Your Unexpired Personal Property Leases

**For any unexpired personal property lease that you listed in *Schedule E*, fill in the information below. *Unexpired leases* are leases that are still in effect; the lease period has not yet ended. You may assume an unexpired personal property lease if the trustee does not assume it. 11 U.S.C. § 365(p)(2).**

Describe your unexpired personal property leases	Will the lease be assumed?
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes

**Part 3:** Sign Here

**Under penalty of perjury, I declare that I have indicated my intention about any property of my estate that secures a debt and any personal property that is subject to an unexpired lease.**

**X** \_\_\_\_\_  
 Signature of Debtor 1

**X** \_\_\_\_\_  
 Signature of Debtor 2

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

## COMMITTEE NOTE

Official Form 112, *Statement of Intention for Individuals Filing Under Chapter 7* is revised in its entirety as part of the Forms Modernization Project, making it easier to read and, as a result, likely to generate more complete and accurate responses. In addition, the form is renumbered, and stylistic changes are made throughout the form.

The form is derived from former Official Form 8, *Chapter 7 Individual Debtor's Statement of Intention*. The new form uses language likely to be understandable to non-lawyers. In addition, the instructions are more extensive, advising an individual Chapter 7 debtor that the form must be completed and filed within 30 days and that the debtor must deliver copies of the form to creditors and lessors listed on the form.

Part 1, *Your Creditors Who Hold Secured Claims*, refers to signing a "Reaffirmation Agreement" rather than asking whether the debtor intends to "reaffirm the debt." In addition, the debtor is asked if the property is claimed as exempt on Schedule C (Official Form 106C).

Part 2, *List Your Unexpired Personal Property Leases*, defines unexpired leases and explains that a debtor may assume an unexpired personal property lease if the trustee does not assume it.

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**Fill in this information to identify the case:**

Debtor 1 \_\_\_\_\_  
 First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
 (State)

Case number \_\_\_\_\_ Chapter \_\_\_\_\_  
 (If known)

**Official Form 119****Bankruptcy Petition Preparer's Notice, Declaration, and Signature****12/14**

**Bankruptcy petition preparers as defined in 11 U.S.C. § 110 must fill out this form every time they help prepare documents that are filed in the case. If more than one bankruptcy petition preparer helps with the documents, each must sign in Part 3. A bankruptcy petition preparer who does not comply with the provisions of title 11 of the United States Code and the Federal Rules of Bankruptcy Procedure may be fined and imprisoned. 11 U.S.C. § 110; 18 U.S.C. § 156.**

**Part 1: Notice to Debtor**

**Bankruptcy petition preparers must give the debtor a copy of this form and have the debtor sign it before they prepare any documents for filing or accept any compensation. A signed copy of this form must be filed with any document prepared.**

Bankruptcy petition preparers are not attorneys and may not practice law or give you legal advice, including the following:

- whether to file a petition under the Bankruptcy Code (11 U.S.C. § 101 et seq.);
- whether filing a case under Chapter 7, 11, 12, or 13 is appropriate;
- whether your debts will be eliminated or discharged in a case under the Bankruptcy Code;
- whether you will be able to keep your home, car, or other property after filing a case under the Bankruptcy Code;
- what tax consequences may arise because a case is filed under the Bankruptcy Code;
- whether any tax claims may be discharged;
- whether you may or should promise to repay debts to a creditor or enter into a reaffirmation agreement;
- how to characterize the nature of your interests in property or your debts; or
- what procedures and rights apply in a bankruptcy case.

**The bankruptcy petition preparer \_\_\_\_\_ has notified me of  
 Name  
 any maximum allowable fee before preparing any document for filing or accepting any fee.**

\_\_\_\_\_  
 Signature of Debtor 1 acknowledging receipt of this notice Date \_\_\_\_\_  
 MM / DD / YYYY

\_\_\_\_\_  
 Signature of Debtor 2, acknowledging receipt of this notice Date \_\_\_\_\_  
 MM / DD / YYYY

**Part 2: Declaration of the Bankruptcy Petition Preparer**

**Under penalty of perjury, I declare that:**

I am a bankruptcy petition preparer or the officer, principal, responsible person, or partner of a bankruptcy petition preparer;

I or my firm prepared the documents listed below and gave the debtor a copy of them and the *Notice to Debtor by Bankruptcy Petition Preparer* as required by 11 U.S.C. §§ 110(b), 110(h), and 342(b); and

if rules or guidelines are established according to 11 U.S.C. § 110(h) setting a maximum fee for services that bankruptcy petition preparers may charge, I or my firm notified the debtor of the maximum amount before preparing any document for filing or before accepting any fee from the debtor.

Printed name \_\_\_\_\_ Title, if any \_\_\_\_\_ Firm name, if it applies \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_ Contact phone \_\_\_\_\_

**I or my firm prepared the documents listed below:**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Voluntary Petition (Form 101)   | <input type="checkbox"/> Schedule G (Form 106G)   | <input type="checkbox"/> Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period (Form 110-1) |
| <input type="checkbox"/> Statement About Your Social Security Numbers (Form 121)                       | <input type="checkbox"/> Schedule H (Form 106H)   | <input type="checkbox"/> Chapter 13 Calculation of Your Disposable Income (Form 110-2)   |
| <input type="checkbox"/> Your Assets and Liabilities and Certain Statistical Information (Form 106Sum) | <input type="checkbox"/> Declaration About an Individual Debtor's Schedules (Form 106Dec)         | <input type="checkbox"/> Application to Pay Filing Fee in Installments (Form 103A)   |
| <input type="checkbox"/> Schedule A (Form 106A)  | <input type="checkbox"/> Statement of Financial Affairs (Form 107)                                | <input type="checkbox"/> Application to Have Chapter 7 Filing Fee Waived (Form 103B)   |
| <input type="checkbox"/> Schedule B (Form 106B)  | <input type="checkbox"/> Statement of Intention for Individuals Filing Under Chapter 7 (Form 112) | <input type="checkbox"/> A list of names and addresses of all creditors ( <i>creditor or mailing matrix</i> )                  |
| <input type="checkbox"/> Schedule C (Form 106C)  | <input type="checkbox"/> Chapter 7 Statement of Your Current Monthly Income (Form 108-1)          | <input type="checkbox"/> Other _____   |
| <input type="checkbox"/> Schedule D (Form 106D)  | <input type="checkbox"/> Chapter 7 Means Test Calculation (Form 108-2)                            |  |
| <input type="checkbox"/> Schedule E (Form 106E)  | <input type="checkbox"/> Chapter 11 Statement of Your Current Monthly Income (Form 109)           |  |
| <input type="checkbox"/> Schedule F (Form 106F)  |   |  |

**Part 3: Sign Here**

Bankruptcy petition preparers must sign and give their Social Security numbers. If more than one bankruptcy petition preparer prepared the documents to which this declaration applies, the signature and Social Security number of each preparer must be provided. 11 U.S.C. § 110.

\_\_\_\_\_  
Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner

\_\_\_\_-\_\_\_\_-\_\_\_\_  
Social Security number of person who signed

\_\_\_\_\_  
Date  
MM / DD / YYYY

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner

\_\_\_\_-\_\_\_\_-\_\_\_\_  
Social Security number of person who signed

\_\_\_\_\_  
Date  
MM / DD / YYYY

\_\_\_\_\_  
Printed name

## COMMITTEE NOTE

Official Form 119, *Bankruptcy Petition Preparer's Notice, Declaration, and Signature*, applies only in cases of individual debtors. It is revised as part of the Forms Modernization Project, making it easier to read and, as a result, likely to generate more complete and accurate responses. In addition, the form is renumbered, and stylistic changes are made throughout the form.

The form is derived from Official Form 19, *Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer*. An instruction is added to the form that provides statutory citations. Filers are advised that if more than one bankruptcy petition preparer helped with the documents, each must sign the form.

Part 1, *Notice to Debtor*, is moved to the beginning of the form and revised. An instruction is added that bankruptcy petition preparers must give the debtor a copy of the form and have the debtor sign it before they prepare any documents for filing or accept compensation, and that the form must be filed with any document prepared. It warns the debtor that bankruptcy petition preparers are not attorneys and may not practice law or give legal advice, with a list of examples of advice that may not be provided by a bankruptcy petition preparer. The signature line of this part includes a statement that the debtor acknowledges receipt of the notice.

Part 2, *Declaration of Bankruptcy Petition Preparer*, revises the declaration by the bankruptcy petition preparer to include an officer, principal, responsible person, or partner of a bankruptcy petition preparer. The bankruptcy petition preparer must provide a firm name, if applicable, as well as a contact phone, and must indicate which documents the bankruptcy petition preparer prepared from a list of documents. An "other" option is provided for any additional documents.

Part 3, *Sign Here*, provides spaces for the bankruptcy petition preparer to enter a social security number, and it adds

language regarding an officer, principal, responsible person, or partner of the bankruptcy petition preparer on the signature line.



**Fill in this information to identify your case:**

United States Bankruptcy Court for the:

\_\_\_\_\_ District of \_\_\_\_\_  
State

Case number (If known): \_\_\_\_\_

Draft March 13, 2013

**Official Form 121**

**Statement About Your Social Security Numbers**

12/14

Use this form to tell the court about any Social Security or federal Individual Taxpayer Identification numbers you have used. Do not file this form as part of the public case file. This form must be submitted separately and must not be included in the court's public electronic records.

To protect your privacy, the court will not make this form available to the public. You should not include a full Social Security Number or Individual Taxpayer Number on any other document filed with the court. The court will make only the last four digits of your numbers known to the public. However, the full numbers will be available to your creditors, the U.S. Trustee or bankruptcy administrator, and the trustee assigned to your case. To help creditors correctly identify a case, full Social Security Numbers may appear on an electronic version of some notices. Please consult local court procedures for submission requirements.

If you do not tell the truth on this form, you may be fined up to \$250,000, you may be imprisoned for up to 5 years, or both.

**Part 1:** Tell the court about yourself and your spouse if your spouse is filing with you

**For Debtor 1:**

**For Debtor 2 (Only If Spouse Is Filing):**

**1. Your name**

\_\_\_\_\_ First name

\_\_\_\_\_ First name

\_\_\_\_\_ Middle name

\_\_\_\_\_ Middle name

\_\_\_\_\_ Last name

\_\_\_\_\_ Last name

**Part 2:** Tell the court about all of your Social Security or federal Individual Taxpayer Identification Numbers

**2. All Social Security Numbers you have used**

\_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
\_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

\_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
\_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

You do not have a Social Security number.

You do not have a Social Security number.

**3. All federal Individual Taxpayer Identification Numbers (ITIN) you have used**

9 \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

9 \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

9 \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

9 \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

You do not have an ITIN.

You do not have an ITIN.

**Part 3:** Sign here

Under penalty of perjury, I declare that the information I have provided in this form is true and correct.

Under penalty of perjury, I declare that the information I have provided in this form is true and correct.

**x** \_\_\_\_\_

**x** \_\_\_\_\_

Signature of Debtor 1

Signature of Debtor 2

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

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## COMMITTEE NOTE

Official Form 121, *Statement About Your Social Security Numbers*, is revised as part of the Forms Modernization Project. The form, which applies only in cases of individual debtors, replaces former Official Form 21, *Statement of Social Security Number(s)*. It is renumbered to distinguish it from the forms used by non-individual debtors, such as corporations and partnerships.

To make Form 121 easier to understand and complete, the form is divided into three sections, and directions on the form are simplified. The debtors' Employer Tax-Identification number (EIN) is eliminated from the form, and the debtor's address is moved from the caption to the body of the form.

**THIS PAGE INTENTIONALLY BLANK**

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)	
Case number:	_____		

## Order of Discharge

**IT IS ORDERED:** A discharge under 11 U.S.C. § 727 is granted to:

\_\_\_\_\_ [\_\_\_\_\_]

\_\_\_\_\_  
MM / DD / YYYY

**By the court:** \_\_\_\_\_  
United States Bankruptcy Judge

### Notice to the creditors:

This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors with discharged debts cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

### Notice to the debtor:

This court order grants you (the debtor) a discharge. Most debts are covered by the discharge, but not all. Generally a discharge removes your personal liability for debts that you owed before you filed your bankruptcy case.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts that existed before the conversion are discharged.

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

**For more information, see page 2 ►**

### **Creditors cannot collect discharged debts from you**

This order means that no one can make any attempt to collect from you personally a debt that has been discharged. For example, creditors with discharged debts cannot sue you, garnish your wages, assert a deficiency claim against you, or otherwise try to collect from you personally. They cannot contact you by mail, phone, or otherwise in any attempt to collect the debt as your personal liability.

A creditor who violates this order can be required to pay you damages and attorney's fees.

However, you may voluntarily pay any debt that has been discharged.

### **But creditors might collect for some debts**

This discharge does not stop creditors from collecting debts that you reaffirmed or from any property in which they have a valid lien.

Debts covered by a valid reaffirmation agreement are not discharged. When you signed a reaffirmation agreement, you chose to give up your discharge for that particular debt.

In addition, the creditor may have a right to enforce a lien against your property unless the lien was avoided or eliminated. For example, the creditor may have the right to foreclose a home mortgage or repossess an auto.

Also, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as your insurance company or a relative who cosigned or guaranteed a loan.

### **Some debts are not discharged**

Examples of some debts that are not discharged are:

- debts that are domestic support obligations;
- debts for most student loans;
- debts for most taxes;
- debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- some debts which you did not properly list;
- debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and
- debts for death or personal injury caused by your operating a vehicle while intoxicated.

**This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of this discharge.**

## COMMITTEE NOTE

Official Form 318, *Order of Discharge*, is revised and renumbered as part of the Forms Modernization Project. The form is used to issue a discharge in chapter 7 cases filed by individuals or joint debtors. It replaces Official Form 18, *Discharge of Debtor*, Director's Procedural Form 18J, *Discharge of Joint Debtors*, and Director's Procedural Form 18JO, *Discharge of One Joint Debtor*.

To make the discharge order and the explanation of it easier to read and understand, legal terms are explained more fully or replaced with commonly understood terms, and the form is reformatted.

Reaffirmed debts are explained more fully, and debtors are informed that a discharge will not stop creditors from collecting debts from any property in which they have a valid lien. In addition, debtors are advised that the discharge does not stop creditors from collecting from anyone else who is liable on the debt, such as cosigner on the loan or an insurance company.

Director's Procedural Forms 18J and 18JO are no longer needed because Form 318 specifies the names of the debtors, or debtor, to whom the discharge is issued.

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Fill in this information to identify the case:

Debtor 1 \_\_\_\_\_  
 First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
 (State)

Case number \_\_\_\_\_  
 (If known)

Draft March 14, 2013

Official Form 423

Certification About a Financial Management Course

12/14

If you are an individual and you filed for bankruptcy under chapter 7 or 13, or under chapter 11 and § 1141 (d)(3) applies, you must take an approved course about personal financial management. In a joint case, each debtor must take the course. 11 U.S.C. §§ 727(a)(11) and 1328(g).

After you finish the course, the provider will give you a certificate. The provider may notify the court that you have completed the course. If the provider does not do so, then Debtor 1 and Debtor 2 must each file this form with the certificate number before your debts will be discharged.

- If you filed under chapter 7 and you need to file this form, file it within 60 days after the first date set for the meeting of creditors under § 341 of the Bankruptcy Code.
- If you filed under chapter 11 or 13 and you need to file this form, file it before you make the last payment that your plan requires or before you file a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Bankruptcy Code. Fed. R. Bankr. P. 1007(c).

In some cases, the court can waive the requirement to take the financial management course. To have the requirement waived, you must file a motion with the court and obtain a court order.

Part 1: Tell the Court About the Required Course

You must check one:

I completed an approved course in personal financial management:

Date I took the course \_\_\_\_\_  
MM / DD / YYYY

Name of approved provider \_\_\_\_\_

Certificate number \_\_\_\_\_

I am not required to complete a course in personal financial management because the court has granted my motion for a waiver of the requirement based on (check one):

- 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 complete a course in personal financial management 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.
- Residence.** I live in a district in which the United States trustee (or bankruptcy administrator) has determined that the approved instructional courses cannot adequately meet my needs.

Part 2: Sign Here

I certify that the information I have provided is true and correct.

**X** \_\_\_\_\_ Date \_\_\_\_\_  
 Signature of debtor named on certificate Printed name of debtor MM / DD / YYYY

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## COMMITTEE NOTE

Official Form 423, *Certification About a Financial Management Course*, is revised as part of the Forms Modernization Project. The form replaces Official Form 23, *Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management*. Form 423 is renumbered to distinguish it from the forms used by non-individual debtors, such as corporations and partnerships.

To make Form 423 easier to understand, legal terms are explained more fully or replaced with commonly understood terms, and the form is reformatted. Part 1, *Tell the Court About the Required Course*, provides definitions for “incapacity” and “disability,” rather than providing statutory citations.

A statement is added that, in some cases, the court can waive the requirement to complete the financial management course. To have the requirement waived, the debtor must file a motion with the court and obtain a court order.

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**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(If known)

Draft March 14, 2013

**Official Form 427**  
**Cover Sheet for Reaffirmation Agreement**

12/14

**Anyone who is a party to a reaffirmation agreement may fill out and file this form. Fill it out completely, attach it to the reaffirmation agreement, and file the documents within the time set under Bankruptcy Rule 4008.**

**Part 1: Explain the Repayment Terms of the Reaffirmation Agreement**

1. **Who is the creditor?** \_\_\_\_\_  
Name of the creditor

2. **How much is the debt?**

On the date that the bankruptcy case was filed \$ \_\_\_\_\_

To be paid under the reaffirmation agreement \$ \_\_\_\_\_

\$ \_\_\_\_\_ per month for \_\_\_\_\_ months (if fixed interest rate)

3. **What is the annual percentage rate (APR) of interest?**

Before the bankruptcy case was filed \_\_\_\_\_%

Under the reaffirmation agreement \_\_\_\_\_%  Fixed rate  Adjustable rate

4. **Does collateral secure the debt?**  No  Yes. Describe the collateral. \_\_\_\_\_

Current market value \$ \_\_\_\_\_

5. **Does the creditor assert that the debt is nondischargeable?**  No  Yes. Attach an explanation of the nature of the debt and the basis for contending that the debt is nondischargeable.

	Income and expenses reported on Schedules G and H	Income and expenses stated on the reaffirmation agreement
6. <b>Using information from Schedule G: Your Income</b> (Official Form 106G) <b>and Schedule H: Your Expenses</b> (Official Form 106H), fill in the amounts.	6a. Combined monthly income from line 12 of Schedule G \$ _____	6e. Monthly income from all sources after payroll deductions \$ _____
	6b. Monthly expenses from Column A, line 22 of Schedule H — \$ _____	6f. Monthly expenses — \$ _____
	6c. Monthly payments on all reaffirmed debts not listed on Schedule H — \$ _____	6g. Monthly payments on all reaffirmed debts not included in monthly expenses — \$ _____
	6d. <b>Scheduled net monthly income</b> Subtract lines 6b and 6c from 6a. \$ _____ If the total is less than 0, put the number in brackets.	6h. <b>Present net monthly income</b> Subtract lines 6f and 6g from 6e. \$ _____ If the total is less than 0, put the number in brackets.

7. Are the income amounts on lines 6a and 6e different?  No  
 Yes. Explain why they are different, and complete line 10. \_\_\_\_\_  
\_\_\_\_\_

8. Are the expense amounts on lines 6b and 6f different?  No  
 Yes. Explain why they are different, and complete line 10. \_\_\_\_\_  
\_\_\_\_\_

9. Is the net monthly income in line 6h less than 0?  No  
 Yes. A presumption of hardship arises (unless the creditor is a credit union). Explain how the debtor will make monthly payments on the reaffirmed debt and pay other living expenses. Complete line 10.  
\_\_\_\_\_  
\_\_\_\_\_

10. Debtor's certification about lines 7-9 I certify that each explanation on lines 7-9 is true and correct.  
If any answer on lines 7-9 is Yes, the debtor must sign here. **X** \_\_\_\_\_ **X** \_\_\_\_\_  
If all the answers on lines 7-9 are No, go to line 11. Signature of Debtor 1 Signature of Debtor 2 (Spouse Only in a Joint Case)

11. Did counsel represent the debtor in negotiating the reaffirmation agreement?  No  
 Yes. Has counsel executed a declaration or an affidavit to support the reaffirmation agreement?  
 No  
 Yes

**Part 2:** Sign Here

Whoever fills out this form must sign here. I certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this *Cover Sheet for Reaffirmation Agreement*.

**X** \_\_\_\_\_ Date \_\_\_\_\_  
Signature MM / DD / YYYY  
\_\_\_\_\_  
Printed Name

Check one:  
 Debtor or Debtor's Attorney  
 Creditor or Creditor's Attorney

## COMMITTEE NOTE

Official Form 427, *Cover Sheet for Reaffirmation Agreement*, is revised and renumbered as part of the Forms Modernization Project. The form replaces Official Form 27, *Reaffirmation Agreement Cover Sheet*. To make it easier to understand, the form is reformatted, and legal terms are explained more fully or replaced with commonly understood terms.

The calculation of the debtor's net monthly income is expanded to include the debtor's net monthly income at the time the bankruptcy petition is filed, as well as the debtor's net monthly income at the time of the reaffirmation agreement. Rather than requiring filers to state their relationship to the case, checkboxes are provided for the debtor or the debtor's attorney and for the creditor or the creditor's attorney.

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# TAB 9

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# TAB 9A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

RE: COMMENTS ON THE REVISED PART VIII RULES AND AMENDMENTS  
TO RULES 9023 AND 9024

DATE: MARCH 20, 2013

The revised bankruptcy appellate rules—Part VIII of the Bankruptcy Rules—were published for comment in August 2012, as were related amendments to Rules 9023 and 9024. Fourteen sets of comments were submitted concerning the Part VIII rules, and one comment was submitted on Rules 9023 and 9024. This memorandum reviews the comments and provides the Subcommittee’s recommendations for changes to be made to the rules as published. Because the Subcommittee believes that the changes are not of sufficient significance to require republication of any of the proposed rules, **it recommends that the Committee approve them with the suggested changes and forward them to the Standing Committee for approval at its June meeting.**

Rules 9023 and 9024

Rule 9023 (New Trials; Amendment of Judgments) and Rule 9024 (Relief from Judgment or Order) would be amended to include a cross-reference to proposed Rule 8008, which governs Indicative Rulings. The National Conference of Bankruptcy Judges commented (12-BK-008) that a cross-reference to another rule is more appropriately placed in a Committee Note than in the rule itself.

The Committee proposed these amendments in order to call attention in another relevant part of the rules to the new bankruptcy appellate rule on indicative rulings. Rule 8008 prescribes

procedures for both the bankruptcy court and the appellate court when an indicative ruling is sought. It therefore incorporates provisions of both Civil Rule 62.1 and FRAP 12.1. Because a litigant filing a post-judgment motion that implicates the indicative-ruling procedure will not encounter a rule similar to Civil Rule 62.1 in either the Part VII or Part IX rules, the Committee decided that it would be useful to include a cross-reference to Rule 8008 in the rules governing post-judgment motions.

A Committee Note may not be amended without an amendment of the rule itself, so the cross-references to Rule 8008 must be placed in the text of these existing rules. Furthermore, several comments on the Part VIII rules suggested that cross-references to other rules should not be placed just in Committee Notes because not everyone reads them, and the Subcommittee is recommending some changes to the Part VIII rules in response to those comments. The proposed amendments of Rules 9023 and 9024 are consistent with that approach.

#### Part VIII Rules

Many of the comments submitted on the 28 revised Part VIII rules were lengthy and detailed. They demonstrated the commenters' careful review of the published rules and provided helpful suggestions on issues of style, organization, and substance. The Subcommittee carefully reviewed all of the comments during conference calls on February 20, March 4, and March 11.

As a general matter, the Subcommittee continues to favor close adherence to the Federal Rules of Appellate Procedure except where those rules are incompatible with bankruptcy appeals. It also recommends postponing for future consideration a number of suggestions that would change existing practice or raise policy issues requiring careful consideration. The overall response to the proposed revision of the Part VIII rules was positive.

The following pages include the Committee’s recommendations for changes to the rules as published and summaries of all of the comments with the Subcommittee’s responses, organized by rule. In several places comments by “EG” discuss issues that the reporter is raising for the Committee’s consideration. They generally concern matters that the reporter noticed in the course of preparing this memorandum after the Subcommittee’s deliberations.

Both a clean copy of the Part VIII rules recommended for approval at this meeting and a comparison version (showing the proposed changes to the published version) are included with these materials. References in this memorandum to line numbers on which changes are proposed are to the comparison version.

### Comments on Part VIII Rules

#### **General Comments**

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The reference to “BAP” is jarring. It would be preferable to use “the bankruptcy appellate panel” or, if BAP is retained, insert “the” in front of the acronym.

- The Committee carefully considered how to refer to bankruptcy appellate panels and settled on “BAP,” a term familiar to most bankruptcy practitioners, in order to avoid excessive wordiness. In many of the rules, the term BAP is used in a series, such as in Rule 8010(c) (“in the district court, BAP, or court of appeals”). The article “the” refers to all three courts and does not need to be repeated. When reference is made only to the BAP, an article is used. *See, e.g.*, Rule 8026(a)(1) (“a BAP” . . . “the BAP”).

12-BK-008—National Conference of Bankruptcy Judges – The NCBJ applauds and endorses the revisions to Part VIII. Bringing the Part VIII rules more into line with the structure and organization of the Federal Rules of Appellate Procedure will reduce confusion and improve the quality of bankruptcy appellate practice.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – The proposed changes are welcome and reflect the fact that we are in the twenty-first century and electronic filing is here to stay. They will make the entire bankruptcy appellate process run more efficiently and effectively.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – The product is impressive and a great leap forward for bankruptcy appellate procedure.

## Rule 8001

**No changes are proposed.**

### Comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The phrase “United States” before “district court” in subdivision (a) is unnecessary.

- The wording of the proposed rule is consistent with FRAP 1(a)(1) (“These rules govern procedure in the United States courts of appeals.”).

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (c) refers to sending a document, but documents are filed with courts, not sent to them. The language of FRAP 1(a)(2) would be preferable: “When these rules provide for filing a motion or document . . . .”

- Subdivision (c) is an all-purpose rule that governs the transmission of documents in a variety of contexts. Because it is not limited to transmission of documents to courts, the more general language (“send”) is used.

## Rule 8002

### **Proposed change:**

**In subdivision (c), delete “to a district court or BAP” after “bankruptcy court” on line 58.**

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – In subdivision (c)(1), the phrase “to a district court or BAP” is unnecessary.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Same.

- The phrase can be deleted without any effect on the meaning of the rule. The other provisions of Rule 8002 do not include this phrase.

### Other comments

12-BK-004—Thomas R. Morris – The inmate mailbox rule prescribed by subdivision (c) should be made subject to the exceptions provided for in proposed Rule 8002(d)(2) (“*When the Time[to Appeal] May Not be Extended*”). These exceptions help to ensure the finality of certain types of bankruptcy court orders upon which transactions often rely. If the inmate mailbox rule is not made subject to the same exceptions, a transaction that depends on the finality of an order could be held hostage to the possibility of an inmate appeal or at least thrown into uncertainty if an inmate appeal becomes known after the expiration of the regular appeal period.



12-BK-011—Debtor/Creditor Rights Comm. of the Business Law Section of the State Bar of Michigan – The Committee agrees with the comment of Mr. Morris. Unlike district court cases in which all of the parties are generally known, the active parties to a contested matter in a bankruptcy court may not be aware that a creditor or equity holder is an inmate. They might therefore believe that an order is final 14 days after its entry, only to have a notice of appeal that was filed by an inmate received by the court after that date. The inmate appeal rule should not be added to Rule 8002, but, if it is, it should be limited to inmates who had previously opposed entry of the order from which an appeal is taken and disclosed their status as an inmate.

- This provision was added to mirror FRAP 4(c). The instances of inmate appeals in bankruptcy cases are likely to be rare.

12-BK-008—National Conference of Bankruptcy Judges – The order of proposed Rules 8002 and 8003 should be reversed. That reorganization would be consistent with the order of FRAP 3 and 4 and would be more logical.

- The rule governing the time for filing a notice of appeal must remain as Rule 8002 because 28 U.S.C. § 158(c)(2) specifically refers to it (“An appeal under subsections (a) and (b) of this section shall be taken . . . in the time provided by Rule 8002 of the Bankruptcy Rules.”).

The order of subdivisions (c) and (d) should be reversed. In FRAP 4 the provision regarding extensions of time to appeal (Rule 4(a)(5)) precedes the provision about the timing of inmate appeals (Rule 4(c)). Moreover, motions for extensions of time occur much more frequently in bankruptcy cases than do inmate appeals, so the reverse order of the provisions is more logical.

- The rule as published addresses the time for all parties to file notices of appeal before addressing extensions of those time periods.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (a)(2) governs the premature filing of a notice of appeal – one filed after the bankruptcy court “announces” a decision or order but before the entry of judgment. To clarify that the rule can apply when the court issues a written decision, the phrase “orally or in writing” should be inserted after “announces.”

- The published rule tracks the language of FRAP 4(a)(2). The term “announcement” is also used in the current rule—Rule 8002(a)—without specifying that the announcement of the decision may be either oral or written.

Subdivision (b)(1) should recognize that parties frequently make motions for reconsideration and bankruptcy courts act on them, even though the rules do not specifically authorize this motion. A motion to reconsider should be added to the list of motions that toll the time for filing a notice of appeal.

- The published rule is consistent with the current rule—Rule 8002(b)—and FRAP 4(a)(4). This appellate rule does not seem to be the appropriate place for authorizing motions to reconsider.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Rule 8002 should include a provision like FRAP 4(a)(6), which permits the district court to reopen the time to file an appeal for someone who did not receive notice of entry of the judgment within 21 days after its entry. This rule applies to bankruptcy cases appealed from the district court to the court of appeals, and there is no reason that it should not also be available for the first level of appeal. The frequently made argument regarding the need for expedition of bankruptcy appeals is overstated, except with regard to the types of judgments listed in proposed Rule 8002(d)(2) (no extension of time to appeal allowed). Reopening would not occur frequently, but it would provide an incentive for prevailing counsel to make sure that losing parties receive formal notice of a judgment.

- The Subcommittee recommends that this issue be listed for future Committee consideration. Given the controversy provoked a few years ago by the extension of the time to file a notice of appeal from 10 to 14 days, a proposal for a rule allowing a party to seek the reopening of the time to appeal up to 180 days after a judgment was entered would likely be met with substantial opposition.

It would be useful for Rule 8002 to have a provision similar to FRAP 4(a)(7), which addresses when a judgment or order is entered for purposes of Rule 4(a). The provision helps clarify timing issues presented by the separate-document requirement.

- The Subcommittee recommends that this issue be listed for future Committee consideration.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – It appears that “of the judgment, order, or decree” was cut off from the end of the sentence.

- The proposed provision tracks the language of FRAP 4(a)(2).

Subsection (b)(3) addresses appealing the order disposing of one of the listed motions. The title should reflect that the rule addresses appealing the order, not the motion.

- The title was added by the style consultant, Professor Joe Kimble. “Appealing the Motion” is shorthand for “Appealing the Ruling on the Motion.”

## **Rule 8003**

### **Proposed changes:**

**(1) In subdivision (c), change references to “serving” and “service” to “transmitting” and “transmission,” and revise the Committee Note accordingly.**

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The title of subdivision (c) refers to “serving” the notice of appeal, and subdivision (c)(3) refers to noting service on the docket. Subdivision (c)(1), however, requires the clerk to “transmit” the notice of appeal. “Transmit” should be substituted for “serve.”

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Same.

12-BK-040—Bankruptcy Clerks Advisory Group – Same.

EG: I suggest an alternative revision for consideration by the Committee. I recommend changing “transmit” to “serve,” rather than the other way around, so that the significance of the action taken by the clerk is clear. Rule 8001(c) provides a general rule requiring electronic transmission that applies whether or not a particular rule uses the word “transmit.” Rule 8011 refers to “serve” and “service” throughout. Moreover, 28 U.S.C. § 158(c)(1) provides that a party other than the appellant must make an election to have an appeal heard by the district court, rather than the BAP, “not later than 30 days after service of the notice of appeal.” And Rule 8006 refers in several places to “service of a notice of appeal under Rule 8003(c).

Under this alternative, subdivision (c) would read as follows:

1 (c) SERVING THE NOTICE OF APPEAL.

2 (1) *Serving Parties and Transmitting to the United States Trustee.* The  
3 bankruptcy clerk must serve the notice of appeal on counsel of record for each party to  
4 the appeal, excluding the appellant, and transmit it to the United States trustee. If a party  
5 is proceeding pro se, the clerk must send [mail] the notice of appeal to the party’s last  
6 known address. The clerk must note, on each copy, the date when the notice of appeal  
7 was filed.

8 (2) *Effect of Failing to Serve or Transmit Notice.* The bankruptcy clerk’s failure  
9 to serve notice on a party or transmit notice to the United States trustee does not affect  
10 the validity of the appeal.

11 (3) *Noting Service on the Docket.* The clerk must note on the docket the names  
12 of the parties served and the date and method of the service.

The Committee Note would remain as published.

**(2) In subdivision (d)(2), lines 61-62, “case and the title of the adversary proceeding, if any” is substituted for “court action.”**

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (d)(2) is unclear. What does “title of the bankruptcy court action” mean? What about the appellee’s name? The rule should either specify more clearly the caption that the appellate court must use or provide more generally for the creation of an appropriate caption for the appeal.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Parties and BAP and district clerks would benefit from guidance about how a docket’s title ought to look under the rule. The Advisory Committee should alert the Bankruptcy Court Administrative Division and the District Court Administrative Division, as well as pertinent AO advisory groups, that this is an issue upon which guidance should be provided to clerks and parties well in advance of the rule’s effective date.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – The reference to the action is not clear in a bankruptcy context. When we docket an appeal, we create a caption that has the main case information at the top and the information about the appellant and appellee below. We give the adversary proceeding information when it is available. Rather than try to capture all the permutations in a rule, revise subdivision (d)(2) to provide that “the clerk must docket the appeal and identify the appellant.”

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Kressel’s comment.

Other comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The meaning of the concluding sentence of subdivision (b)(1)—“They may then proceed on appeal as a single appellant”—is unclear.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Kressel’s comment.

- This language is taken directly from FRAP 3(b)(1). It allows multiple parties with sufficiently similar interests to join together for all aspects of an appeal, including filing a joint brief and presenting an oral argument on behalf of all of the joint appellants.

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (c)(1) should require the appellant rather than the bankruptcy clerk to serve the notice of appeal on the parties.

12-BK-008—National Conference of Bankruptcy Judges – Same. If the service duty remains on the bankruptcy clerk, Rule 8004(c)(1) concerning interlocutory appeals should be made consistent with Rule 8003(c)(1).

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Same. If the service duty remains on the bankruptcy clerk, service should not be required on entities that received electronic notice of the docketing of the notice of appeal in the bankruptcy court. The following language should be added to the end of the first sentence of (c)(1) after “excluding the appellant”: “and any entity who received electronic notice of the docketing of the notice of appeal at the time the notice of appeal was docketed.”

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Kressel’s and the NCBJ comments.

- The published rule follows the current practice of service by the clerk that is provided for by Rule 8004 and FRAP 3(d).

12-BK-010—The States’ Association of Bankruptcy Attorneys – Subdivision (d)(1) should be revised to delay the transmission of the notice of appeal until the time has expired for all parties to the appeal to make an election to have the district court, rather than the BAP, hear the appeal. This change would avoid requiring the BAP to transfer an appeal to the district court if the appellee elects to have the district court hear it.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Sometimes the bankruptcy clerk will not have transmitted the notice of appeal to the BAP when an appellee files an election to have the district court hear the appeal. The rule should reflect that possibility by stating three requirements for transmission of the notice of appeal to the BAP: a BAP has been established for appeals from that district, the appellant has not elected to have the district court hear the appeal, and [new language] “no other party has yet filed an election to have the district court hear the appeal.”

- SABA is correct that the published rule can result in the transmission of the notice of appeal to the BAP and the appeal being docketed there, only to be followed days later by the transfer of the appeal to the district court. While that may be inefficient, the Committee determined that it would be beneficial to have appeals promptly docketed in an appellate court, as occurs under FRAP 3(d) and 12(a). SABA’s proposal could delay docketing of the appeal for 30 days.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (a)(1) is redundant and should be removed.

- The provision is not redundant. It specifies what action must be taken to appeal—file a timely notice of appeal—whereas Rule 8002(a)(1) specifies the time period for doing so. As some have commented, it might make more sense to reverse the order of these rules, but as explained above, the time provision must remain in Rule 8002.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – The Committee Note should address what happens if an appeal is docketed in a BAP and a motion is filed in that court before the appellee’s time to elect a district court has expired. He suggests adding the following discussion:

If the appeal has been docketed in the BAP under subdivision (d), the BAP is to rule on any motion presented to it unless and until the appellee timely elects under 28 U.S.C. § 158(c)(1)(B) to have the appeal heard by the district court. Once an appellee timely elects under § 158(c)(1)(B) to have the appeal heard by the district court, Rule 8005(b) governs the BAP clerk's duty to transmit the appellate documents, including any motion, to the district clerk.

- This discussion does not seem appropriate in the Committee Note for Rule 8003, which addresses how to take an appeal as of right and the docketing of that appeal.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (c) should require a notice of appeal that conforms to the Official Form; a copy of the order, the names and addresses of the parties and their attorneys; and the fee.

- Subdivision (c) by its terms requires a notice of appeal that conforms substantially to the appropriate Official Form; the judgment, order, or decree appealed from; and the fee. Official Form 17 (Notice of Appeal) requires the appellant to provide the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys.

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (c)(1) requires the clerk to note on each copy of the notice of appeal the date when it was filed. This requirement is unnecessary because the electronic docket within CM/ECF will state the filing date.

- This information needs to be provided to some pro se parties.

BK-034—Oregon State Bar Debtor-Creditor Section Local Rules and Forms Committee – The change to Rule 8003 removing the delay of docketing an appeal provides greater clarity regarding the timing of the docketing of the appeal and will save bankruptcy clerks time and resources.

## **Rule 8004**

### **Proposed changes:**

**(1) In subdivision (c)(2), make the same change regarding the title under which an appeal is docketed that is proposed for Rule 8003(d)(2).**

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (c)(2) presents the same issue discussed above concerning the caption used for docketing an appeal.

12-BK-008—National Conference of Bankruptcy Judges – Same. A more detailed provision based on the distinction between “cases” and “adversary proceedings” would be better.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Subdivision (c) presents the same issues that Rule 8003 raises regarding the title that should be used for docketing the appeal.

12-BK-040—Bankruptcy Clerks Advisory Group – Same.

**(2) Delete the last sentence of subdivision (c)(3) on lines 45-46.**

The change is proposed in response to the following comment:

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (c)(3) should provide that the appellate court “may” (not “must”) dismiss the appeal if leave to appeal is denied. We sometimes deny such motions as moot because the order appealed from was final, not interlocutory.

- Neither current Rule 8003 nor FRAP 5 contains the sentence that the comment refers to.

Other comments

12-BK-010—The States’ Association of Bankruptcy Attorneys – Subdivision (c)(1) presents the same issue discussed above concerning the time for the bankruptcy clerk to transmit the notice of appeal to the BAP for docketing the appeal.

- See the discussion regarding SABA’s comment about Rule 8003(d)(1).

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – It is not clear whether the harmless error provisions of proposed Rule 8003(a)(2) apply to this rule. Perhaps the Committee Note should indicate that they do apply.

- The comment refers to the provision of Rule 8003 that states that an appellant’s failure to take any step other than timely filing a notice of appeal does not affect the validity of an appeal. Subdivision (d) of this rule might be viewed as an equivalent provision. It allows the appellate court to treat a notice of appeal as a motion for leave to appeal if a motion is not filed (or the court can order the appellant to file a motion). Thus, like Rule 8003, Rule 8004 suggests that filing a notice of appeal is the only essential requirement.

Rule 8005(d) requires a motion for leave to appeal that is not accompanied by a notice of appeal to be treated as a notice of appeal for purposes of determining the timeliness of a statement of election to have a district court hear an appeal. Rule 8004(d), however, is silent about whether a motion for leave to appeal may be treated as a notice of appeal. The provision should expressly state that such a motion may be treated as a notice of appeal. The result should not differ based on whether or not a BAP has been authorized.

- Rule 8005(d) does not provide that in districts in which an appeal may be taken to a BAP, a motion for leave to appeal may be treated for purposes of Rule 8004 as a notice of appeal. Instead, it prevents an appellant who seeks leave to appeal and does not initially file a notice of appeal from getting additional time to make an election. The absence of a provision in Rule 8004(d) authorizing a motion for leave to appeal to be treated as a notice of appeal means that it may not be so treated. The proposed rule, although consistent with existing Rule 8001(b), could create a trap for litigants more familiar with the appellate rules than with the bankruptcy rules. FRAP 5 requires a party seeking leave to appeal to file a petition for permission to appeal, but does not require the filing of a notice of appeal.

The Subcommittee wants to call the Committee's attention to this issue for consideration of whether Rule 8004 should conform more closely to FRAP 5. Set out below is an alternative Rule 8004 that eliminates the requirement of a separate notice of appeal and requires a motion for leave to appeal to include information that would be in a notice of appeal. Adoption of this alternative version of Rule 8004 would likely require its republication. Adoption of this change would also require elimination of Rule 8005(d) and the portion of the Committee Note referring to it.

If the Committee wishes to go forward with the alternative versions of Rules 8004 and 8005, it might request adoption now of the current versions while suggesting publication of the alternative versions in 2013, or withhold any action on the alternate versions now, with the understanding that publication would be sought for 2014, together with any additional further amendments.

#### **Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal**

(a) MOTION FOR LEAVE TO APPEAL. To appeal from an interlocutory order or decree of a bankruptcy court under 28 U.S.C. § 158(a)(3), a party must file with the district or BAP clerk a motion for leave to appeal within the time allowed by Rule 8002 for filing a notice of appeal. Unless the motion is served electronically using the court's transmission equipment, it must include proof of service in accordance with Rule 8011(d).

(b) CONTENTS OF THE MOTION; RESPONSE.

(1) *Contents.* A motion for leave to appeal under 28 U.S.C. § 158(a)(3) must include the following:



(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why leave to appeal should be granted;

(E) a copy of the interlocutory order or decree and any related opinion or memorandum; and

(F) the names of all parties to the interlocutory order or decree from which appeal is sought and the names, addresses, and telephone numbers of their respective attorneys.

(2) *Response.* A party may file with the district or BAP clerk a response in opposition or a cross-motion within 14 days after the motion is served.

(3) *Oral Argument Not Required.* The motion and any response or cross-motion are submitted without oral argument unless the district court or BAP orders otherwise.

(c) GRANT OF LEAVE; FEES; FILING THE RECORD.

(1) *Grant of Leave to Appeal.* A notice of appeal need not be filed. The date when the order granting leave to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(2) *Payment of Fees.* Within 14 days after the entry of the order granting leave to appeal, the appellant must pay the bankruptcy clerk all required fees.

(2) *Filing the Record.* The bankruptcy clerk must notify the district or BAP clerk once the appellant has paid the fees. Upon receiving the notice, the district or BAP clerk must enter the appeal on the docket. The record must be designated, transmitted, and filed in accordance with Rules 8009 and 8010.

(e) DIRECT APPEAL TO A COURT OF APPEALS. If leave to appeal an interlocutory order or decree is required under 28 U.S.C. § 158(a)(3), an authorization of a direct appeal by the court of appeals under 28 U.S.C. § 158(d)(2) satisfies the requirement.

12-BK-031—Insolvency Law Comm. of the Business Law Section of the State Bar of California – Subdivision (b)(2) provides that a response in opposition or a cross-motion to a motion for leave to appeal is to be filed in the district court or BAP even though the original motion is filed in the bankruptcy court. This may cause confusion. The rule should be modified to provide that a response or cross-motion must be filed within 14 days after the bankruptcy clerk transmits the notice of appeal, rather than after the motion is served.

- Rules 8003 and 8004 do not provide that the bankruptcy clerk must notify the parties of the date when the notice of appeal is transmitted to the appellate court. The date of service of the motion for leave to appeal is therefore more likely to be known by the parties.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Rule 8004 should specify that motions for leave to appeal are not governed by Rule 9014. This addition would parallel proposed Rule 8006(f)(4) (a request for certification of a direct appeal is not governed by Rule 9014).

- The provision in Rule 8006(f)(4) is not necessary and should be deleted. Rule 9014 applies to contested matters “not otherwise governed by these rules.”

The rule should clarify the power of the bankruptcy court during an interlocutory appeal. This issue causes considerable confusion among courts. *See In re Rains*, 428 F.3d 893, 904 (9th Cir. 2005) (holding that the bankruptcy court retained jurisdiction to enforce an order that had been appealed so long as the court did not alter or expand it).

- Like FRAP 5, Rule 8004 governs the procedure for seeking to appeal by leave. It is beyond the scope of the rule to specify the scope of the bankruptcy court’s jurisdiction during the period before the appellate court rules on the motion for leave to appeal.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (a) should refer to “an appeal from an interlocutory order, decree, or judgment,” not just “order or decree.” We frequently see attempts to appeal a partial judgment, which can be interlocutory.

- Although current Rule 8001(b) refers to an “interlocutory judgment,” the statute— 28 U.S.C. § 158(a)(3)—just refers to “interlocutory orders and decrees.” The proposed rule is consistent with the statute.

Subdivision (a)(3) requires the notice of appeal to be accompanied by proof of service unless it is served electronically. There is not a similar provision under Rule 8003. Moreover, the proof of service only applies to the notice of appeal and not to the motion for leave to appeal. It would be better to include in this rule the language of Rule 8003(c).

- There is an inconsistency between Rule 8003 and Rule 8004. Rule 8003(c) requires the bankruptcy clerk to serve the notice of appeal, whereas Rule 8004(a) places that duty on the appellant. This difference is a carryover from existing Rule 8001(a) (“Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8004) and Rule 8001(b) (the notice of appeal must be “accompanied by . . . proof of service in accordance with Rule 8008”). Because the motion for leave to appeal must accompany the notice of appeal, the proof of service applies to both documents. The Subcommittee recommends that the Committee consider in the future whether the service requirement should be the same in both rules.

12-BK-040—Bankruptcy Clerks Advisory Group – Subsection (a)(3) uses the term “electronic transmission equipment,” which is not used in the bankruptcy court system. The sentence should be revised to state, “Unless served electronically by the court . . . .”

- The term “the court’s transmission equipment” follows the language of FRAP 26(c)(2). *See also* Fed. R. Civ. P. 5(b)(3) (“the court’s transmission facilities”).

Subdivision (c)(3) provides that the “motion and any response or cross-motion are submitted without oral argument unless the district court or BAP orders otherwise.” The wording suggests that there may be situations in which oral argument would be allowed. The Committee Note is clearer: “Unless the district court or BAP orders otherwise, no oral argument will be held on the motion.”

- The two sentences mean the same thing: the general rule is no oral argument, but the court can allow it. The phrasing of the proposed rule tracks FRAP 5(b)(3) and current Rule 8003.

BK-034—Oregon State Bar Debtor-Creditor Section Local Rules and Forms Committee – The change to Rule 8004 removing the delay of docketing an appeal provides greater clarity regarding the timing of the docketing of the appeal and will save bankruptcy clerks time and resources.

## **Rule 8005**

### **Proposed changes:**

**(1) In subdivision (a), change “that conforms substantially to” to “using” in order to mandate the use of the Official Form that for appellants combines the Notice of Appeal and the Statement of Election. Make conforming changes to the Committee note.**

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (a) should emphasize that the official election form needs to be a separate document from the notice of appeal. The separate document requirement should be retained.

12-BK-010—The States’ Association of Bankruptcy Attorneys – Is there an official form, or is it still being drafted? The election form should be combined with the notice of appeal. The current separate statement requirement causes confusion and, when not followed, leads to the voiding of an election to have the appeal heard in the district court. Putting the two forms together will ensure that they are filed at the same time.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (a) should make clear whether the statement of election must be set forth in a separate document. The current separate document requirement should be retained.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (a) does not specify whether the election must be made by a separate document. Requiring a separate document makes things much clearer for the courts and parties.

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (a) refers to an Official Form, but there is no such form.

- The Committee previously decided to eliminate the separate document requirement and to propose Official Forms for making an election to have the district court hear an appeal. As is discussed under agenda item 9(B), two new Official Forms are being recommended for publication. An appellant is required to make an election at the time it files its notice of appeal. In order to facilitate compliance with that statutory requirement, proposed Form 17A places the statement of election on the notice-of-appeal form. Proposed Form 17B is the form an appellee would use to make an election.

**(2) Add “and notify the bankruptcy clerk of the transfer” at the end of subdivision (b). Make conforming changes to the Committee Note.**

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The provision in subdivision (b) for the BAP clerk to transmit documents to the district clerk may not be well received by district clerks. They are accustomed to receiving documents from bankruptcy clerks. The current practice (at least in the 8th Cir. BAP) of having the BAP clerk return the appeal to the bankruptcy clerk, who then transmits it to the district clerk, should be retained or allowed as an acceptable alternative.

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (b) should be revised to require notification of the bankruptcy clerk if the BAP clerk transmits the record to the district clerk.

**(3) Add a sentence to the first paragraph of the Committee Note explaining that the rule only applies in districts in which appeals to a BAP are authorized.**

The change is proposed in response to the following comment:

12-BK-040—Bankruptcy Clerks Advisory Group – The title of the rule does not indicate that it does not apply in every circuit. The Committee Note should clarify that not every circuit has a BAP.

Other comments:

12-BK-010—The States’ Association of Bankruptcy Attorneys – Given the suggestion for revising proposed Rule 8003 to delay transmittal of the appeal until all parties’ time to elect a district court has expired, subdivision (b)(1) should be revised to eliminate the possibility of a BAP clerk transmitting an appeal to the district clerk. If no parties file a statement of election, the bankruptcy clerk will transmit the appeal to the BAP clerk. If any party does elect a district court, the bankruptcy clerk will send the appeal to the district clerk.

- See the discussion of SABA’s comment about Rule 8003(d)(1).

Subdivision (c) requires a party to seek the determination of the validity of an election in the “court where the appeal is then pending.” In light of some case law that says that an invalid election is a nullity, the draft language is ambiguous. It should be revised to require a motion in the “court to which the bankruptcy court has transmitted the documents pursuant to the provisions of subsection (b).”

- If SABA’s suggestion concerning Rule 8003(d)(1) is not accepted, there will be cases in which the BAP clerk has transmitted documents to the district court, and the appellant challenges the validity of the appellee’s election. The language proposed by the comment would not capture that situation because the bankruptcy clerk would have transmitted the documents to the BAP.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (c) requires the motion to be filed where “the appeal is then pending.” “Pending” is a term that only applies to direct appeals. To use the term here suggests that the bankruptcy court will consider the matter. Since the motion to determine the validity of an election does not have to be filed until 14 days after the statement of election is filed, the district court or BAP should decide the motion. Substitute “docketed” for “pending.” The Committee Note’s statement that “Nothing in the rule prevents a court from determining the validity of an election on its own motion” suggests that a bankruptcy court could make this determination after an appeal has been docketed at the BAP.

- The basis for the statement about the meaning of “pending” is unclear. The intent of the provision is that the appellate court, not the bankruptcy court, will decide the motion. As for the statement in the Committee Note, the rule itself does not prevent a bankruptcy court from determining the validity of an election (for

example, if the election form is not properly filled out). But if the appeal is already pending in the district court or BAP, jurisdictional doctrines may prevent the bankruptcy court from making the determination.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – There are two problems with subdivision (c). First, it does not deal with the situation in which the bankruptcy court erroneously transmits a notice of appeal to the district court even though no election was made. In that case there should be a longer period of time to contest the transmittal to the district court. Second, even when a statement of election is filed, 14 days to contest the election is not long enough. The time should be the same as the appellee’s time to file an election.

- With regard to the first point, subdivision (c) only purports to address situations in which a statement of election was filed. The rule neither can nor should address all situations in which errors are made. Regardless of the rule, it is likely that the district court would entertain a motion to transfer an appeal to the BAP if no party filed a statement of election. The Subcommittee concluded that 14 days is a sufficient period for seeking a determination regarding the validity of an election.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – If Rule 8003(d)(1) is revised to take account of the possibility that an appellee may file a statement of election before the bankruptcy clerk transmits the notice of appeal to the BAP, subdivision (b) should be revised by adding the following sentence after the first sentence of the published rule: “Once the bankruptcy clerk has transmitted an appeal for docketing in the BAP, a party other than the appellant must file any statement of election with the BAP clerk.” The Committee Note should also be revised to reflect this change.

- The Subcommittee is recommending that Judge Teel’s suggestion for revising Rule 8003(d)(1) not be adopted, so there is no need to revise subdivision (b) of this rule.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – The rule does not retain the provision of current Rule 8001(e)(2), which provides for the withdrawal of an election with the district court’s acquiescence.

- The comment is correct. The Subcommittee recommends that this issue be listed for future Committee consideration.

## **Rule 8006**

### **Proposed changes:**

**(1) In subdivision (b), add “under Rule 8002” after “effective date” on lines 13-14.**

The change is proposed in response to the following comment:

12-BK-010—The States’ Association of Bankruptcy Attorneys – Two cross-references to other rules should be added to subdivision (b). The second sentence should state that “For purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the effective date, pursuant to Rule 8002, of the first notice of appeal . . .” The last sentence should read, “A matter is pending in the district court or BAP thereafter upon the valid election in accordance with Rule 8005.”

- The Subcommittee recommends adding the first cross-reference. Although the Committee Note refers to Rule 8002 and its provision for the delayed effectiveness of a notice of appeal in some circumstances, many people do not read Committee Notes. The Subcommittee concluded that the second suggested cross-reference should not be added. In circuits with no BAP, there will be no election. And even in circuits with a BAP, there is no reason to refer to an election in this provision.

**(2) In subdivision (f)(4), delete “not governed by Rule 9014 and are” in lines 71-72.**

This change is proposed in response to the comment, discussed on page 12, that was submitted by Judge Klein concerning Rule 8004.

**(3) At the end of subdivision (g), add “in accordance with F.R. App. P. 6(c).”**

This change is proposed in response to the following comments:

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (g) should make clear that the request for permission to take a direct appeal filed with the circuit clerk is a request under FRAP 5. It would be helpful to parties to specify the applicable appellate rule.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Same.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with the NCBJ comment.

- FRAP 6(c) was published at the same time as the Part VIII rules. It prescribes the procedure for requesting permission of the court of appeals to hear a direct appeal, and it incorporates all of FRAP 5 except (a)(3). The Subcommittee concluded that the cross-reference should be added to the rule even though it is discussed in the Committee Note.

**(4) Add “with the circuit clerk” after “timely filed” in the next-to-the-last line of the first paragraph of the Committee Note.**

This change is proposed in response to the following comment:

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Add “with the circuit clerk” to the first paragraph of the Committee Note after “a request for permission to appeal has been timely filed.”

Other comments:

12-BK-008—National Conference of Bankruptcy Judges – The rule is not organized in a logical order. It should be reorganized as follows: (e), (f), (c), (d), (b), (a), and (g).

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with the NCBJ comment.

- The Subcommittee disagrees with the comments. The logic of the organization of the proposed rule is as follows: It begins by stating what is required for an effective certification—(a). Then it prescribes in what court a matter is pending for purposes of this rule—(b). The rule then addresses the various ways in which a certification may be made: by all of the parties—(c) or by the court. Subdivision (d) specifies which court may make a certification, (e) addresses a certification on the court’s own motion, and (f) addresses a certification by the court on request by either a party or a majority of the appellants and a majority of the appellees. Finally (g) addresses what happens in the court of appeals following a certification.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (d), in combination with subdivision (b), gives a bankruptcy court only 30 days after the effective date of the first notice of appeal, to certify a direct appeal. That is not enough time for the court that will be most knowledgeable about the case to make a decision. Either Rule 9006 should be amended to allow the bankruptcy court to extend this time period, or the period in which the case is deemed to remain pending in the bankruptcy court for purposes of this rule should be extended to at least 60 days. When a majority of appellants and appellees request a certification, they have 60 days after the entry of judgment to do so. Midway through this time period, the court that can make the certification will change, causing confusion.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – If a request for certification is made within 30 days after the notice of appeal, but the bankruptcy court does not rule on it within that time period, the bankruptcy court loses jurisdiction to certify the appeal. The rule does not make clear how the bankruptcy court would transmit the motion to the appropriate appellate court.

- The published rule tried to strike an appropriate balance between allowing the bankruptcy court to have time to decide whether to certify a direct appeal and recognizing that the appeal will otherwise be proceeding in the district court or BAP. The 60-day time period for requests for certification is prescribed by 28 U.S.C. § 158(d)(2)(E). As the proposed rule is currently written, it could happen that the court with authority to enter the certification would change after a request was filed, but before it was ruled on. When the request is made by “a majority of the appellants and a majority of appellees (if any),” that shift in courts probably will not be significant because the statute requires the bankruptcy court, district court, or BAP to enter the certification. No deliberation is required. Either the bankruptcy court could enter the certification quickly, or the appellate court could



enter it without having to know much about the case. But when the request is made by “a party,” the court must determine that one of the statutory circumstances supporting a direct appeal exists. If a party filed a request on the twenty-fifth day after the judgment was entered, the bankruptcy court would have only a few days to rule on the request, assuming that the notice of appeal was promptly filed and that it became immediately effective. If the court did not rule on the request during the 30 days after the notice of appeal became effective, the ruling would have to be made by the district court or BAP. That, however, is a possibility that the statute allows. The Subcommittee concluded that the rule does not need to specify how the motion gets transmitted to the appellate court.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (c) should provide an opportunity for the bankruptcy court to comment on the proceeding’s suitability for direct appeal when a certification is jointly made by all appellants and appellees.

- The statutory provision that this provision implements is unusual in that it permits the parties to make the certification that a court otherwise is required to make for a direct appeal to the court of appeals. Subdivision (e)(2) provides that a party may file a supplemental statement regarding the merits of certification when the court makes the certification on its own motion. It might make sense for the rule to provide the court a similar opportunity when the parties make the certification. Although the joint certification procedure appears to be rarely invoked, the Subcommittee recommends that the Committee consider the issue in the near future.

## **Rule 8007**

### **Proposed changes:**

#### **(1) Change the order in which the courts are listed in the title of subdivision (b).**

The change is proposed in response to the following comment:

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – The title of subdivision (b) should be revised to state, “Motion in Appellate Court,” or the order of the courts should be reversed so that the rarest situation is not listed first.

- The proposed Part VIII rules do not use the term “appellate court” because of the potential ambiguity of the term. The Subcommittee recommends that the title be reworded as follows: “Motion in the District Court, BAP, or Court of Appeals on Direct Appeal.”

#### **(2) In subdivision (b)(1), delete “or where it will be taken” in lines 21-22.**

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Although it is appropriate to allow a motion for stay or other relief to be made in the bankruptcy court before a notice of appeal is filed, as subdivision (a)(2) provides, a notice of appeal should be required before an appellate court can hear such a motion. That is how the appellate court obtains jurisdiction. The rule does not explain how the motion gets before the appellate court if no notice of appeal has been filed.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Kressel’s comment.

- The provision in (a)(2)—“The motion may be made either before or after the notice of appeal is filed—is not in either current Bankruptcy Rule 8005 or in FRAP 8. Its purpose, insofar as the bankruptcy court is concerned, is to clarify that a bankruptcy court retains jurisdiction to rule on a motion for a stay pending appeal even after a notice of appeal has been filed. That rule is consistent with the case law. A search, however, turned up no authority concerning whether a notice of appeal must be filed before an appellate court may rule on a motion for a stay pending appeal. As published, subdivision (b)(1) suggested that the appellate court does have that authority. The Subcommittee recommends eliminating that suggestion.

A conforming amendment is proposed for the Committee Note.

**(3) In subdivision (e)(1), substitute “order the continuation of” for “continue.”**

EG: This proposed change does not respond to a comment. Instead, in adding a discussion of this provision to the Committee Note, I concluded that the word “continue” in subdivision (e)(1) is ambiguous. I had understood the rule to mean that the bankruptcy court could either suspend or go forward with other proceedings in the bankruptcy case while a matter was on appeal. I then became confused about whether that was a correct reading or whether “continue” meant postpone to another date (i.e. order a continuance). I then saw that current Rule 8005 is worded “order the continuation of,” and that is how this rule was originally drafted. The change to “continue” was made by the style consultant. I believe that it is a substantive change that should not be made.

**(4) Add a discussion of subdivision (e) in the Committee Note.**

The change is proposed in response to the following comment:

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – If the intent of subdivision (e) is to override the doctrine of exclusive appellate jurisdiction, the rule or Committee Note should be more explicit.

- This provision carries over a provision of current Rule 8005. The authority in paragraph (1) refers to the underlying bankruptcy case, not the proceeding or matter on appeal. The Committee Note lacks any discussion of this subdivision.

Other comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Doesn't subdivision (c) need to provide for the approval by the bankruptcy court of the bond after it is filed there?

- Subdivision (c) tracks the language of current Bankruptcy Rule 8005 and FRAP 8(a)(2)(E), and neither rule refers to the approval of the bond by the bankruptcy court. The need for that approval is just implied.

12-BK-010—The States' Association of Bankruptcy Attorneys – Subdivision (d) should except all governmental units, not just the United States, from the bond requirement.

- The proposed provision is consistent with current Rule 8005 and Fed. R. Civ. P. 62(e) in limiting the exception to the United States. Neither FRAP 7 (“Bond for Costs on Appeal in a Civil Case”) nor FRAP 8 expressly provides an exception for the United States from a bond requirement, although the Wright and Miller treatise suggests that courts of appeals rely on Rule 62(e) and 28 U.S.C. § 2408 in excepting the United States from the bond requirement. 16A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, ET AL., FEDERAL PRACTICE AND PROCEDURE § 3954.1 (4th ed. 2012)
- .

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Asking the bankruptcy court to grant a stay pending appeal is almost always a waste of time—even though that is the long-standing practice. This step in the process should be permissive rather than mandatory. In addition, the rule should state that the appellate court's consideration of the stay motion should be *de novo* rather than a review of whether the bankruptcy court abused its discretion in denying the stay.

- The bankruptcy rule should remain consistent with the appellate rule in generally requiring a request for a stay first from the bankruptcy court. The Subcommittee concluded that the rule should not address the standard of review. Courts are divided on this issue under FRAP 8. *See* 16A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, ET AL., FEDERAL PRACTICE AND PROCEDURE § 3954 (4th ed. 2012) (“In addressing the question of the stay, some courts of appeals will defer to the district court's determination and will reach a differing conclusion only if the district court has abused its discretion or if events subsequent to the district court's determination justify a different conclusion; other courts, however, eschew such deference.”).

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (b)(2)(B) should require a copy of any written ruling or order in the bankruptcy court to be included with the motion.

- The proposed rule follows FRAP 8(a)(2)(A).

## Rule 8008

**No changes are proposed.**

### Comments

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (c) should be made applicable to courts of appeals on direct appeal. While FRAP 12.1 deals with remands by the courts of appeal after notification of indicative rulings, it does not authorize remand to bankruptcy courts.

- The proposed FRAP 6(c), which was published last summer, makes FRAP 12.1 applicable to direct appeals and directs that “district court” be read as meaning “bankruptcy court” where appropriate. Thus, as the Committee Note explains, once the movant notifies the court of appeals under subdivision (b) that the bankruptcy court has made an indicative ruling, FRAP 6 and 12.1 take over and govern what happens in the court of appeals.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Rather than completely ducking the question when an appeal limits or defeats the bankruptcy court’s authority to act while the appeal is pending, the Committee Note should at least note the point on which there seems to be a consensus—that a trial court retains plenary authority when an interlocutory order is appealed, at least until the appellate court grants leave to appeal.

- The Committee Note is modeled on the Committee Notes of the corresponding civil and appellate rules.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivisions (a), (b), and (c) provide for actions, such as “state” and “notify,” that may not be in writing and reflected on the docket. Since the movant is requesting relief, it should file a motion.

- This rule is modeled on Fed. R. Civ. P. 62.1 and FRAP 12.1, both of which use the terms “state” and “notify.”

## Rule 8009

### **Proposed changes:**

**(1) In subdivision (a)(2) and (3), add “with the bankruptcy clerk” after “may file” on lines 20-21 and 28.**

The change is proposed in response to the following comment:

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (a)(1)(A) provides that the appellant files its designation in the bankruptcy court, but subdivisions (a)(2) and (a)(3) do not specify the court where the appellee, cross-appellant, and cross-appellee file their designations.

**(2) Add “the docket entries maintained by the bankruptcy clerk” as the first item in (a)(4).**

The change is proposed in response to the following comment:

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – “The docket entries maintained by the bankruptcy clerk” should be added as the first entry in the list of items to be included in the record on appeal. This is derived from FRAP 10(a)(3), although the certification requirement is deleted.

- Although current Rule 8006 does not require the docket sheet to be included in the record on appeal, it is included in FRAP 10 and might be helpful to appellate courts that do not access the record electronically.

Other comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The practice of designating the record is fairly archaic. The 8th Cir. BAP has a rule that the record before the bankruptcy court is the record on appeal. The record does not have to be designated or copied. Instead the parties refer to the appropriate bankruptcy court docket numbers in their briefs, and BAP judges can review the entire bankruptcy court record. This rule should at the least accommodate that practice. Language similar to that included in Rule 8018(e) should be incorporated here. [Rule 8018(e) provides, “The district court or BAP may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record, with the submission of any relevant parts of the record that the district court or BAP orders the parties to file.”]

12-BK-015—Judge Barry S. Schermer (Bankr. E.D. Mo.) – The bankruptcy judges of the E.D. Mo. agree with Judge Kressel’s comment about designation of the record.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Kressel’s and Judge Schermer’s comments.

- The 8th Cir. BAP has adopted this procedure regarding the record on appeal even though current Rule 8006 requires parties to designate the record. The Subcommittee recommends that the Committee consider the issue in the near future.

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (b)(5) should make clear that the transcript referred to is the one described in (b)(1) and not a transcript that a party has created on its own and included in a brief or submitted as a separate document.

- This provision tracks the language of FRAP 10(b)(2). Both rules allow in some circumstances a statement of the evidence when a transcript is unavailable.

Subdivision (c) is troubling, at least without a definition of “unavailable.” Many appellants will argue that a transcript is unavailable because they cannot afford to pay for it.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Same.

12-BK-040—Bankruptcy Clerks Advisory Group – The group agrees with Judge Kressel’s comment. This rule will require the bankruptcy clerk to check for service, track the time for filing objections, as well as the settlement and approval of the statement. It also appears that the clerk will have to verify that the transcript is unavailable. If the provision is retained, it needs to be revised. The statement will have already been filed under subdivision (a)(1). The penultimate sentence of subdivision (c) should therefore be revised as follows: “~~The statement and a~~Any objections or proposed amendments must ~~then be submitted~~filed with to the bankruptcy court for settlement and approval.”

- The provision follows very closely the language of FRAP 10(c), which does not define “unavailable.” There is a substantial body of case law under the appellate rule holding that an appellant’s inability to pay for a transcript does not make it unavailable within the meaning of the rule. *See, e.g., Thomas v. Computax Corp.*, 631 F.2d 131 (9th Cir. 1980). If the bankruptcy rule is modeled on the appellate rule, parties will be able to look to decisions interpreting it. Attempting to write a definition of “unavailable” will likely give rise to new issues. As for BCAG’s proposed revision, the sentence in question in the published rule tracks the language of FRAP 10(c). Subdivision (a)(1) does not require the appellant to file the statement of the evidence, but just the designation of the statement as an item to be included in the record.

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (d)—Agreed Statement as the Record on Appeal—will cause havoc and irritate bankruptcy judges.

12-BK-015—Judge Barry S. Schermer (Bankr. E.D. Mo.) – The bankruptcy judges of the E.D. Mo. strongly oppose the addition of subdivision (d). It would cause much additional work for bankruptcy judges and their staff. The benefits to the parties and the appellate court are questionable.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Schermer’s comment.

- This provision is modeled on FRAP 10(d). While it is not likely to be used frequently, retaining the provision is consistent with the goal of making the Part VIII rules as similar as possible to the appellate rules.

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (a)(5) includes the possibility of the bankruptcy clerk having to prepare paper copies of items for the record on appeal at a party’s expense if the clerk requests them and the party does not comply. Although this provision is part of existing Rule 8006, it should be eliminated. The parties should bear the burden of producing them, not the clerk.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with the NCBJ comment.

- The need for paper copies of documents is likely to become increasingly rare in the future. Subdivision (a)(5) is consistent with current Rule 8006.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – In subdivision (a)(4), delete “from the record” from the last item, and authorize the bankruptcy court to order additional items added. As revised, the last item in (a)(4) would read, “any additional items that the bankruptcy court or the court where the appeal is pending orders.”

- Eliminating “from the record” would allow the court to order any other item without limit to be included. Judge Teel says that, until an item is designated, it is not part of the record, but it is part of the record in the bankruptcy court prior to designation as part of the record on appeal. Subdivision (e)(2) allows the bankruptcy court to supplement the record if anything material to either party is omitted or misstated.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (e)(1) authorizes a party to move to strike an item that has been improperly designated as part of the record on appeal. The FRAP provision on which this rule is modeled, FRAP 10(e), does not contain a similar sentence. Improper designation goes beyond whether the record accurately reflects what occurred in the bankruptcy court. It goes to the form and content of the record, which are governed by (e)(3) and are resolved by the appellate court. The sentence about moving to strike should therefore be moved from subdivision (e)(1) to (e)(3).

- If the provision in question is left where it is in subdivision (e)(1), it will likely be interpreted to be consistent in scope with the remainder of the paragraph—as providing a procedure for challenging designated items that do not accurately disclose what occurred in the bankruptcy court.

12-BK-040—Bankruptcy Clerks Advisory Group – In subdivisions (b)(1), (b)(2), and (b)(3), if an appellant is not ordering a transcript, it must file with the bankruptcy clerk a certificate stating that fact. Since orders for transcripts must be filed with the clerk, as well as the reporter’s receipt of a transcript order, the filing of a certificate of no transcript seems unnecessary. The certificate requirement also suggests the need for a special form.

- These provisions are modeled on FRAP 10(b). The certificate requirement is imposed as a timing trigger. The appellee or cross-appellant must order any part of the transcript it wants within 14 days after the appellant files its order or certificate. If a form for the certificate is needed, a local form can be adopted.

Subdivision (f) addresses sealed documents. Currently sealed documents remain under seal during the appeal. The rule suggests that, if a party does not file a motion with the appellate court to accept the document under seal, the document may be unsealed. The more protective approach would be to keep the document sealed unless requested otherwise.

- Under the provision, a sealed document remains under seal in the bankruptcy court and is not transmitted as part of the record unless the appellate court grants a

motion to accept the document under seal. The Committee Note explains that the “motion must be granted before the bankruptcy clerk may transmit the sealed document to the district, BAP, or circuit clerk.”

BK-034—Oregon State Bar Debtor-Creditor Section Local Rules and Forms Committee – Proposed subdivision (a) provides stylistic changes that will assist practitioners in completing the record on appeal with greater ease.

## **Rule 8010**

### **Proposed changes:**

**(1) In subdivision (a)(1), change “the person or service that the bankruptcy court designates” to “the person or service selected in accordance with bankruptcy court procedures.”**

The change is proposed in response to the following comments:

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – In subdivision (a)(1), “bankruptcy court” should be changed to “bankruptcy clerk” because the clerk is the person who designates the person or service that transcribes the recording of a court proceeding. Worded as it is, the provision might lead to appellants bothering the court with motions to designate a court reporter or transcription service.

12-BK-040—Bankruptcy Clerks Advisory Group – Regarding subdivision (a)(1), bankruptcy clerks do not designate a single transcription service. Instead, in order to avoid favoritism, they provide a list of transcription services.

**(2) In subdivision (a)(2)(A), add “in accordance with Rule 8009(b)” on line 11 following “order for a transcript.”**

The change is proposed in response to the following comment:

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Regarding subdivision (a)(2)(A): Add a cross-reference to Rule 8009(b) so that the sentence begins, “Upon receiving an order for a transcript in accordance with Rule 8009(b) . . . .” This addition would emphasize the need for making satisfactory arrangements for paying the court reporter. Nonpayment is a common cause of delays of bankruptcy appeals.

### Other comments

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (b)(1) directs the bankruptcy clerk to transmit the record when it is complete. In some cases the record is never complete because the parties fail to designate what the record should contain. The provision should be revised to fix an outside deadline for the clerk’s transmission of the record. Once the



deadline passes, the clerk would transmit whatever items in the list in proposed Rule 8009(a)(4) the clerk has.

BK-034—Oregon State Bar Debtor-Creditor Section Local Rules and Forms Committee – Subdivision (b) does not specify the clerk’s duties if the record is never completed.

12-BK-040—Bankruptcy Clerks Advisory Group – Endorses the NCBJ comment on this issue.

- The Subcommittee recommends that this issue be listed for future Committee consideration.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – In some cases when the appellate court orders paper copies of the record to be delivered, it may be appropriate for the appellee to provide them. Add to the end of the first sentence of subdivision (b)(4), “or the appellee where appropriate.”

The Subcommittee recommends that this comment be considered in the future along with the immediately preceding comments.

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (b)(4) should be eliminated for the reasons stated regarding Rule 8009(a)(5).

12-BK-040—Bankruptcy Clerks Advisory Group – The group endorses the NCBJ comment on this issue.

- See the discussion of the NCBJ’s comments about Rule 8009(a)(5).

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – The requirement that a reporter file an acknowledgment of the order for a transcript may be more difficult for a reporter in the bankruptcy court than in the district court. In the bankruptcy court the reporter is unlikely to have a close relationship and familiarity with the court, and the duty imposed under this provision is more onerous than the requirement of FRAP 11(b)(1)(A) (“enter at the foot of the order the date of the receipt and the expected completion date and send a copy, so endorsed, to the Cir. court”). Also limit the reporter’s duty under subdivision (a)(2)(A) to requests for transcripts that are designated for purposes of an appeal.

- The intent was not to impose a duty substantially different from the requirement of FRAP 11(b)(1)(A). The proposed rule is worded slightly differently from the appellate rule in order to avoid paper-based terminology. Given the context of the provision, the Subcommittee doubts that there will be confusion about this rule applying outside of the appeal context.

The requirements of subdivision (a)(2)(C)–(D) (reporter must seek extension of time, clerk must report tardiness) will be ineffectual. The bankruptcy judge has no tools and few incentives to do anything but shrug.

- Some reporters will comply, so the rule is likely to have an impact. Perhaps the ultimate tool will be the striking of the offending reporter or service from the list of transcribers that the clerk provides to parties.

Consider authorizing a sanction of dismissal of an appeal if the appellant is delinquent in performing any of its duties regarding completion of the record.

- Rule 8003(a)(2) provides this authority. (“An appellant’s failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal.”)

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (a)(2) does not make clear how a reporter will be able to estimate when the transcript will be completed or how the reporter requests an extension of time from the bankruptcy clerk.

- The Subcommittee did not see this as a problem. It also concluded that the procedure for requesting an extension of time from the clerk can be left to local practices.

As stated regarding Rule 8009, the appellate court should be permitted to deem the record of proceedings in the bankruptcy court as the record on appeal. Then there would be no need for the bankruptcy clerk to transmit the record.

- See discussion of this issue under Rule 8009.

## **Rule 8011**

**No changes are proposed.**

### Comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The rule allowing briefs and appendices to be timely filed if mailed by the deadline has always been a bad rule. Why shouldn’t the filing rules be the same for these documents as for all others?

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Subdivision (a)(2) should not follow the ill-advised rule of FRAP 25(a)(2)(B) of having different filing rules for briefs and appendices.

- The Subcommittee recommends that this issue be listed for future Committee consideration.

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (a)(2)(C) requires that a notarized statement state that first-class postage has been prepaid, but the rule does not require that the postage be paid.

- The wording of the proposed rule mirrors FRAP 25(a)(2)(C).

Subdivision (b) refers to service by the clerk. The rules should not require service by the clerk.

- The Subcommittee is recommending retaining the provision of proposed Rule 8003 that requires the clerk to serve the notice of appeal.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (a)(3), which is similar to Rule 5005(a)(1), should incorporate a provision similar to Rule 5005(c).

- Rule 5005(c) provides, among other things, that “[i]n the interest of justice, the court may order that a paper erroneously delivered [for example, to a district judge or a district clerk] shall be deemed filed with the [bankruptcy] clerk as of the date of its original delivery.” Rule 8010(a)(3) is identical to FRAP 25(a)(4) and does not have a similar provision. Rule 8002(a)(4), however, provides that a notice of appeal that is mistakenly filed in a district court, BAP, or court of appeals will be considered filed in the bankruptcy court on the date on which it was received by the incorrect court.

The Committee Note’s discussion of the signature requirement of subdivision (e) should refer to Rule 9011, unless Rule 9011 is to be qualified. In that case, there is a need for clarification.

- A reference to Rule 9011 in the Committee Note would require a determination that Rule 9011 applies to bankruptcy appeals in district courts and BAPs. *Compare In re Sokolik*, 635 F. 3d 261, 269-271 (7<sup>th</sup> Cir. 2011) (affirming (1) district court’s denial of Rule 9011 sanctions against appellee due to failure to satisfy safe-harbor requirement and (2) award of sanctions against appellant under Rule 8020 in bankruptcy appeal), *with* 10 COLLIER ON BANKRUPTCY ¶ 8020.05 (16<sup>th</sup> ed. 2012) (“Bankruptcy Rule 8020 governs sanctions imposed by the district court or bankruptcy appellate panel for frivolous appeals, while Bankruptcy Rule 9011 sometimes applies to frivolous actions filed in the bankruptcy court.”).

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Revise subdivision (a)(2)(D) to read, “Unless the BAP or district court orders otherwise, no paper copy is required.”

- The suggested wording is simpler and more succinct than the proposed provision. However, it fails to convey the intended meaning that, when documents in paper form are filed by mail or delivery, generally no *additional* copies are required.

## Rule 8012

### Proposed change:

**At the end of the first paragraph of the Committee Note, add an explanation that the broad definition of “corporation” in § 101(9) of the Code applies to this rule.**

The change is proposed in response to the following comment:

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – It may be worth explaining in the Committee Note that a “corporate party” includes limited liability partnerships, limited liability companies, and other entities that are included within the definition of “corporation” in § 101(9) of the Bankruptcy Code.

- Under Rule 9001, the definitions in § 101 govern the use of the terms in the Bankruptcy Rules. Because lawyers handling bankruptcy appeals will not always be well versed in Bankruptcy Code definitions, a reminder in the Committee Note of the broad definition of “corporation” may be useful.

## Rule 8013

### Proposed changes:

**(1) Add “Unless the court orders otherwise,” to the beginning of subdivision (a)(D)(ii) and (iii) on lines 33-36.**

The change is proposed in response to the following comments:

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (a)(2)(D)(ii) provides that a notice of motion is not required. This provision is contrary to the motion practice in some district courts, such as the Northern District of Illinois, which require a notice of motion for all motions. The provision should either be deleted or modified to add “unless required by local rule.”

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Modify subdivision (a)(2)(D)(iii) by adding at the end of the provision, “unless required by local rule or order of the court in which the appeal is pending.” A district court or BAP should have discretion to require a proposed order.

- District courts in their capacity as trial courts already have well established motion practices. The desire for uniformity and consistency with the appellate rules is not sufficiently strong to require disruption of those practices with respect to notices of motion and proposed orders.

**(2) In subdivision (d)(2)(B), change “reconsider” to “consider” on line 67.**

The change is proposed in response to the following comments:

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Modify subdivision (d)(2)(B) to read: “state whether the request was pursued via a motion to the bankruptcy court, and, if it was, state whether all grounds for it were submitted to the bankruptcy court, and, if they were not, state why the motion should not be remanded for the bankruptcy court to reconsider.” Sometimes it would not be appropriate to file a motion relating to an appeal in the bankruptcy court. Make a conforming change to the Committee Note.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (d)(2)(B) refers to remanding a motion for the bankruptcy court to reconsider. “Consider” should be substituted for “reconsider” since the bankruptcy court may not have previously considered the emergency motion. The description of what is meant by “remand” should be more precise.

**EG: A conforming amendment needs to be made, but has not been, to the Committee Note.**

#### Other comments

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (f)(3)(A) provides that a motion may not exceed 20 pages. Some districts have local rules with more restrictive requirements. The provision should therefore be prefaced with “Unless otherwise provided by local rule.”

- Proposed subdivision (f)(3) begins by stating, “Unless the district court or BAP orders otherwise.” That language has been interpreted in other rules to permit a court to “order otherwise” by means of a local rule.

Subdivision (g), which allows intervention in an appeal, should be deleted. It does not have a counterpart in the general appellate rules, although some circuits have recognized an inherent power to permit intervention. It is not clear why a special bankruptcy appellate intervention rule is needed or who would have standing to participate on appeal if they had not participated in proceedings in the bankruptcy court.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – It is unclear why subdivision (g) is necessary or whether a party moving to intervene would have standing.

- This rule may be useful for some bankruptcy appeals. It is not always clear who is a party to a contested matter, so someone affected by an order being appealed may seek to intervene to participate in the appeal. Likewise, a United States trustee may need this authority to participate in some appeals.

12-BK-010—The States’ Association of Bankruptcy Attorneys – In subdivision (a)(1), for clarity add “where the case is pending” after “district or BAP clerk.”

- The Subcommittee concluded that the rule is sufficiently clear.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (b) refers to a motion to reconsider. As previously noted, Rule 8002(b)(1) should include these motions in the list of tolling motions.

- The Subcommittee is recommending that motions to reconsider not be added to Rule 8002(b)(1). The reference here is consistent with FRAP 27(b).

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – In subdivision (a)(1), add “to the district court or the BAP” after “A request.” This change will make the provision clearer since sometimes a motion relating to an appeal will be filed in the bankruptcy court.

- The Subcommittee concluded that the additional language is not needed.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (d) appears to require irreparable harm to support an emergency motion. There could be situations, however, such as expediting an appeal, that may warrant emergency consideration even though irreparable harm will not ensue.

- Proposed subdivision (d) carries forward the provisions of current Rule 8011(d). Like the proposed rule, the current rule requires irreparable harm for an emergency motion.

## **Rule 8014**

**No changes are proposed.**

### Comments

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – In subdivision (a)(4)(B), insert “appellate” before “jurisdiction.”

- This change is not needed because the context makes clear that the reference is to appellate jurisdiction.

In subdivision (a)(4)(D), consider requiring an assertion that leave to appeal has been granted in the case of an interlocutory appeal under § 158(a)(3).

- The proposed provision tracks the language of FRAP 28(a)(4)(D). Interlocutory appeals are covered by “or information establishing the district court’s or BAP’s jurisdiction on another basis.”

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (f), which governs supplemental authorities, requires a party to inform the court by way of a “signed submission.” Proceeding by a motion would be preferable.

- FRAP 28(j), on which this provision is based, requires notification of the clerk by letter. To avoid paper-based terminology, the proposed provision uses the term “submission.” There does not appear to be any reason to depart from the FRAP practice by requiring a motion.

## Rule 8015

### Proposed changes:

**(1) In subdivision (f), delete “or order in a particular case” following “local rule” in line 122, and make a conforming change to the Committee Note.**

**(2) Add language to the penultimate paragraph of the Committee Note to clarify the distinction between Rule 8011(a)(3) and subdivision (f) of this rule.**

The changes are proposed in response to the following comment:

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (f) seems inconsistent with Rule 8011(a)(3). Perhaps it would be more accurate to provide that nonconforming documents must be accepted for filing (Rule 8011(a)(3)), but that a court may order a document not conforming to the requirements of Rule 8015 to be stricken if prompt corrective action is not taken.

- Rule 8011(a)(3) applies to clerks, and subdivision (f) of this rule addresses the court’s authority. The Committee Note should clarify this distinction. There is no need for this rule to provide for local variation by order in a particular case because Rule 8028 allows suspension of the requirements of Rule 8015 in a particular case.

**(3) Revise the Committee Note’s discussion of subdivision (a)(7) to clarify that using the type-volume limitations for brief lengths will permit briefs that exceed the number of pages specified in the rule.**

The change is proposed in response to the following comment:

12-BK-010—The States’ Association of Bankruptcy Attorneys – The Committee Note incorrectly suggests that the page limits of proposed subdivision (a)(7) will be shorter than the existing page limits provided by current Rule 8010(c). Although the page limitation of proposed subdivision (a)(7)(A) reduces the number of pages from 50 to 30, the Committee Note to FRAP 32 indicates that the type-volume limitation that is adopted by subdivision (a)(7)(B) is expected to approximate 50 pages. The 30-page limit is merely a safe harbor. The Committee Note to Rule 8015 should make clear that no significant reduction in brief length is being imposed.

- This comment is well taken. The Committee Note to the 1998 amendment of FRAP 32 states: “The limits in subparagraph (B) approximate the current 50-page limit . . . .”

## Other comments

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (a)(7)(C) refers to an Official Form that does not exist.

12-BK-040—Bankruptcy Clerks Advisory Group – Same.

- As is discussed under agenda item 9(B), a new Official Bankruptcy Form based on Appellate Form 6 is being recommended for publication.

12-BK-040—Bankruptcy Clerks Advisory Group (continued) – Subdivision (c) refers to “Paper Copies of Appendices.” It should be revised to “Paper Filed Appendices” or “Appendices Filed in Paper.” The first sentence should begin, “An appendix filed in paper . . . .” Similarly subdivision (e)(2) should be revised to refer to “Other Documents Filed in Paper” and should begin, “Any other document filed in paper . . . .”

- The Subcommittee recommends that no change in wording be made.

BK-034—Oregon State Bar Debtor-Creditor Section Local Rules and Forms Committee – We support the proposed reduction of brief page length, as this will bring greater consistency with the FRAP and Oregon Local Bankruptcy Rules.

## **Rule 8016**

### **Proposed changes:**

**(1) Add subdivision (d)(2)(D) that parallels Rule 8015(a)(7)(B)(iii).**

The change is not proposed in response to a comment. Instead, the drafting of proposed Official Form 17C revealed the need for a provision in this rule about parts of the brief that do not count in calculating word and line limitations.

**(2) Delete subdivision (f), and make a conforming change to the Committee Note.**

The change is made in response to the following comments:

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (f) addresses the consequences of an appellant’s or an appellee’s failure to file a brief on time. This provision is misplaced because it applies to all appeals, not just to cross-appeals. Moreover, another provision —Rule 8018(a)(4)—addresses the same subject, but differs in scope. A single rule addressing the issue would be better.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – It is unclear why subdivision (f) is tucked in here. It also appears to duplicate Rule 8018(a)(4).



- FRAP 28.1, on which Rule 8016 is based, does not contain this provision. The subject is better addressed only in Rule 8018(a)(4), which parallels FRAP 31(c). If that change is made, Rule 8016(a) should be changed to make Rule 8018(a)(1)-(3) inapplicable, rather than all of Rule 8018(a), and (b) should be changed to include Rule 8018(a)(4) as well as Rules 8018(b) and 8019.

**EG: The changes to Rule 8018(a) and (b) noted in the preceding response need to be made, but have not been.**

#### Other comments

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – In subdivision (f) the authorization for dismissal of an appeal or cross-appeal should require notice and an opportunity to show cause why dismissal ought not be ordered. This issue is more logically addressed in Rule 8018.

- This suggestion will be considered in connection with Rule 8018(a)(4).

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (d) addresses length and type-volume limitations similar to those in Rule 8015. A counterpart to Rule 8015(f) should be incorporated.

- Rules 8015 and 8016 follow the organization of FRAP 32 and 28.1. The provision the comment refers to—Local Variation—is included only in FRAP 32 and not in FRAP 28.1.

### **Rule 8017**

**No changes are proposed.**

#### Comments

12-BK-010—The States’ Association of Bankruptcy Attorneys – All governmental units should be permitted to file an amicus brief without consent or leave of court.

- This is an issue that the Appellate Rules Committee has been considering. The bankruptcy appellate rules should not expand the rule unless FRAP 29 is expanded.

Proposed Rule 8007(d), which eliminates the bond requirement for the United States, its officer, or agency, also applies to an appeal taken “by direction of any department of the federal government.” Why aren’t all provisions referring to governmental units similarly worded?

- The wording of Rule 8007(d) is taken from current Rule 8005 and Civil Rule 62(e). The language is derived from a federal statute. Rule 8017(a) follows the wording of FRAP 29.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – With respect to subdivision (g), we prefer the presumption of no oral argument by an amicus curiae. Revise the provision to read, “Unless the BAP or district court orders otherwise, an amicus curiae may not participate in oral argument.”

- The proposed rule as written does not create a presumption in favor of oral argument. It provides, in language identical to FRAP 29(g), that an amicus curiae may participate in oral argument only with the court’s permission.

## **Rule 8018**

### **Proposed change:**

**In subdivision (a)(4), change “the appeal may be dismissed” to “an appellee may move to dismiss the appeal or the appellate court, after notice, may dismiss the appeal on its own motion.”**

The change is proposed in response to the following comment to Rule 8016:

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – In Rule 8016(f), the authorization for dismissal of an appeal or cross-appeal should require notice and an opportunity to show cause why dismissal ought not be ordered. This issue is more logically addressed in Rule 8018.

- FRAP 31(c) provides that “an appellee may move to dismiss the appeal” if the appellant fails to file a brief on time. That language is preferable to the language in the published rule because it does not suggest that an appeal can be dismissed without notice to the appellant. The addition of that language, however, should not suggest that the appellate court cannot dismiss appeals *sua sponte* for failure to prosecute, so long as notice is given.

**EG: The wording of the proposed change should be revised slightly. “the district court or BAP” should be substituted for “the appellate court.”**

### Other comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (e) allows the appellate court to dispense with the appendix and permit an appeal to proceed on the original record. Similar language should be included in Rule 8009.

- See discussion of Judge Kressel’s and Judge Schermer’s comments regarding Rule 8009.

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (a)(4) is partly redundant of Rule 8016(f).

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – If Rule 8016(f) is retained, a new subdivision (f) should be added to this rule that provides a cross-reference to the earlier provision. It might read as follows: “(f) FAILURE TO FILE ON TIME. Rule 8016(f) addresses the failure of an appellant (or of an appellee on a cross-appeal) timely to file a principal brief.”

- The Subcommittee recommends addressing these comments by deleting Rule 8016(f).

## **Rule 8019**

**No changes are proposed.**

### Comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – There should not be a presumption in favor of oral argument. Furthermore, the grounds for not allowing it should not be limited. It is sometimes not granted for other reasons, such as the need for an expedited decision or issues of cost.

- Subdivision (b) carries over the provisions of current Rule 8012 and is consistent with FRAP 34(a)(2).

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – There is an inconsistency between subdivisions (b) and (g). Subdivision (b) requires unanimity among the panel of BAP judges to dispense with oral argument, yet subdivision (g) says that the BAP may direct a case to be argued even though the parties agreed to submit it on the briefs. A simple majority of the judges should be sufficient in either situation.

- The unanimity requirement of subdivision (b) is consistent with current Rule 8012 and FRAP 34(a)(2). Subdivision (g) is consistent with FRAP 34(f).

12-BK-027—William McNeil – The Committee Note regarding subdivision (f) is inconsistent with the rule. The note states that if the appellee does not appear, the court is authorized to postpone oral argument. Subdivision (f), however, authorizes postponement only if both parties fail to appear. An appellant who appear for oral argument should not be forced to reappear at a postponed argument just because the other party failed to appear.

- The comment is incorrect. The Committee Note points out the difference between Rule 8019(f) and FRAP 34(e). The latter rule provides that if the appellee fails to appear, “the court must hear appellant’s argument,” whereas the proposed bankruptcy rule provides, “the district court or BAP may hear the appellant’s argument.” Because the rule is permissive, it gives the court another option—postponement of the argument.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – It would be useful for the Committee Note to explain with regard to subdivision (f) that “orders otherwise” includes dismissal of the appeal for lack of prosecution.

- Since the Committee Note does not address other actions that the court may take, it should not mention this one action in particular.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (d) regarding order and contents of argument is unnecessary.

- This provision adopts FRAP 34(c).

Subdivision (g) does not provide the means by which the parties inform the court of their agreement to submit the case for decision on the briefs.

- The provision tracks the language of FRAP 34(f). If a procedure is needed, it can be prescribed by local rule.

## **Rule 8020**

**No changes are proposed.**

### Comment

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (b) provides sanctioning authority for the “failure to comply with any court order.” It would be better to add “or local rule” after “order.” The Committee Note states that failure to comply with a court order may include a failure to comply with a local court rule, but people do not always read Committee Notes, and some courts do not consider them authoritative.

- Several years ago Judge Rosenthal brought to the Committee’s attention case law holding that a local rule satisfies a statutory or rule provision requiring a court order for a departure from a general rule (for example, a statute that says, “unless the court orders otherwise”). As a result, the Committee has since taken the position that a rule’s reference to “order” includes local rules. While Judge Klein may be correct that this point is too subtle for many readers to pick up on, an inclusion of “or local rule” here may suggest that local rules are not intended to be included in other rules where they are not specifically mentioned.

## **Rule 8021**

**No changes are proposed.**

## Comment

12-BK-010—The States’ Association of Bankruptcy Attorneys – Subdivision (b) should be expanded to apply to all governmental units, not just to the United States and its agencies and officers.

- The provision is consistent with FRAP 39(b). The Subcommittee is not recommending adoption of this suggestion regarding other Part VIII rules.

## **Rule 8022**

**No changes are proposed.**

## Comments

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – It would give the courts more flexibility to state in subdivision (a)(2) that there is no oral argument on a motion for rehearing unless the court orders otherwise. An absolute prohibition seems unnecessary.

- The language of the proposed rule is identical to FRAP 40(a)(2). Current Rule 8015 does not address the availability of oral argument.

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (b) states, “Copies must be served and filed as provided by Rule 8011.” Because parties do not file copies, the provision should state, “The motion must be served and filed . . . .”

- The language of the proposed rule tracks FRAP 40(b).

## **Rule 8023**

**No changes are proposed.**

## Comments

12-BK-008—National Conference of Bankruptcy Judges – The proposed rule is consistent with current practice under Rule 8001(c), and the NCBJ supports its adoption. The rule, however, presents two issues that the Committee should consider in the near future. (1) It does not account for the possibility that an appeal may concern an objection to discharge under § 727(a). In the bankruptcy court, Rule 7041 provides that a plaintiff may not dismiss this type of action without giving notice and obtaining a court order containing appropriate terms and conditions. Consideration should be given to including similar safeguards in this rule. (2) The rule also does not take into account that a bankruptcy trustee may be a party to an appeal that is voluntarily dismissed. Under Rule 9019 the trustee is required to obtain court approval of any compromise. The rule does not make clear how it relates to Rule 9019.

- The Subcommittee recommends that these issues be listed for future Committee consideration.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – The rule provides that the appellate court must dismiss if the parties file an agreement. Since they are requesting relief, according to Rule 8013(a) they should have to file a motion.

- Both current Rule 8001(c)(2) and FRAP 42(b) require the filing of an agreement, not a motion.

## **Rule 8024**

### **Proposed change:**

**In subdivision (c), change references to “original documents” to “physical items,” and make conforming changes to the Committee Note.**

The change is proposed in response to the following comment:

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (c) refers to returning “original” documents. The bankruptcy clerk would not be transmitting original documents as the record on appeal. It therefore would be better to refer to “any paper documents.”

- Current Rule 8016(b) refers to the return of “original papers” transmitted as the record on appeal. FRAP 45(d) also refers to the return of “original papers” constituting the record on appeal. FRAP 10(a)(1) provides that “the original papers and exhibits filed in the district court,” along with any transcript of proceedings and a certified copy of docket entries, constitute the record on appeal. The reference in FRAP 45(d) to “original documents” therefore appears not to be drawing a distinction between originals and copies, but instead is requiring that the trial documents comprising the record on appeal be returned to the district court. The term “original documents” in proposed Rule 8024(c) could cause confusion. The term “physical items” would cover documents and any exhibits that are physically, rather than electronically, sent to the appellate court.

### Other comment

12-BK-008—National Conference of Bankruptcy Judges – The proposed rule carries forward a problem in current rule 8016. It fails to address when jurisdiction reverts in the bankruptcy court after an appeal. The Federal Rules of Appellate Procedure resolve this problem for appeals from the district court to the court of appeals by providing for the issuance of a mandate by the appellate court. Until the mandate is issued, the district court generally lacks authority to take any action with respect to the matters involved in the appeal. Proposed Rule 8024 lacks any comparable provision, even though it provides for the appellate clerk’s transmission of notice of entry of judgment, with a copy of any opinion, to the parties, the U.S. trustee, and the bankruptcy

clerk. The rule should adopt a mandate requirement with time limits for the issuance of the mandate and a provision for when it becomes effective. Because the problem exists with the current rule and does not seem to be disrupting bankruptcy administration unduly, promulgation of this rule should not be delayed. But the Committee should consider the issue in the near future.

- The Subcommittee recommends that this issue listed for future Committee consideration. *See Payne v. Clarendon Nat'l Ins. Co. (In re Sunset Sales, Inc.)*, 195 F.3d 568 (10th Cir. 1999) (noting that the “Bankruptcy Rules do not specifically address the issuance of the BAP’s mandate. Therefore, the subject is governed by local rule.”).

### **Rules 8026, 8027, and 8028**

No comments were submitted on these proposed rules, and no changes are proposed.

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# TAB 9A.1

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# FEDERAL RULES OF BANKRUPTCY PROCEDURE

## PART VIII. BANKRUPTCY APPEALS

### Rule

- 8001. Scope of Part VIII Rules; Definition of “BAP”; Method of Transmission
- 8002. Time for Filing Notice of Appeal
- 8003. Appeal as of Right—How Taken; Docketing the Appeal
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- 8027. Notice of a Mediation Procedure
- 8028. Suspension of Rules in Part VIII

**Rule 8001. Scope of Part VIII Rules; Definition of “BAP”;  
Method of Transmission**

1           (a) GENERAL SCOPE. These Part VIII rules govern the  
2           procedure in a United States district court and a bankruptcy  
3           appellate panel on appeal from a judgment, order, or decree of a  
4           bankruptcy court. They also govern certain procedures on appeal  
5           to a United States court of appeals under 28 U.S.C. § 158(d).

6           (b) DEFINITION OF “BAP.” “BAP” means a bankruptcy  
7           appellate panel established by a circuit’s judicial council and  
8           authorized to hear appeals from a bankruptcy court under 28  
9           U.S.C. § 158.

10          (c) METHOD OF TRANSMITTING DOCUMENTS. A  
11          document must be sent electronically under these Part VIII rules,  
12          unless it is being sent by or to an individual who is not represented  
13          by counsel or the court’s governing rules permit or require mailing  
14          or other means of delivery.

**COMMITTEE NOTE**

These Part VIII rules apply to appeals under 28 U.S.C. § 158(a) from bankruptcy courts to district courts and BAPs. The Federal Rules of Appellate Procedure generally govern bankruptcy appeals to courts of appeals.

Eight of the Part VIII rules do, however, relate to appeals to courts of appeals. Rule 8004(e) provides that the authorization by a court of appeals of a direct appeal of a bankruptcy court’s interlocutory order or decree constitutes a grant of leave to appeal. Rule 8006 governs the

procedure for certification under 28 U.S.C. § 158(d)(2) of a direct appeal from a judgment, order, or decree of a bankruptcy court to a court of appeals. Rule 8007 addresses stays pending a direct appeal to a court of appeals. Rule 8008 authorizes a bankruptcy court to issue an indicative ruling while an appeal is pending in a court of appeals. Rules 8009 and 8010 govern the record on appeal in a direct appeal to a court of appeals. Rule 8025 governs the granting of a stay of a district court or BAP judgment pending an appeal to the court of appeals. And Rule 8028 authorizes the court of appeals to suspend applicable Part VIII rules in a particular case, subject to certain enumerated exceptions.

These rules take account of the evolving technology in the federal courts for the electronic filing, storage, and transmission of documents. Except as applied to pro se parties, the Part VIII rules require documents to be sent electronically, unless applicable court rules or orders expressly require or permit another means of sending a particular document.

**Rule 8002. Time for Filing Notice of Appeal**

1 (a) IN GENERAL.

2 (1) *Fourteen-Day Period.* Except as provided in  
3 subdivisions (b) and (c), a notice of appeal must be filed  
4 with the bankruptcy clerk within 14 days after entry of the  
5 judgment, order, or decree being appealed.

6 (2) *Filing Before the Entry of Judgment.* A notice  
7 of appeal filed after the bankruptcy court announces a  
8 decision or order—but before entry of the judgment, order,  
9 or decree—is treated as filed on the date of and after the  
10 entry.

11 (3) *Multiple Appeals.* If one party files a timely  
12 notice of appeal, any other party may file a notice of appeal  
13 within 14 days after the date when the first notice was filed,  
14 or within the time otherwise allowed by this rule,  
15 whichever period ends later.

16 (4) *Mistaken Filing in Another Court.* If a notice of  
17 appeal is mistakenly filed in a district court, BAP, or court  
18 of appeals, the clerk of that court must state on the notice  
19 the date on which it was received and transmit it to the  
20 bankruptcy clerk. The notice of appeal is then

21 considered filed in the bankruptcy court on the date so  
22 stated.

23 (b) EFFECT OF A MOTION ON THE TIME TO  
24 APPEAL.

25 (1) *In General.* If a party timely files in the  
26 bankruptcy court any of the following motions, the time to  
27 file an appeal runs for all parties from the entry of the order  
28 disposing of the last such remaining motion:

29 (A) to amend or make additional findings  
30 under Rule 7052, whether or not granting the  
31 motion would alter the judgment;

32 (B) to alter or amend the judgment under  
33 Rule 9023;

34 (C) for a new trial under Rule 9023; or

35 (D) for relief under Rule 9024 if the motion  
36 is filed within 14 days after the judgment is entered.

37 (2) *Filing an Appeal Before the Motion is Decided.*

38 If a party files a notice of appeal after the court announces  
39 or enters a judgment, order, or decree—but before it  
40 disposes of any motion listed in subdivision (b)(1)—the  
41 notice becomes effective when the order disposing of the  
42 last such remaining motion is entered.



43                               (3) *Appealing the Motion.* If a party intends to  
44 challenge an order disposing of any motion listed in  
45 subdivision (b)(1)—or the alteration or amendment of a  
46 judgment, order, or decree upon the motion—the party  
47 must file a notice of appeal or an amended notice of appeal.  
48 The notice or amended notice must comply with Rule 8003  
49 or 8004 and be filed within the time prescribed by this rule,  
50 measured from the entry of the order disposing of the last  
51 such remaining motion.

52                               (4) *No Additional Fee.* No additional fee is  
53 required to file an amended notice of appeal.

54                               (c) APPEAL BY AN INMATE CONFINED IN AN  
55 INSTITUTION.

56                               (1) *In General.* If an inmate confined in an  
57 institution files a notice of appeal from a judgment, order,  
58 or decree of a bankruptcy court, the notice is timely if it is  
59 deposited in the institution’s internal mail system on or  
60 before the last day for filing. If the institution has a system  
61 designed for legal mail, the inmate must use that system to  
62 receive the benefit of this rule. Timely filing may be shown  
63 by a declaration in compliance with 28 U.S.C. § 1746 or by  
64 a notarized statement, either of which must set forth the

65 date of deposit and state that first-class postage has been  
66 prepaid.

67 (2) *Multiple Appeals.* If an inmate files under this  
68 subdivision the first notice of appeal, the 14-day period  
69 provided in subdivision (a)(3) for another party to file a  
70 notice of appeal runs from the date when the bankruptcy  
71 clerk docketed the first notice.

72 (d) EXTENDING THE TIME TO APPEAL.

73 (1) *When the Time May be Extended.* Except as  
74 provided in subdivision (d)(2), the bankruptcy court may  
75 extend the time to file a notice of appeal upon a party's  
76 motion that is filed:

77 (A) within the time prescribed by this rule;

78 or

79 (B) within 21 days after that time, if the  
80 party shows excusable neglect.

81 (2) *When the Time May Not be Extended.* The  
82 bankruptcy court may not extend the time to file a notice of  
83 appeal if the judgment, order, or decree appealed from:

84 (A) grants relief from an automatic stay  
85 under § 362, 922, 1201, or 1301 of the Code;

86 (B) authorizes the sale or lease of property

87 or the use of cash collateral under § 363 of the  
88 Code;  
89 (C) authorizes the obtaining of credit under  
90 § 364 of the Code;  
91 (D) authorizes the assumption or  
92 assignment of an executory contract or unexpired  
93 lease under § 365 of the Code;  
94 (E) approves a disclosure statement under  
95 § 1125 of the Code; or  
96 (F) confirms a plan under § 943, 1129,  
97 1225, or 1325 of the Code.  
98 (3) *Time Limits on an Extension.* No extension of  
99 time may exceed 21 days after the time prescribed by this  
100 rule, or 14 days after the order granting the motion to  
101 extend time is entered, whichever is later.

### COMMITTEE NOTE

This rule is derived from former Rule 8002 and F.R.App.P. 4(a) and (c). With the exception of subdivision (c), the changes to the former rule are stylistic. The rule retains the former rule's 14-day time period for filing a notice of appeal, as opposed to the longer periods permitted for appeals in civil cases under F.R.App.P. 4(a).

Subdivision (a) continues to allow any other party to file a notice of appeal within 14 days after the first notice of appeal is filed, or thereafter to the extent otherwise authorized by this rule. Subdivision (a) also retains provisions of the former rule that prescribe the date the notice of appeal is

deemed filed if the appellant files it prematurely or in the wrong court.

Subdivision (b), like former Rule 8002(b) and F.R.App.P. 4(a), tolls the time for filing a notice of appeal when certain postjudgment motions are filed, and it prescribes the effective date of a notice of appeal that is filed before the court disposes of all of the specified motions. As under the former rule, a party that wants to appeal the court's disposition of the motion or the alteration or amendment of a judgment, order, or decree in response to such a motion must file a notice of appeal or, if it has already filed one, an amended notice of appeal.

Although Rule 8003(a)(3)(C) requires a notice of appeal to be accompanied by the required fee, no additional fee is required for the filing of an amended notice of appeal.

Subdivision (c) mirrors the provisions of F.R.App.P. 4(c)(1) and (2), which specify timing rules for a notice of appeal filed by an inmate confined in an institution.

Subdivision (d) continues to allow the court to grant an extension of time to file a notice of appeal, except with respect to certain specified judgments, orders, and decrees.

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

1 (a) FILING THE NOTICE OF APPEAL.

2 (1) *In General.* An appeal from a judgment, order,  
3 or decree of a bankruptcy court to a district court or BAP  
4 under 28 U.S.C. § 158(a)(1) or (a)(2) may be taken only by  
5 filing a notice of appeal with the bankruptcy clerk within  
6 the time allowed by Rule 8002.

7 (2) *Effect of Not Taking Other Steps.* An  
8 appellant's failure to take any step other than the timely  
9 filing of a notice of appeal does not affect the validity of the  
10 appeal, but is ground only for the district court or BAP to  
11 act as it considers appropriate, including dismissing the  
12 appeal.

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

14 (A) conform substantially to the appropriate  
15 Official Form;

16 (B) be accompanied by the judgment, order,  
17 or decree, or the part of it, being appealed; and

18 (C) be accompanied by the prescribed fee.

19 (4) *Additional Copies.* If requested to do so, the  
20 appellant must furnish the bankruptcy clerk with enough

21 copies of the notice to enable the clerk to comply with  
22 subdivision (c).

23 (b) JOINT OR CONSOLIDATED APPEALS.

24 (1) *Joint Notice of Appeal.* When two or more  
25 parties are entitled to appeal from a judgment, order, or  
26 decree of a bankruptcy court and their interests make  
27 joinder practicable, they may file a joint notice of appeal.  
28 They may then proceed on appeal as a single appellant.

29 (2) *Consolidating Appeals.* When parties have  
30 separately filed timely notices of appeal, the district court  
31 or BAP may join or consolidate the appeals.

32 (c) TRANSMITTING THE NOTICE OF APPEAL.

33 (1) *Transmitting to the United States Trustee and*  
34 *Other Parties.* The bankruptcy clerk must transmit the  
35 notice of appeal to the United States trustee and to counsel  
36 of record for each party to the appeal, excluding the  
37 appellant. If a party is proceeding pro se, the clerk must  
38 send the notice of appeal to the party's last known address.  
39 The clerk must note, on each copy, the date when the notice  
40 of appeal was filed.

41 (2) *Effect of Failing to Transmit Notice.* The  
42 bankruptcy clerk's failure to transmit notice to a party or

43 the United States trustee does not affect the validity of  
44 the appeal.

45 (3) *Noting Transmission on the Docket.* The clerk  
46 must note on the docket the names of the parties to whom  
47 the notice of appeal was transmitted and the date and  
48 method of the transmission.

49 (d) TRANSMITTING THE NOTICE OF APPEAL TO  
50 THE DISTRICT COURT OR BAP; DOCKETING THE APPEAL.

51 (1) *Transmitting the Notice.* The bankruptcy clerk  
52 must promptly transmit the notice of appeal to the BAP  
53 clerk if a BAP has been established for appeals from that  
54 district and the appellant has not elected to have the district  
55 court hear the appeal. Otherwise, the bankruptcy clerk  
56 must promptly transmit the notice to the district clerk.

57 (2) *Docketing in the District Court or BAP.* Upon  
58 receiving the notice of appeal, the district or BAP clerk  
59 must docket the appeal under the title of the bankruptcy  
60 case and the title of the adversary proceeding, if any, and  
61 must identify the appellant, adding the appellant's name if  
62 necessary.

## COMMITTEE NOTE

This rule is derived from several former Bankruptcy Rule and Appellate Rule provisions. It addresses appeals as of right, joint and consolidated appeals, service of the notice of appeal, and the timing of the docketing of an appeal in the district court or BAP.

Subdivision (a) incorporates, with stylistic changes, much of the content of former Rule 8001(a) regarding the taking of an appeal as of right under 28 U.S.C. § 158(a)(1) or (2). The rule now requires that the judgment, order, or decree being appealed be attached to the notice of appeal.

Subdivision (b), which is an adaptation of F.R.App.P. 3(b), permits the filing of a joint notice of appeal by multiple appellants that have sufficiently similar interests that their joinder is practicable. It also allows the district court or BAP to consolidate appeals taken separately by two or more parties.

Subdivision (c) is derived from former Rule 8004 and F.R.App.P. 3(d). Under Rule 8001(c), the former rule's requirement that service of the notice of appeal be accomplished by mailing is generally modified to require that the bankruptcy clerk transmit the notice of appeal to counsel by electronic means. Transmission to pro se parties must be made by sending the notice to the address most recently provided to the court.

Subdivision (d) modifies the provision of former Rule 8007(b), which delayed the docketing of an appeal by the district court or BAP until the record was complete and the bankruptcy clerk transmitted it. The new provision, adapted from F.R.App.P. 3(d) and 12(a), requires the bankruptcy clerk to promptly transmit the notice of appeal to the clerk of the district court or BAP. Upon receipt of the notice of appeal, the district or BAP clerk must docket the appeal. Under this procedure, motions filed in the district court or BAP prior to completion and transmission of the record can generally be placed on the docket of an already pending appeal.



**Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal**

1           (a) NOTICE OF APPEAL AND MOTION FOR LEAVE  
2 TO APPEAL. To appeal from an interlocutory order or decree of a  
3 bankruptcy court under 28 U.S.C. § 158(a)(3), a party must file  
4 with the bankruptcy clerk a notice of appeal as prescribed by Rule  
5 8003(a). The notice must:

- 6                   (1) be filed within the time allowed by Rule 8002;
- 7                   (2) be accompanied by a motion for leave to appeal  
8                   prepared in accordance with subdivision (b); and
- 9                   (3) unless served electronically using the court’s  
10                   transmission equipment, include proof of service in  
11                   accordance with Rule 8011(d).

12           (b) CONTENTS OF THE MOTION; RESPONSE.

13                   (1) *Contents.* A motion for leave to appeal under  
14                   28 U.S.C. § 158(a)(3) must include the following:

- 15                           (A) the facts necessary to understand the  
16                           question presented;
- 17                           (B) the question itself;
- 18                           (C) the relief sought;
- 19                           (D) the reasons why leave to appeal should  
20                           be granted; and

21 (E) a copy of the interlocutory order or  
22 decree and any related opinion or memorandum.

23 (2) *Response*. A party may file with the district or  
24 BAP clerk a response in opposition or a cross-motion  
25 within 14 days after the motion is served.

26 (c) TRANSMITTING THE NOTICE OF APPEAL AND  
27 THE MOTION; DOCKETING THE APPEAL; DETERMINING  
28 THE MOTION.

29 (1) *Transmitting to the District Court or BAP*. The  
30 bankruptcy clerk must promptly transmit the notice of  
31 appeal and the motion for leave to the BAP clerk if a BAP  
32 has been established for appeals from that district and the  
33 appellant has not elected to have the district court hear the  
34 appeal. Otherwise, the bankruptcy clerk must promptly  
35 transmit the notice and motion to the district clerk.

36 (2) *Docketing in the District Court or BAP*. Upon  
37 receiving the notice and motion, the district or BAP clerk  
38 must docket the appeal under the title of the bankruptcy  
39 case and the title of the adversary proceeding, if any, and  
40 must identify the appellant, adding the appellant's name if  
41 necessary.

42 (3) *Oral Argument Not Required*. The motion and

43 any response or cross-motion are submitted without oral  
44 argument unless the district court or BAP orders otherwise.

45 (d) FAILURE TO FILE A MOTION WITH A  
46 NOTICE OF APPEAL. If an appellant timely files a notice  
47 of appeal under this rule but does not include a motion for  
48 leave, the district court or BAP may order the appellant to  
49 file a motion for leave, or treat the notice of appeal as a  
50 motion for leave and either grant or deny it. If the court  
51 orders that a motion for leave be filed, the appellant must  
52 do so within 14 days after the order is entered, unless the  
53 order provides otherwise.

54 (e) DIRECT APPEAL TO A COURT OF APPEALS. If  
55 leave to appeal an interlocutory order or decree is required under  
56 28 U.S.C. § 158(a)(3), an authorization of a direct appeal by the  
57 court of appeals under 28 U.S.C. § 158(d)(2) satisfies the  
58 requirement.

#### **COMMITTEE NOTE**

This rule is derived from former Rules 8001(b) and 8003 and F.R.App.P. 5. It retains the practice for interlocutory bankruptcy appeals of requiring a notice of appeal to be filed along with a motion for leave to appeal. Like current Rule 8003, it alters the timing of the docketing of the appeal in the district court or BAP.

Subdivision (a) requires a party seeking leave to appeal under 28 U.S.C. § 158(a)(3) to file with the bankruptcy clerk both a notice of appeal

and a motion for leave to appeal.

Subdivision (b) prescribes the contents of the motion, retaining the requirements of former Rule 8003(a). It also continues to allow another party to file a cross-motion or response to the appellant's motion. Because of the prompt docketing of the appeal under the current rule, the cross-motion or response must be filed in the district court or BAP, rather than in the bankruptcy court as the former rule required.

Subdivision (c) requires the bankruptcy clerk to transmit promptly to the district court or BAP the notice of appeal and the motion for leave to appeal. Upon receipt of the notice and the motion, the district or BAP clerk must docket the appeal. Unless the district court or BAP orders otherwise, no oral argument will be held on the motion.

Subdivision (d) retains the provisions of former Rule 8003(c). It provides that if the appellant timely files a notice of appeal, but fails to file a motion for leave to appeal, the court can either direct that a motion be filed or treat the notice of appeal as the motion and either grant or deny leave.

Subdivision (e), like former Rule 8003(d), treats the authorization of a direct appeal by the court of appeals as a grant of leave to appeal under 28 U.S.C. § 158(a)(3) if the district court or BAP has not already granted leave. Thus, a separate order granting leave to appeal is not required. If the court of appeals grants permission to appeal, the record must be assembled and transmitted in accordance with Rules 8009 and 8010.

**Rule 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP**

1           (a) FILING OF A STATEMENT OF ELECTION. To  
2           elect to have an appeal heard by the district court, a party must:

3                       (1) file a statement of election using the appropriate  
4                       Official Form; and

5                       (2) do so within the time prescribed by 28 U.S.C.  
6                       § 158(c)(1).

7           (b) TRANSFERRING THE DOCUMENTS RELATED  
8           TO THE APPEAL. Upon receiving an appellant’s timely  
9           statement of election, the bankruptcy clerk must transmit to the  
10          district clerk all documents related to the appeal. Upon receiving a  
11          timely statement of election by a party other than the appellant, the  
12          BAP clerk must transmit to the district clerk all documents related  
13          to the appeal and notify the bankruptcy clerk of the transfer.

14          (c) DETERMINING THE VALIDITY OF AN  
15          ELECTION. A party seeking a determination of the validity of an  
16          election must file a motion in the court where the appeal is then  
17          pending. The motion must be filed within 14 days after the  
18          statement of election is filed.

19          (d) MOTION FOR LEAVE WITHOUT A NOTICE OF  
20          APPEAL—EFFECT ON THE TIMING OF AN ELECTION. If an

21           appellant moves for leave to appeal under Rule 8004 but fails to  
22           file a separate notice of appeal with the motion, the motion must be  
23           treated as a notice of appeal for purposes of determining the  
24           timeliness of a statement of election.

### **COMMITTEE NOTE**

This rule, which implements 28 U.S.C. § 158(c)(1), is derived from former Rule 8001(e). It applies only in districts in which an appeal to a BAP is authorized.

As the former rule required, subdivision (a) provides that an appellant that elects to have a district court, rather than a BAP, hear its appeal must file with the bankruptcy clerk a statement of election when it files its notice of appeal. The statement must be made using the appropriate Official Form. For appellants, that statement is included in the Notice of Appeal Official Form. If a BAP has been established for appeals from the bankruptcy court and the appellant does not file a timely statement of election, any other party that elects to have the district court hear the appeal must file a statement of election, using the appropriate Official Form, with the BAP clerk no later than 30 days after service of the notice of appeal.

Subdivision (b) requires the bankruptcy clerk to transmit all appeal documents to the district clerk if the appellant files a timely statement of election. If the appellant does not make that election, the bankruptcy clerk must transmit those documents to the BAP clerk. Upon a timely election by any other party, the BAP clerk must promptly transmit the appeal documents to the district clerk and notify the bankruptcy clerk that the appeal has been transferred.

Subdivision (c) provides a new procedure for the resolution of disputes regarding the validity of an election. A motion seeking the determination of the validity of an election must be filed no later than 14 days after the statement of election is filed. Nothing in this rule prevents a court from determining the validity of an election on its own motion.

Subdivision (d) provides that, in the case of an appeal by leave, if the appellant files a motion for leave to appeal but fails to file a notice of appeal, the filing and service of the motion will be treated for timing

purposes under this rule as the filing and service of the notice of appeal.

**Rule 8006. Certifying a Direct Appeal to the Court of Appeals**

1           (a) EFFECTIVE DATE OF A CERTIFICATION. A  
2 certification of a judgment, order, or decree of a bankruptcy court  
3 for direct review in a court of appeals under 28 U.S.C. § 158(d)(2)  
4 is effective when:

- 5                       (1) the certification has been filed;  
6                       (2) a timely appeal has been taken under Rule 8003  
7 or 8004; and  
8                       (3) the notice of appeal has become effective under  
9 Rule 8002.

10           (b) FILING THE CERTIFICATION. The certification  
11 must be filed with the clerk of the court where the matter is  
12 pending. For purposes of this rule, a matter remains pending in the  
13 bankruptcy court for 30 days after the effective date under Rule  
14 8002 of the first notice of appeal from the judgment, order, or  
15 decree for which direct review is sought. A matter is pending in  
16 the district court or BAP thereafter.

17           (c) JOINT CERTIFICATION BY ALL APPELLANTS  
18 AND APPELLEES. A joint certification by all the appellants and  
19 appellees under 28 U.S.C. § 158(d)(2)(A) must be made by using  
20 the appropriate Official Form. The parties may supplement the  
21 certification with a short statement of the basis for the certification,



22 which may include the information listed in subdivision (f)(2).

23 (d) THE COURT THAT MAY MAKE THE  
24 CERTIFICATION. Only the court where the matter is pending, as  
25 provided in subdivision (b), may certify a direct review on request  
26 of parties or on its own motion.

27 (e) CERTIFICATION ON THE COURT'S OWN  
28 MOTION.

29 (1) *How Accomplished.* A certification on the  
30 court's own motion must be set forth in a separate  
31 document. The clerk of the certifying court must serve it  
32 on the parties to the appeal in the manner required for  
33 service of a notice of appeal under Rule 8003(c)(1). The  
34 certification must be accompanied by an opinion or  
35 memorandum that contains the information required by  
36 subdivision (f)(2)(A)-(D).

37 (2) *Supplemental Statement by a Party.* Within 14  
38 days after the court's certification, a party may file with the  
39 clerk of the certifying court a short supplemental statement  
40 regarding the merits of certification.

41 (f) CERTIFICATION BY THE COURT ON REQUEST.

42 (1) *How Requested.* A request by a party for  
43 certification that a circumstance specified in 28 U.S.C.

44 §158(d)(2)(A)(i)-(iii) applies—or a request by a majority of  
45 the appellants and a majority of the appellees—must be  
46 filed with the clerk of the court where the matter is pending  
47 within 60 days after the entry of the judgment, order, or  
48 decree.

49 (2) *Service and Contents.* The request must be  
50 served on all parties to the appeal in the manner required  
51 for service of a notice of appeal under Rule 8003(c)(1), and  
52 it must include the following:

53 (A) the facts necessary to understand the  
54 question presented;

55 (B) the question itself;

56 (C) the relief sought;

57 (D) the reasons why the direct appeal  
58 should be allowed, including which circumstance  
59 specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)  
60 applies; and

61 (E) a copy of the judgment, order, or decree  
62 and any related opinion or memorandum.

63 (3) *Time to File a Response or a Cross-Request.* A  
64 party may file a response to the request within 14 days after  
65 the request is served, or such other time as the court where

66 the matter is pending allows. A party may file a cross-  
67 request for certification within 14 days after the request is  
68 served, or within 60 days after the entry of the judgment,  
69 order, or decree, whichever occurs first.

70 (4) *Oral Argument Not Required.* The request,  
71 cross-request, and any response are submitted without oral  
72 argument unless the court where the matter is pending  
73 orders otherwise.

74 (5) *Form and Service of the Certification.* If the  
75 court certifies a direct appeal in response to the request, it  
76 must do so in a separate document. The certification must  
77 be served on the parties to the appeal in the manner  
78 required for service of a notice of appeal under Rule  
79 8003(c)(1).

80 (g) PROCEEDING IN THE COURT OF APPEALS  
81 FOLLOWING A CERTIFICATION. Within 30 days after the date  
82 the certification becomes effective under subdivision (a), a request  
83 for permission to take a direct appeal to the court of appeals must  
84 be filed with the circuit clerk in accordance with F. R. App. P. 6(c).

## COMMITTEE NOTE

This rule is derived from former Rule 8001(f), and it provides the procedures for the certification of a direct appeal of a judgment, order, or decree of a bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2). Once a case has been certified in the bankruptcy court, the district court, or the BAP for direct appeal and a request for permission to appeal has been timely filed with the circuit clerk, the Federal Rules of Appellate Procedure govern further proceedings in the court of appeals.

Subdivision (a), like the former rule, requires that an appeal be properly taken—now under Rule 8003 or 8004—before a certification for direct review in the court of appeals takes effect. This rule requires the timely filing of a notice of appeal under Rule 8002 and accounts for the delayed effectiveness of a notice of appeal under the circumstances specified in that rule. Ordinarily, a notice of appeal is effective when it is filed in the bankruptcy court. Rule 8002, however, delays the effectiveness of a notice of appeal when (1) it is filed after the announcement of a decision or order but prior to the entry of the judgment, order, or decree; or (2) it is filed after the announcement or entry of a judgment, order, or decree but before the bankruptcy court disposes of certain postjudgment motions.

When the bankruptcy court enters an interlocutory order or decree that is appealable under 28 U.S.C. § 158(a)(3), certification for direct review in the court of appeals may take effect before the district court or BAP grants leave to appeal. The certification is effective when the actions specified in subdivision (a) have occurred. Rule 8004(e) provides that if the court of appeals grants permission to take a direct appeal before leave to appeal an interlocutory ruling has been granted, the authorization by the court of appeals is treated as the granting of leave to appeal.

Subdivision (b) provides that a certification must be filed in the court where the matter is pending, as determined by this subdivision. This provision modifies the former rule. Because of the prompt docketing of appeals in the district court or BAP under Rules 8003 and 8004, a matter is deemed—for purposes of this rule only—to remain pending in the bankruptcy court for 30 days after the effective date of the notice of appeal. This provision will in appropriate cases give the bankruptcy judge, who will be familiar with the matter being appealed, an opportunity to decide whether certification for direct review is appropriate. Similarly, subdivision (d) provides that only the court where the matter is then pending according to subdivision (b) may make a certification on its own motion or on the request of one or more parties.

Section 158(d)(2) provides three different ways in which an appeal may be certified for direct review. Implementing these options, the rule provides in subdivision (c) for the joint certification by all appellants and appellees; in subdivision (e) for the bankruptcy court's, district court's, or BAP's certification on its own motion; and in subdivision (f) for the bankruptcy court's, district court's, or BAP's certification on request of a party or a majority of appellants and a majority of appellees.

Subdivision (g) requires that, once a certification for direct review is made, a request to the court of appeals for permission to take a direct appeal to that court must be filed with the clerk of the court of appeals no later than 30 days after the effective date of the certification. Federal Rule of Appellate Procedure 6(c), which incorporates all of F.R.App.P. 5 except subdivision (a)(3), prescribes the procedure for requesting the permission of the court of appeals and governs proceedings that take place thereafter in that court.

**Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings**

1 (a) INITIAL MOTION IN THE BANKRUPTCY COURT.

2 (1) *In General.* Ordinarily, a party must move first  
3 in the bankruptcy court for the following relief:

4 (A) a stay of a judgment, order, or decree of  
5 the bankruptcy court pending appeal;

6 (B) the approval of a supersedeas bond;

7 (C) an order suspending, modifying,  
8 restoring, or granting an injunction while an appeal  
9 is pending; or

10 (D) the suspension or continuation of  
11 proceedings in a case or other relief permitted by  
12 subdivision (e).

13 (2) *Time to File.* The motion may be made either  
14 before or after the notice of appeal is filed.

15 (b) MOTION IN THE DISTRICT COURT, THE BAP, OR  
16 THE COURT OF APPEALS ON DIRECT APPEAL.

17 (1) *Request for Relief.* A motion for the relief  
18 specified in subdivision (a)(1)—or to vacate or modify a  
19 bankruptcy court’s order granting such relief—may be  
20 made in the court where the appeal is pending.

21 (2) *Showing or Statement Required.* The motion  
22 must:

23 (A) show that moving first in the  
24 bankruptcy court would be impracticable; or

25 (B) if a motion was made in the bankruptcy  
26 court, either state that the court has not yet ruled on  
27 the motion, or state that the court has ruled and set  
28 out any reasons given for the ruling.

29 (3) *Additional Content.* The motion must also  
30 include:

31 (A) the reasons for granting the relief  
32 requested and the facts relied upon;

33 (B) affidavits or other sworn statements  
34 supporting facts subject to dispute; and

35 (C) relevant parts of the record.

36 (4) *Serving Notice.* The movant must give  
37 reasonable notice of the motion to all parties.

38 (c) **FILING A BOND OR OTHER SECURITY.** The  
39 district court, BAP, or court of appeals may condition relief on  
40 filing a bond or other appropriate security with the bankruptcy  
41 court.

42 (d) **BOND FOR A TRUSTEE OR THE UNITED**

43 STATES. The court may require a trustee to file a bond or other  
44 appropriate security when the trustee appeals. A bond or other  
45 security is not required when an appeal is taken by the United  
46 States, its officer, or its agency or by direction of any department of  
47 the federal government.

48 (e) CONTINUED PROCEEDINGS IN THE  
49 BANKRUPTCY COURT. Despite Rule 7062 and subject to the  
50 authority of the district court, BAP, or court of appeals, the  
51 bankruptcy court may:

52 (1) suspend or order the continuation of other  
53 proceedings in the case; or

54 (2) issue any other appropriate orders during the  
55 pendency of an appeal to protect the rights of all parties in  
56 interest.

#### COMMITTEE NOTE

This rule is derived from former Rule 8005 and F.R.App.P. 8. It now applies to direct appeals in courts of appeals.

Subdivision (a), like the former rule, requires a party ordinarily to seek relief pending an appeal in the bankruptcy court. Subdivision (a)(1) expands the list of relief enumerated in F.R.App.P. 8(a)(1) to reflect bankruptcy practice. It includes the suspension or continuation of other proceedings in the bankruptcy case, as authorized by subdivision (e). Subdivision (a)(2) clarifies that a motion for a stay pending appeal, approval of a supersedeas bond, or any other relief specified in paragraph (1) may be made in the bankruptcy court before or after the filing of a notice of appeal.



Subdivision (b) authorizes a party to seek the relief specified in (a)(1), or the vacation or modification of the granting of such relief, by means of a motion filed in the court where the appeal is pending—district court, BAP, or the court of appeals on direct appeal. Accordingly, a notice of appeal need not be filed with respect to a bankruptcy court’s order granting or denying such a motion. The motion for relief in the district court, BAP, or court of appeals must state why it was impracticable to seek relief initially in the bankruptcy court, if a motion was not filed there, or why the bankruptcy court denied the relief sought.

Subdivisions (c) and (d) retain the provisions of the former rule that permit the district court or BAP—and now the court of appeals—to condition the granting of relief on the posting of a bond by the appellant, except when that party is a federal government entity. Rule 9025 governs proceedings against sureties.

Subdivision (e) retains the provision of the former rule that authorizes the bankruptcy court to decide whether to suspend or allow the continuation of other proceedings in the bankruptcy case while the matter for which a stay has been sought is pending on appeal.

**Rule 8008. Indicative Rulings**

1           (a) RELIEF PENDING APPEAL. If a party files a timely  
2 motion in the bankruptcy court for relief that the court lacks  
3 authority to grant because of an appeal that has been docketed and  
4 is pending, the bankruptcy court may:

5                   (1) defer considering the motion;

6                   (2) deny the motion; or

7                   (3) state that the court would grant the motion if the  
8 court where the appeal is pending remands for that purpose,  
9 or state that the motion raises a substantial issue.

10           (b) NOTICE TO THE COURT WHERE THE APPEAL IS  
11 PENDING. The movant must promptly notify the clerk of the  
12 court where the appeal is pending if the bankruptcy court states that  
13 it would grant the motion or that the motion raises a substantial  
14 issue.

15           (c) REMAND AFTER AN INDICATIVE RULING. If the  
16 bankruptcy court states that it would grant the motion or that the  
17 motion raises a substantial issue, the district court or BAP may  
18 remand for further proceedings, but it retains jurisdiction unless it  
19 expressly dismisses the appeal. If the district court or BAP  
20 remands but retains jurisdiction, the parties must promptly notify

21 the clerk of that court when the bankruptcy court has decided the  
22 motion on remand.

### COMMITTEE NOTE

This rule is an adaptation of F.R.Civ.P. 62.1 and F.R.App.P. 12.1. It provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue. The rule does not attempt to define the circumstances in which an appeal limits or defeats the bankruptcy court's authority to act in the face of a pending appeal. In contrast, Rule 8002(b) identifies motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before the last such motion is resolved. In those circumstances, the bankruptcy court has authority to resolve the motion without resorting to the indicative ruling procedure.

Subdivision (b) requires the movant to notify the court where an appeal is pending if the bankruptcy court states that it would grant the motion or that it raises a substantial issue. This provision applies to appeals pending in the district court, the BAP, or the court of appeals.

Federal Rules of Appellate Procedure 6 and 12.1 govern the procedure in the court of appeals following notification of the bankruptcy court's indicative ruling.

Subdivision (c) of this rule governs the procedure in the district court or BAP upon notification that the bankruptcy court has issued an indicative ruling. The district court or BAP may remand to the bankruptcy court for a ruling on the motion for relief. The district court or BAP may also remand all proceedings, thereby terminating the initial appeal, if it expressly states that it is dismissing the appeal. It should do so, however, only when the appellant has stated clearly its intention to abandon the appeal. Otherwise, the district court or BAP may remand for the purpose of ruling on the motion, while retaining jurisdiction to proceed with the appeal after the bankruptcy court rules, provided that the appeal is not then moot and a party wishes to proceed.

**Rule 8009. Record on Appeal; Sealed Documents**

1 (a) DESIGNATING THE RECORD ON APPEAL;  
2 STATEMENT OF THE ISSUES.

3 (1) *Appellant.*

4 (A) The appellant must file with the  
5 bankruptcy clerk and serve on the appellee a  
6 designation of the items to be included in the record  
7 on appeal and a statement of the issues to be  
8 presented.

9 (B) The appellant must file and serve the  
10 designation and statement within 14 days after:

11 (i) the appellant's notice of appeal as  
12 of right becomes effective under Rule 8002;

13 or

14 (ii) an order granting leave to appeal  
15 is entered.

16 A designation and statement served prematurely  
17 must be treated as served on the first day on which  
18 filing is timely.

19 (2) *Appellee and Cross-Appellant.* Within 14 days  
20 after being served, the appellee may file with the  
21 bankruptcy clerk and serve on the appellant a designation of

22 additional items to be included in the record. An appellee  
23 who files a cross-appeal must file and serve a designation  
24 of additional items to be included in the record and a  
25 statement of the issues to be presented on the cross-appeal.

26 (3) *Cross-Appellee*. Within 14 days after service of  
27 the cross-appellant's designation and statement, a cross-  
28 appellee may file with the bankruptcy clerk and serve on  
29 the cross-appellant a designation of additional items to be  
30 included in the record.

31 (4) *Record on Appeal*. The record on appeal must  
32 include the following:

- 33 • the docket entries maintained by the  
34 bankruptcy clerk;
- 35 • items designated by the parties;
- 36 • the notice of appeal;
- 37 • the judgment, order, or decree being  
38 appealed;
- 39 • any order granting leave to appeal;
- 40 • any certification required for a direct appeal  
41 to the court of appeals;
- 42 • any opinion, findings of fact, and  
43 conclusions of law relating to the issues on appeal,

- 44 including transcripts of all oral rulings;
- 45 • any transcript ordered under subdivision (b);
- 46 any statement required by subdivision (c);
- 47 and
- 48 • any additional items from the record that the
- 49 court where the appeal is pending orders.

50 (5) *Copies for the Bankruptcy Clerk.* If paper

51 copies are needed, a party filing a designation of items must

52 provide a copy of any of those items that the bankruptcy

53 clerk requests. If the party fails to do so, the bankruptcy

54 clerk must prepare the copy at the party's expense.

55 (b) TRANSCRIPT OF PROCEEDINGS.

56 (1) *Appellant's Duty to Order.* Within the time

57 period prescribed by subdivision (a)(1), the appellant must:

58 (A) order in writing from the reporter, as

59 defined in Rule 8010(a)(1), a transcript of such parts

60 of the proceedings not already on file as the

61 appellant considers necessary for the appeal, and

62 file a copy of the order with the bankruptcy clerk; or

63 (B) file with the bankruptcy clerk a

64 certificate stating that the appellant is not ordering a

65 transcript.

66                           (2) *Cross-Appellant's Duty to Order.* Within 14  
67 days after the appellant files a copy of the transcript order  
68 or a certificate of not ordering a transcript, the appellee as  
69 cross-appellant must:

70                           (A) order in writing from the reporter, as  
71 defined in Rule 8010(a)(1), a transcript of such  
72 additional parts of the proceedings as the cross-  
73 appellant considers necessary for the appeal, and  
74 file a copy of the order with the bankruptcy clerk; or

75                           (B) file with the bankruptcy clerk a  
76 certificate stating that the cross-appellant is not  
77 ordering a transcript.

78                           (3) *Appellee's or Cross-Appellee's Right to Order.*

79 Within 14 days after the appellant or cross-appellant files a  
80 copy of a transcript order or certificate of not ordering a  
81 transcript, the appellee or cross-appellee may order in  
82 writing from the reporter a transcript of such additional  
83 parts of the proceedings as the appellee or cross-appellee  
84 considers necessary for the appeal. A copy of the order  
85 must be filed with the bankruptcy clerk.

86                           (4) *Payment.* At the time of ordering, a party must  
87 make satisfactory arrangements with the reporter for paying

88 the cost of the transcript.

89 (5) *Unsupported Finding or Conclusion.* If the  
90 appellant intends to argue on appeal that a finding or  
91 conclusion is unsupported by the evidence or is contrary to  
92 the evidence, the appellant must include in the record a  
93 transcript of all relevant testimony and copies of all  
94 relevant exhibits.

95 (c) STATEMENT OF THE EVIDENCE WHEN A  
96 TRANSCRIPT IS UNAVAILABLE. If a transcript of a hearing or  
97 trial is unavailable, the appellant may prepare a statement of the  
98 evidence or proceedings from the best available means, including  
99 the appellant's recollection. The statement must be filed within the  
100 time prescribed by subdivision (a)(1) and served on the appellee,  
101 who may serve objections or proposed amendments within 14 days  
102 after being served. The statement and any objections or proposed  
103 amendments must then be submitted to the bankruptcy court for  
104 settlement and approval. As settled and approved, the statement  
105 must be included by the bankruptcy clerk in the record on appeal.

106 (d) AGREED STATEMENT AS THE RECORD ON  
107 APPEAL. Instead of the record on appeal as defined in  
108 subdivision (a), the parties may prepare, sign, and submit to the  
109 bankruptcy court a statement of the case showing how the issues



110 presented by the appeal arose and were decided in the bankruptcy  
111 court. The statement must set forth only those facts alleged and  
112 proved or sought to be proved that are essential to the court's  
113 resolution of the issues. If the statement is accurate, it—together  
114 with any additions that the bankruptcy court may consider  
115 necessary to a full presentation of the issues on appeal—must be  
116 approved by the bankruptcy court and must then be certified to the  
117 court where the appeal is pending as the record on appeal. The  
118 bankruptcy clerk must then transmit it to the clerk of that court  
119 within the time provided by Rule 8010. A copy of the agreed  
120 statement may be filed in place of the appendix required by Rule  
121 8018(b) or, in the case of a direct appeal to the court of appeals, by  
122 F.R.App.P. 30.

123 (e) CORRECTING OR MODIFYING THE RECORD.

124 (1) *Submitting to the Bankruptcy Court.* If any  
125 difference arises about whether the record accurately  
126 discloses what occurred in the bankruptcy court, the  
127 difference must be submitted to and settled by the  
128 bankruptcy court and the record conformed accordingly. If  
129 an item has been improperly designated as part of the  
130 record on appeal, a party may move to strike that item.

131 (2) *Correcting in Other Ways.* If anything material

132 to either party is omitted from or misstated in the record by  
133 error or accident, the omission or misstatement may be  
134 corrected, and a supplemental record may be certified and  
135 transmitted:

136 (A) on stipulation of the parties;

137 (B) by the bankruptcy court before or after  
138 the record has been forwarded; or

139 (C) by the court where the appeal is  
140 pending.

141 (3) *Remaining Questions.* All other questions as to  
142 the form and content of the record must be presented to the  
143 court where the appeal is pending.

144 (f) **SEALED DOCUMENTS.** A document placed under  
145 seal by the bankruptcy court may be designated as part of the  
146 record on appeal. In doing so, a party must identify it without  
147 revealing confidential or secret information, but the bankruptcy  
148 clerk must not transmit it to the clerk of the court where the appeal  
149 is pending as part of the record. Instead, a party must file a motion  
150 with the court where the appeal is pending to accept the document  
151 under seal. If the motion is granted, the movant must notify the  
152 bankruptcy court of the ruling, and the bankruptcy clerk must  
153 promptly transmit the sealed document to the clerk of the court

154 where the appeal is pending.  
155 (g) OTHER NECESSARY ACTIONS. All parties to an  
156 appeal must take any other action necessary to enable the  
157 bankruptcy clerk to assemble and transmit the record.

### COMMITTEE NOTE

This rule is derived from former Rule 8006 and F.R.App.P. 10 and 11(a). The provisions of this rule and Rule 8010 are applicable to appeals taken directly to a court of appeals under 28 U.S.C. § 158(d)(2), as well as to appeals to a district court or BAP. See F.R.App.P. 6(c)(2)(A) and (B).

The rule retains the practice of former Rule 8006 of requiring the parties to designate items to be included in the record on appeal. In this respect, the bankruptcy rule differs from the appellate rule. Among other things, F.R.App.P. 10(a) provides that the record on appeal consists of all the documents and exhibits filed in the case. This requirement would often be unworkable in a bankruptcy context because thousands of items might have been filed in the overall bankruptcy case.

Subdivision (a) provides the time period for an appellant to file a designation of items to be included in the record on appeal and a statement of the issues to be presented. It then provides for the designation of additional items by the appellee, cross-appellant, and cross-appellee, as well as for the cross-appellant's statement of the issues to be presented in its appeal. Subdivision (a)(4) prescribes the content of the record on appeal. Ordinarily, the bankruptcy clerk will not need to have paper copies of the designated items because the clerk will either transmit them to the appellate court electronically or otherwise make them available electronically. If the bankruptcy clerk requires a paper copy of some or all of the items designated as part of the record, the clerk may request the party that designated the item to provide the necessary copies, and the party must comply with the request or bear the cost of the clerk's copying.

Subdivision (b) governs the process for ordering a complete or partial transcript of the bankruptcy court proceedings. In situations in which a transcript is unavailable, subdivision (c) allows for the parties' preparation of a statement of the evidence or proceedings, which must be approved by the bankruptcy court.

Subdivision (d) adopts the practice of F.R.App.P. 10(d) of permitting the parties to agree on a statement of the case in place of the record on appeal. The statement must show how the issues on appeal arose and were decided in the bankruptcy court. It must be approved by the bankruptcy court in order to be certified as the record on appeal.

Subdivision (e), modeled on F.R.App.P. 10(e), provides a procedure for correcting the record on appeal if an item is improperly designated, omitted, or misstated.

Subdivision (f) is a new provision that governs the handling of any document that remains sealed by the bankruptcy court and that a party wants to include in the record on appeal. The party must request the court where the appeal is pending to accept the document under seal, and that motion must be granted before the bankruptcy clerk may transmit the sealed document to the district, BAP, or circuit clerk.

Subdivision (g) requires the parties' cooperation with the bankruptcy clerk in assembling and transmitting the record. It retains the requirement of former Rule 8006, which was adapted from F.R.App.P. 11(a).

**Rule 8010. Completing and Transmitting the Record**

1 (a) REPORTER’S DUTIES.

2 (1) *Proceedings Recorded Without a Reporter*

3 *Present.* If proceedings were recorded without a reporter  
4 being present, the person or service selected in accordance  
5 with bankruptcy court procedures to transcribe the  
6 recording is the reporter for purposes of this rule.

7 (2) *Preparing and Filing the Transcript.* The  
8 reporter must prepare and file a transcript as follows:

9 (A) Upon receiving an order for a transcript  
10 in accordance with Rule 8009(b), the reporter must  
11 file in the bankruptcy court an acknowledgment of  
12 the request that shows when it was received, and  
13 when the reporter expects to have the transcript  
14 completed.

15 (B) After completing the transcript, the  
16 reporter must file it with the bankruptcy clerk, who  
17 will notify the district, BAP, or circuit clerk of its  
18 filing.

19 (C) If the transcript cannot be completed  
20 within 30 days after receiving the order, the reporter  
21 must request an extension of time from the

22 bankruptcy clerk. The clerk must enter on the  
23 docket and notify the parties whether the extension  
24 is granted.

25 (D) If the reporter does not file the  
26 transcript on time, the bankruptcy clerk must notify  
27 the bankruptcy judge.

28 (b) CLERK'S DUTIES.

29 (1) *Transmitting the Record—In General.* Subject  
30 to Rule 8009(f) and subdivision (b)(5) of this rule, when the  
31 record is complete, the bankruptcy clerk must transmit to  
32 the clerk of the court where the appeal is pending either the  
33 record or a notice that the record is available electronically.

34 (2) *Multiple Appeals.* If there are multiple appeals  
35 from a judgment, order, or decree, the bankruptcy clerk  
36 must transmit a single record.

37 (3) *Receiving the Record.* Upon receiving the  
38 record or notice that it is available electronically, the  
39 district, BAP, or circuit clerk must enter that information on  
40 the docket and promptly notify all parties to the appeal.

41 (4) *If Paper Copies Are Ordered.* If the court  
42 where the appeal is pending directs that paper copies of the  
43 record be provided, the clerk of that court must so notify

44 the appellant. If the appellant fails to provide them, the  
45 bankruptcy clerk must prepare them at the appellant's  
46 expense.

47 (5) *When Leave to Appeal is Requested.* Subject to  
48 subdivision (c), if a motion for leave to appeal has been  
49 filed under Rule 8004, the bankruptcy clerk must prepare  
50 and transmit the record only after the district court, BAP, or  
51 court of appeals grants leave.

52 (c) RECORD FOR A PRELIMINARY MOTION IN THE  
53 DISTRICT COURT, BAP, OR COURT OF APPEALS. This  
54 subdivision (c) applies if, before the record is transmitted, a party  
55 moves in the district court, BAP, or court of appeals for any of the  
56 following relief:

- 57 • leave to appeal;
- 58 • dismissal;
- 59 • a stay pending appeal;
- 60 • approval of a supersedeas bond, or additional  
61 security on a bond or undertaking on appeal; or
- 62 • any other intermediate order.

63 The bankruptcy clerk must then transmit to the clerk of the court  
64 where the relief is sought any parts of the record designated by a

65 party to the appeal or a notice that those parts are available  
66 electronically.

### COMMITTEE NOTE

This rule is derived from former Rule 8007 and F.R.App. P 11. It applies to an appeal taken directly to a court of appeals under 28 U.S.C. § 158(d)(2), as well as to an appeal to a district court or BAP.

Subdivision (a) generally retains the procedure of former Rule 8007(a) regarding the reporter's duty to prepare and file a transcript if a party requests one. It clarifies that the person or service that transcribes the recording of a proceeding is considered the reporter under this rule if the proceeding is recorded without a reporter being present in the courtroom. It also makes clear that the reporter must file with the bankruptcy court the acknowledgment of the request for a transcript and statement of the expected completion date, the completed transcript, and any request for an extension of time beyond 30 days for completion of the transcript.

Subdivision (b) requires the bankruptcy clerk to transmit the record to the district, BAP or circuit clerk when the record is complete and, in the case of appeals under 28 U.S.C. §158(a)(3), leave to appeal has been granted. This transmission will be made electronically, either by sending the record itself or sending notice that the record can be accessed electronically. The court where the appeal is pending may, however, require that a paper copy of some or all of the record be furnished, in which case the clerk of that court will direct the appellant to provide the copies. If the appellant does not do so, the bankruptcy clerk must prepare the copies at the appellant's expense.

In a change from former Rule 8007(b), subdivision (b) of this rule no longer directs the clerk of the appellate court to docket the appeal upon receipt of the record from the bankruptcy clerk. Instead, under Rules 8003(d) and 8004(c) and F.R.App.P. 12(a), the district, BAP, or circuit clerk docket the appeal upon receipt of the notice of appeal or, in the case of appeals under 28 U.S.C. § 158(a)(3), the notice of appeal and the motion for leave to appeal. Accordingly, by the time the district, BAP, or circuit clerk receives the record, the appeal will already be docketed in that court. The clerk of the appellate court must indicate on the docket and give notice to the parties to the appeal when the transmission of the record is received.



Under Rule 8018(a) and F.R.App.P. 31, the briefing schedule is generally based on that date.

Subdivision (c) is derived from former Rule 8007(c) and F.R.App.P. 11(g) . It provides for the transmission of parts of the record that the parties designate for consideration by the district court, BAP, or court of appeals in ruling on specified preliminary motions filed prior to the preparation and transmission of the record on appeal.

**Rule 8011. Filing and Service; Signature**

1 (a) FILING.

2 (1) *With the Clerk.* A document required or  
3 permitted to be filed in a district court or BAP must be filed  
4 with the clerk of that court.

5 (2) *Method and Timeliness.*

6 (A) *In general.* Filing may be  
7 accomplished by transmission to the clerk of the  
8 district court or BAP. Except as provided in  
9 subdivision (a)(2)(B) and (C), filing is timely only if  
10 the clerk receives the document within the time  
11 fixed for filing.

12 (B) *Brief or Appendix.* A brief or appendix  
13 is also timely filed if, on or before the last day for  
14 filing, it is:

15 (i) mailed to the clerk by first-class  
16 mail—or other class of mail that is at least  
17 as expeditious—postage prepaid, if the  
18 district court’s or BAP’s procedures permit  
19 or require a brief or appendix to be filed by  
20 mailing; or

21 (ii) dispatched to a third-party

22 commercial carrier for delivery within 3  
23 days to the clerk, if the court's procedures so  
24 permit or require.

25 (C) *Inmate Filing*. A document filed by an  
26 inmate confined in an institution is timely if  
27 deposited in the institution's internal mailing system  
28 on or before the last day for filing. If the institution  
29 has a system designed for legal mail, the inmate  
30 must use that system to receive the benefit of this  
31 rule. Timely filing may be shown by a declaration  
32 in compliance with 28 U.S.C. § 1746 or by a  
33 notarized statement, either of which must set forth  
34 the date of deposit and state that first-class postage  
35 has been prepaid.

36 (D) *Copies*. If a document is filed  
37 electronically, no paper copy is required. If a  
38 document is filed by mail or delivery to the district  
39 court or BAP, no additional copies are required.  
40 But the district court or BAP may require by local  
41 rule or by order in a particular case the filing or  
42 furnishing of a specified number of paper copies.

43 (3) *Clerk's Refusal of Documents*. The court's

44 clerk must not refuse to accept for filing any document  
45 transmitted for that purpose solely because it is not  
46 presented in proper form as required by these rules or by  
47 any local rule or practice.

48 (b) SERVICE OF ALL DOCUMENTS REQUIRED.

49 Unless a rule requires service by the clerk, a party must, at or  
50 before the time of the filing of a document, serve it on the other  
51 parties to the appeal. Service on a party represented by counsel  
52 must be made on the party's counsel.

53 (c) MANNER OF SERVICE.

54 (1) *Methods.* Service must be made electronically,  
55 unless it is being made by or on an individual who is not  
56 represented by counsel or the court's governing rules  
57 permit or require service by mail or other means of  
58 delivery. Service may be made by or on an unrepresented  
59 party by any of the following methods:

60 (A) personal delivery;

61 (B) mail; or

62 (C) third-party commercial carrier for  
63 delivery within 3 days.

64 (2) *When Service Is Complete.* Service by  
65 electronic means is complete on transmission, unless the

66 party making service receives notice that the document was  
67 not transmitted successfully. Service by mail or by  
68 commercial carrier is complete on mailing or delivery to the  
69 carrier.

70 (d) PROOF OF SERVICE.

71 (1) *What Is Required.* A document presented for  
72 filing must contain either:

73 (A) an acknowledgment of service by the  
74 person served; or

75 (B) proof of service consisting of a  
76 statement by the person who made service  
77 certifying:

78 (i) the date and manner of service;

79 (ii) the names of the persons served;

80 and

81 (iii) the mail or electronic address,  
82 the fax number, or the address of the place  
83 of delivery, as appropriate for the manner of  
84 service, for each person served.

85 (2) *Delayed Proof.* The district or BAP clerk may  
86 permit documents to be filed without acknowledgment or  
87 proof of service, but must require the acknowledgment or

88 proof to be filed promptly thereafter.

89 (3) *Brief or Appendix*. When a brief or appendix is  
90 filed, the proof of service must also state the date and  
91 manner by which it was filed.

92 (e) SIGNATURE. Every document filed electronically  
93 must include the electronic signature of the person filing it or, if  
94 the person is represented, the electronic signature of counsel. The  
95 electronic signature must be provided by electronic means that are  
96 consistent with any technical standards that the Judicial Conference  
97 of the United States establishes. Every document filed in paper  
98 form must be signed by the person filing the document or, if the  
99 person is represented, by counsel.

#### COMMITTEE NOTE

This rule is derived from former Rule 8008 and F.R.App.P. 25. It adopts some of the additional details of the appellate rule, and it provides greater recognition of the possibility of electronic filing and service.

Subdivision (a) governs the filing of documents in the district court or BAP. Consistent with other provisions of these Part VIII rules, subdivision (a)(2) requires electronic filing of documents, including briefs and appendices, unless the district court's or BAP's procedures permit or require other methods of delivery to the court. An electronic filing is timely if it is received by the district or BAP clerk within the time fixed for filing. No additional copies need to be submitted when documents are filed electronically, by mail, or by delivery unless the district court or BAP requires them.

Subdivision (a)(3) provides that the district or BAP clerk may not refuse to accept a document for filing solely because its form does not

comply with these rules or any local rule or practice. The district court or BAP may, however, direct the correction of any deficiency in any document that does not conform to the requirements of these rules or applicable local rules, and may prescribe such other relief as the court deems appropriate.

Subdivisions (b) and (c) address the service of documents in the district court or BAP. Except for documents that the district or BAP clerk must serve, a party that makes a filing must serve copies of the document on the other parties to the appeal. Service on represented parties must be made on counsel. Subdivision (c) expresses the general requirement under these Part VIII rules that documents be sent electronically. *See* Rule 8001(c). Local court rules, however, may provide for other means of service, and subdivision (c) specifies non-electronic methods of service by or on an unrepresented party. Electronic service is complete upon transmission, unless the party making service receives notice that the transmission did not reach the person intended to be served in a readable form.

Subdivision (d) retains the former rule's provisions regarding proof of service of a document filed in the district court or BAP. In addition, it provides that a certificate of service must state the mail or electronic address or fax number to which service was made.

Subdivision (e) is a new provision that requires an electronic signature of counsel or an unrepresented filer for documents that are filed electronically in the district court or BAP. A local rule may specify a method of providing an electronic signature that is consistent with any standards established by the Judicial Conference of the United States. Paper copies of documents filed in the district court or BAP must bear an actual signature of counsel or the filer. By requiring a signature, subdivision (e) ensures that a readily identifiable attorney or party takes responsibility for every document that is filed.

## **Rule 8012. Corporate Disclosure Statement**

1           (a) WHO MUST FILE. Any nongovernmental corporate  
2 party appearing in the district court or BAP must file a statement  
3 that identifies any parent corporation and any publicly held  
4 corporation that owns 10% or more of its stock or states that there  
5 is no such corporation.

6           (b) TIME TO FILE; SUPPLEMENTAL FILING. A party  
7 must file the statement with its principal brief or upon filing a  
8 motion, response, petition, or answer in the district court or BAP,  
9 whichever occurs first, unless a local rule requires earlier filing.  
10 Even if the statement has already been filed, the party's principal  
11 brief must include a statement before the table of contents. A party  
12 must supplement its statement whenever the required information  
changes.

### **COMMITTEE NOTE**

This rule is derived from F.R.App.P. 26.1. It requires the filing of corporate disclosure statements and supplemental statements in order to assist district court and BAP judges in determining whether they should recuse themselves. Rule 9001 makes the definitions in § 101 of the Code applicable to these rules. Under § 101(9) the word “corporation” includes a limited liability company, limited liability partnership, business trust, and certain other entities that are not designated under applicable law as corporations.

If filed separately from a brief, motion, response, petition, or answer, the statement must be filed and served in accordance with Rule 8011. Under Rule 8015(a)(7)(B)(iii), the corporate disclosure statement is not included in calculating applicable word-count limitations.



**Rule 8013. Motions; Intervention**

1 (a) CONTENTS OF A MOTION; RESPONSE; REPLY.

2 (1) *Request for Relief.* A request for an order or  
3 other relief is made by filing a motion with the district or  
4 BAP clerk, with proof of service on the other parties to the  
5 appeal.

6 (2) *Contents of a Motion.*

7 (A) *Grounds and the Relief Sought.* A  
8 motion must state with particularity the grounds for  
9 the motion, the relief sought, and the legal argument  
10 necessary to support it.

11 (B) *Motion to Expedite an Appeal.* A  
12 motion to expedite an appeal must explain what  
13 justifies considering the appeal ahead of other  
14 matters. If the district court or BAP grants the  
15 motion, it may accelerate the time to transmit the  
16 record, the deadline for filing briefs and other  
17 documents, oral argument, and the resolution of the  
18 appeal. A motion to expedite an appeal may be  
19 filed as an emergency motion under subdivision (d).

20 (C) *Accompanying Documents.*

21 (i) Any affidavit or other document

22 necessary to support a motion must be  
23 served and filed with the motion.

24 (ii) An affidavit must contain only  
25 factual information, not legal argument.

26 (iii) A motion seeking substantive  
27 relief must include a copy of the bankruptcy  
28 court's judgment, order, or decree, and any  
29 accompanying opinion as a separate exhibit.

30 (D) *Documents Barred or Not Required.*

31 (i) A separate brief supporting or  
32 responding to a motion must not be filed.

33 (ii) Unless the court orders  
34 otherwise, a notice of motion is not required.

35 (iii) Unless the court orders  
36 otherwise, a proposed order is not required.

37 (3) *Response and Reply; Time to File.* Unless the  
38 district court or BAP orders otherwise,

39 (A) any party to the appeal may file a  
40 response to the motion within 7 days after service of  
41 the motion; and

42 (B) the movant may file a reply to a response  
43 within 7 days after service of the response, but may

44 only address matters raised in the response.

45 (b) DISPOSITION OF A MOTION FOR A  
46 PROCEDURAL ORDER. The district court or BAP may rule on a  
47 motion for a procedural order—including a motion under Rule  
48 9006(b) or (c)—at any time without awaiting a response. A party  
49 adversely affected by the ruling may move to reconsider, vacate, or  
50 modify it within 7 days after the procedural order is served.

51 (c) ORAL ARGUMENT. A motion will be decided  
52 without oral argument unless the district court or BAP orders  
53 otherwise.

54 (d) EMERGENCY MOTION.

55 (1) *Noting the Emergency.* When a movant  
56 requests expedited action on a motion because irreparable  
57 harm would occur during the time needed to consider a  
58 response, the movant must insert the word “Emergency”  
59 before the title of the motion.

60 (2) *Contents of the Motion.* The emergency motion  
61 must

62 (A) be accompanied by an affidavit setting  
63 out the nature of the emergency;

64 (B) state whether all grounds for it were  
65 submitted to the bankruptcy court and, if not, why

66 the motion should not be remanded for the  
67 bankruptcy court to consider;

68 (C) include the e-mail addresses, office  
69 addresses, and telephone numbers of moving  
70 counsel and, when known, of opposing counsel and  
71 any unrepresented parties to the appeal; and

72 (D) be served as prescribed by Rule 8011.

73 (3) *Notifying Opposing Parties.* Before filing an  
74 emergency motion, the movant must make every  
75 practicable effort to notify opposing counsel and any  
76 unrepresented parties in time for them to respond. The  
77 affidavit accompanying the emergency motion must state  
78 when and how notice was given or state why giving it was  
79 impracticable.

80 (e) POWER OF A SINGLE BAP JUDGE TO  
81 ENTERTAIN A MOTION.

82 (1) *Single Judge's Authority.* A BAP judge may  
83 act alone on any motion, but may not dismiss or otherwise  
84 determine an appeal, deny a motion for leave to appeal, or  
85 deny a motion for a stay pending appeal if denial would  
86 make the appeal moot.

87 (2) *Reviewing a Single Judge's Action.* The BAP

88 may review a single judge's action, either on its own  
89 motion or on a party's motion.

90 (f) FORM OF DOCUMENTS; PAGE LIMITS; NUMBER  
91 OF COPIES.

92 (1) *Format of a Paper Document.* Rule 27(d)(1)  
93 F.R.App.P. applies in the district court or BAP to a paper  
94 version of a motion, response, or reply.

95 (2) *Format of an Electronically Filed Document.*  
96 A motion, response, or reply filed electronically must  
97 comply with the requirements for a paper version regarding  
98 covers, line spacing, margins, typeface, and type style. It  
99 must also comply with the page limits under paragraph (3).

100 (3) *Page Limits.* Unless the district court or BAP  
101 orders otherwise:

102 (A) a motion or a response to a motion must  
103 not exceed 20 pages, exclusive of the corporate  
104 disclosure statement and accompanying documents  
105 authorized by subdivision (a)(2)(C); and

106 (B) a reply to a response must not exceed 10  
107 pages.

108 (4) *Paper Copies.* Paper copies must be provided

109                   only if required by local rule or by an order in a particular  
110                   case.  
111                   (g) INTERVENING IN AN APPEAL. Unless a statute  
112                   provides otherwise, an entity that seeks to intervene in an appeal  
113                   pending in the district court or BAP must move for leave to  
114                   intervene and serve a copy of the motion on the parties to the  
115                   appeal. The motion or other notice of intervention authorized by  
116                   statute must be filed within 30 days after the appeal is docketed. It  
117                   must concisely state the movant's interest, the grounds for  
118                   intervention, whether intervention was sought in the bankruptcy  
119                   court, why intervention is being sought at this stage of the  
120                   proceeding, and why participating as an amicus curiae would not  
121                   be adequate.

#### **COMMITTEE NOTE**

This rule is derived from former Rule 8011 and F.R.App.P. 15(d) and 27. It adopts many of the provisions of the appellate rules that specify the form and page limits of motions and accompanying documents, while also adjusting those requirements for electronic filing. In addition, it prescribes the procedure for seeking to intervene in the district court or BAP.

Subdivision (a) retains much of the content of former Rule 8011(a) regarding the contents of a motion, response, and reply. It also specifies the documents that may accompany a motion. Unlike the former rule, which allowed the filing of separate briefs supporting a motion, subdivision (a) now adopts the practice of F.R.App.P. 27(a) of prohibiting the filing of briefs supporting or responding to a motion. The motion or response itself must include the party's legal arguments.

Subdivision (a)(2)(B) clarifies the procedure for seeking to expedite an appeal. A motion under this provision seeks to expedite the time for the disposition of the appeal as a whole, whereas an emergency motion—which is addressed by subdivision (d)—typically involves an urgent request for relief short of disposing of the entire appeal (for example, an emergency request for a stay pending appeal to prevent imminent mootness). In appropriate cases—such as when there is an urgent need to resolve the appeal quickly to prevent harm—a party may file a motion to expedite the appeal as an emergency motion.

Subdivision (b) retains the substance of former Rule 8011(b). It authorizes the district court or BAP to act on a motion for a procedural order without awaiting a response to the motion. It specifies that a party seeking reconsideration, vacation, or modification of the order must file a motion within 7 days after service of the order.

Subdivision (c) continues the practice of former Rule 8011(c) and F.R.App.P. 27(e) of dispensing with oral argument of motions in the district court or BAP unless the court orders otherwise.

Subdivision (d), which carries forward the content of former Rule 8011(d), governs emergency motions that the district court or BAP may rule on without awaiting a response when necessary to prevent irreparable harm. A party seeking expedited action on a motion in the district court or BAP must explain the nature of the emergency, whether all grounds in support of the motion were first presented to the bankruptcy court, and, if not, why the district court or BAP should not remand for reconsideration. The moving party must also explain the steps taken to notify opposing counsel and any unrepresented parties in advance of filing the emergency motion and, if they were not notified, why it was impracticable to do so.

Subdivision (e), like former Rule 8011(e) and similar to F.R.App.P. 27(c), authorizes a single BAP judge to rule on certain motions. This authority, however, does not extend to issuing rulings that would dispose of the appeal. For that reason, the rule now prohibits a single BAP judge from denying a motion for a stay pending appeal when the effect of that ruling would be to require dismissal of the appeal as moot. A ruling by a single judge is subject to review by the BAP.

Subdivision (f) incorporates by reference the formatting and appearance requirements of F.R.App.P. 27(d)(1). When paper versions of the listed documents are filed, they must comply with the requirements of the specified rules regarding reproduction, covers, binding, appearance, and

format. When these documents are filed electronically, they must comply with the relevant requirements of the specified rules regarding covers and format. Subdivision (f) also specifies page limits for motions, responses, and replies, which is a matter that former Rule 8011 did not address.

Subdivision (g) clarifies the procedure for seeking to intervene in a proceeding that has been appealed. It is based on F.R.App.P. 15(d), but it also requires the moving party to explain why intervention is being sought at the appellate stage. The former Part VIII rules did not address intervention.



**Rule 8014. Briefs**

1           (a) APPELLANT’S BRIEF. The appellant’s brief must  
2 contain the following under appropriate headings and in the order  
3 indicated:

4                   (1) a corporate disclosure statement, if required by  
5 Rule 8012;

6                   (2) a table of contents, with page references;

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

10                  (4) a jurisdictional statement, including:

11                           (A) the basis for the bankruptcy court’s  
12 subject-matter jurisdiction, with citations to  
13 applicable statutory provisions and stating relevant  
14 facts establishing jurisdiction;

15                           (B) the basis for the district court’s or  
16 BAP’s jurisdiction, with citations to applicable  
17 statutory provisions and stating relevant facts  
18 establishing jurisdiction;

19                           (C) the filing dates establishing the  
20 timeliness of the appeal; and

21                           (D) an assertion that the appeal is from a

22 final judgment, order, or decree, or information  
23 establishing the district court's or BAP's  
24 jurisdiction on another basis;

25 (5) a statement of the issues presented and, for each  
26 one, a concise statement of the applicable standard of  
27 appellate review;

28 (6) a concise statement of the case setting out the  
29 facts relevant to the issues submitted for review, describing  
30 the relevant procedural history, and identifying the rulings  
31 presented for review, with appropriate references to the  
32 record;

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

37 (8) the argument, which must contain the  
38 appellant's contentions and the reasons for them, with  
39 citations to the authorities and parts of the record on which  
40 the appellant relies;

41 (9) a short conclusion stating the precise relief  
42 sought; and

43 (10) the certificate of compliance, if required by

44 Rule 8015(a)(7) or (b).

45 (b) APPELLEE’S BRIEF. The appellee’s brief must  
46 conform to the requirements of subdivision (a)(1)-(8) and (10),  
47 except that none of the following need appear unless the appellee is  
48 dissatisfied with the appellant’s statement:

49 (1) the jurisdictional statement;

50 (2) the statement of the issues and the applicable  
51 standard of appellate review; and

52 (3) the statement of the case.

53 (c) REPLY BRIEF. The appellant may file a brief in reply  
54 to the appellee’s brief. A reply brief must comply with the  
55 requirements of subdivision (a)(2)-(3).

56 (d) STATUTES, RULES, REGULATIONS, OR SIMILAR  
57 AUTHORITY. If the court’s determination of the issues presented  
58 requires the study of the Code or other statutes, rules, regulations,  
59 or similar authority, the relevant parts must be set out in the brief  
60 or in an addendum.

61 (e) BRIEFS IN A CASE INVOLVING MULTIPLE  
62 APPELLANTS OR APPELLEES. In a case involving more than  
63 one appellant or appellee, including consolidated cases, any  
64 number of appellants or appellees may join in a brief, and any party  
65 may adopt by reference a part of another’s brief. Parties may also

66 join in reply briefs.

77 (f) CITATION OF SUPPLEMENTAL AUTHORITIES. If  
78 pertinent and significant authorities come to a party's attention  
79 after the party's brief has been filed—or after oral argument but  
80 before a decision—a party may promptly advise the district or BAP  
81 clerk by a signed submission setting forth the citations. The  
82 submission, which must be served on the other parties to the  
83 appeal, must state the reasons for the supplemental citations,  
84 referring either to the pertinent page of a brief or to a point argued  
85 orally. The body of the submission must not exceed 350 words.  
86 Any response must be made within 7 days after the party is served,  
87 unless the court orders otherwise, and must be similarly limited.

#### COMMITTEE NOTE

This rule is derived from former Rule 8010(a) and (b) and F.R.App.P. 28. Adopting much of the content of Rule 28, it provides greater detail than former Rule 8010 contained regarding appellate briefs.

Subdivision (a) prescribes the content and structure of the appellant's brief. It largely follows former Rule 8010(a)(1), but, to ensure national uniformity, it eliminates the provision authorizing a district court or BAP to alter these requirements. Subdivision (a)(1) provides that when Rule 8012 requires an appellant to file a corporate disclosure statement, it must be placed at the beginning of the appellant's brief. Subdivision (a)(10) is new. It implements the requirement under Rule 8015(a)(7)(C) and (b) for the filing of a certificate of compliance with the limit on the number of words or lines allowed to be in a brief.

Subdivision (b) carries forward the provisions of former Rule 8010(a)(2).

Subdivision (c) is derived from F.R.App.P. 28(c). It authorizes an appellant to file a reply brief, which will generally complete the briefing process.

Subdivision (d) is similar to former Rule 8010(b), but it is reworded to reflect the likelihood that briefs will generally be filed electronically rather than in paper form.

Subdivision (e) mirrors F.R.App.P. 28(i). It authorizes multiple appellants or appellees to join in a single brief. It also allows a party to incorporate by reference portions of another party's brief.

Subdivision (f) adopts the procedures of F.R.App.P. 28(j) with respect to the filing of supplemental authorities with the district court or BAP after a brief has been filed or after oral argument. Unlike the appellate rule, it specifies a period of 7 days for filing a response to a submission of supplemental authorities. The supplemental submission and response must comply with the signature requirements of Rule 8011(e).

**Rule 8015. Form and Length of Briefs; Form of Appendices and Other Papers.**

1 (a) PAPER COPIES OF A BRIEF. If a paper copy of a  
2 brief may or must be filed, the following provisions apply:

3 (1) *Reproduction.*

4 (A) A brief may be reproduced by any  
5 process that yields a clear black image on light  
6 paper. The paper must be opaque and unglazed.  
7 Only one side of the paper may be used.

8 (B) Text must be reproduced with a clarity  
9 that equals or exceeds the output of a laser printer.

10 (C) Photographs, illustrations, and tables  
11 may be reproduced by any method that results in a  
12 good copy of the original. A glossy finish is  
13 acceptable if the original is glossy.

14 (2) *Cover.* The front cover of a brief must contain:

15 (A) the number of the case centered at the  
16 top;

17 (B) the name of the court;

18 (C) the title of the case as prescribed by  
19 Rule 8003(d)(2) or 8004(c)(2);

20 (D) the nature of the proceeding and the

21 name of the court below;

22 (E) the title of the brief, identifying the  
23 party or parties for whom the brief is filed; and

24 (F) the name, office address, telephone  
25 number, and e-mail address of counsel representing  
26 the party for whom the brief is filed.

27 (3) *Binding*. The brief must be bound in any  
28 manner that is secure, does not obscure the text, and  
29 permits the brief to lie reasonably flat when open.

30 (4) *Paper Size, Line Spacing, and Margins*. The  
31 brief must be on 8½-by-11 inch paper. The text must be  
32 double-spaced, but quotations more than two lines long  
33 may be indented and single-spaced. Headings and  
34 footnotes may be single-spaced. Margins must be at least  
35 one inch on all four sides. Page numbers may be placed in  
36 the margins, but no text may appear there.

37 (5) *Typeface*. Either a proportionally spaced or  
38 monospaced face may be used.

39 (A) A proportionally spaced face must  
40 include serifs, but sans-serif type may be used in  
41 headings and captions. A proportionally spaced  
42 face must be 14-point or larger.

43 (B) A monospaced face may not contain  
44 more than 10½ characters per inch.

45 (6) *Type Styles.* A brief must be set in plain, roman  
46 style, although italics or boldface may be used for  
47 emphasis. Case names must be italicized or underlined.

48 (7) *Length.*

49 (A) *Page limitation.* A principal brief must  
50 not exceed 30 pages, or a reply brief 15 pages,  
51 unless it complies with (B) and (C).

52 (B) *Type-volume limitation.*

53 (i) A principal brief is acceptable if:

- 54 • it contains no more  
55 than 14,000 words; or  
56 • it uses a monospaced  
57 face and contains no more  
58 than 1,300 lines of text.

59 (ii) A reply brief is acceptable if it  
60 contains no more than half of the type  
61 volume specified in item (i).

62 (iii) Headings, footnotes, and  
63 quotations count toward the word and line  
64 limitations. The corporate disclosure



65 statement, table of contents, table of  
66 citations, statement with respect to oral  
67 argument, any addendum containing  
68 statutes, rules, or regulations, and any  
69 certificates of counsel do not count toward  
70 the limitation.

71 (C) *Certificate of Compliance.*

72 (i) A brief submitted under  
73 subdivision (a)(7)(B) must include a  
74 certificate signed by the attorney, or an  
75 unrepresented party, that the brief complies  
76 with the type-volume limitation. The person  
77 preparing the certificate may rely on the  
78 word or line count of the word-processing  
79 system used to prepare the brief. The  
80 certificate must state either:

- 81 • the number of words in the
- 82 brief; or
- 83 • the number of lines of
- 84 monospaced type in the brief.

85 (ii) The certification requirement is  
86 satisfied by a certificate of compliance that

87 conforms substantially to the appropriate  
88 Official Form.

89 (b) ELECTRONICALLY FILED BRIEFS. A brief filed  
90 electronically must comply with subdivision (a), except for (a)(1),  
91 (a)(3), and the paper requirement of (a)(4).

92 (c) PAPER COPIES OF APPENDICES. A paper copy of  
93 an appendix must comply with subdivision (a)(1), (2), (3), and (4),  
94 with the following exceptions:

95 (1) An appendix may include a legible photocopy  
96 of any document found in the record or of a printed  
97 decision.

98 (2) When necessary to facilitate inclusion of odd-  
99 sized documents such as technical drawings, an appendix  
100 may be a size other than 8½-by-11 inches, and need not lie  
101 reasonably flat when opened.

102 (d) ELECTRONICALLY FILED APPENDICES. An  
103 appendix filed electronically must comply with subdivision (a)(2)  
104 and (4), except for the paper requirement of (a)(4).

105 (e) OTHER DOCUMENTS.

106 (1) *Motion*. Rule 8013(f) governs the form of a  
107 motion, response, or reply.

108 (2) *Paper Copies of Other Documents*. A paper

109 copy of any other document, other than a submission under  
110 Rule 8014(f), must comply with subdivision (a), with the  
111 following exceptions:

112 (A) A cover is not necessary if the caption  
113 and signature page together contain the information  
114 required by subdivision (a)(2).

115 (B) Subdivision (a)(7) does not apply.

116 (3) *Other Documents Filed Electronically.* Any  
117 other document filed electronically, other than a submission  
118 under Rule 8014(f), must comply with the appearance  
119 requirements of paragraph (2).

120 (f) LOCAL VARIATION. A district court or BAP must  
121 accept documents that comply with the applicable requirements of  
122 this rule. By local rule, a district court or BAP may accept  
123 documents that do not meet all of the requirements of this rule.

### COMMITTEE NOTE

This rule is derived primarily from F.R.App.P. 32. Former Rule 8010(c) prescribed page limits for principal briefs and reply briefs. Those limits are now addressed by subdivision (a)(7) of this rule. In addition, the rule incorporates most of the detail of F.R.App.P. 32 regarding the appearance and format of briefs, appendices, and other documents, along with new provisions that apply when those documents are filed electronically.

Subdivision (a) prescribes the form requirements for briefs that are filed in paper form. It incorporates F.R.App.P. 32(a), except it does not

include color requirements for brief covers, it requires the cover of a brief to include counsel's e-mail address, and cross-references to the appropriate bankruptcy rules are substituted for references to the Federal Rules of Appellate Procedure.

Subdivision (a)(7) decreases the length of briefs, as measured by the number of pages, that was permitted by former Rule 8010(c). Page limits are reduced from 50 to 30 pages for a principal brief and from 25 to 15 for a reply brief in order to achieve consistency with F.R.App.P. 32(a)(7). But as permitted by the appellate rule, subdivision (a)(7) also permits the limits on the length of a brief to be measured by a word or line count, as an alternative to a page limit. Basing the calculation of brief length on either of the type-volume methods specified in subdivision (a)(7)(B) will result in briefs that may exceed the designated page limits in (a)(7)(A) and that may be approximately as long as allowed by the prior page limits.

Subdivision (b) adapts for briefs that are electronically filed subdivision (a)'s form requirements. With the use of electronic filing, the method of reproduction, method of binding, and use of paper become irrelevant. But information required on the cover, formatting requirements, and limits on brief length remain the same.

Subdivisions (c) and (d) prescribe the form requirements for appendices. Subdivision (c), applicable to paper appendices, is derived from F.R.App.P. 32(b), and subdivision (d) adapts those requirements for electronically filed appendices.

Subdivision (e), which is based on F.R.App.P. 32(c), addresses the form required for documents—in paper form or electronically filed—that these rules do not otherwise cover.

Subdivision (f), like F.R.App.P. 32(e), provides assurance to lawyers and parties that compliance with this rule's form requirements will allow a brief or other document to be accepted by any district court or BAP. A court may, however, by local rule or, under Rule 8028 by order in a particular case, choose to accept briefs and documents that do not comply with all of this rule's requirements. The decision whether to accept a brief that appears not to be in compliance with the rules must be made by the court. Under Rule 8011(a)(3), the clerk may not refuse to accept a document for filing solely because it is not presented in proper form as required by these rules or any local rule or practice.

Under Rule 8011(e), the party filing the document or, if represented,

its counsel must sign all briefs and other submissions. If the document is filed electronically, an electronic signature must be provided in accordance with Rule 8011(e).

**Rule 8016. Cross-Appeals**

1           (a) APPLICABILITY. This rule applies to a case in which  
2 a cross-appeal is filed. Rules 8014(a)-(c), 8015(a)(7)(A)-(B), and  
3 8018(a) do not apply to such a case, except as otherwise provided  
4 in this rule.

5           (b) DESIGNATION OF APPELLANT. The party who  
6 files a notice of appeal first is the appellant for purposes of this rule  
7 and Rules 8018(b) and 8019. If notices are filed on the same day,  
8 the plaintiff, petitioner, applicant, or movant in the proceeding  
9 below is the appellant. These designations may be modified by the  
10 parties' agreement or by court order.

11           (c) BRIEFS. In a case involving a cross-appeal:

12                   (1) *Appellant's Principal Brief*. The appellant must  
13 file a principal brief in the appeal. That brief must comply  
14 with Rule 8014(a).

15                   (2) *Appellee's Principal and Response Brief*. The  
16 appellee must file a principal brief in the cross-appeal and  
17 must, in the same brief, respond to the principal brief in the  
18 appeal. That brief must comply with Rule 8014(a), except  
19 that the brief need not include a statement of the case unless  
20 the appellee is dissatisfied with the appellant's statement.

21                   (3) *Appellant's Response and Reply Brief*. The

22 appellant must file a brief that responds to the principal  
23 brief in the cross-appeal and may, in the same brief, reply to  
24 the response in the appeal. That brief must comply with  
25 Rule 8014(a)(2)-(8) and (10), except that none of the  
26 following need appear unless the appellant is dissatisfied  
27 with the appellee's statement in the cross-appeal:

- 28 (A) the jurisdictional statement;
- 29 (B) the statement of the issues and the  
30 applicable standard of appellate review; and
- 31 (C) the statement of the case.

32 (4) *Appellee's Reply Brief.* The appellee may file a  
33 brief in reply to the response in the cross-appeal. That brief  
34 must comply with Rule 8014(a)(2)-(3) and (10) and must  
35 be limited to the issues presented by the cross-appeal.

36 (d) LENGTH.

37 (1) *Page Limitation.* Unless it complies with  
38 paragraphs (2) and (3), the appellant's principal brief must  
39 not exceed 30 pages; the appellee's principal and response  
40 brief, 35 pages; the appellant's response and reply brief, 30  
41 pages; and the appellee's reply brief, 15 pages.

42 (2) *Type-Volume Limitation.*

43 (A) The appellant's principal brief or the

44 appellant's response and reply brief is acceptable if:  
45 (i) it contains no more than 14,000  
46 words; or  
47 (ii) it uses a monospaced face and  
48 contains no more than 1,300 lines of text.  
49 (B) The appellee's principal and response  
50 brief is acceptable if:  
51 (i) it contains no more than 16,500  
52 words; or  
53 (ii) it uses a monospaced face and  
54 contains no more than 1,500 lines of text.  
55 (C) The appellee's reply brief is acceptable  
56 if it contains no more than half of the type volume  
57 specified in subparagraph (A).  
58 (D) Headings, footnotes, and quotations  
59 count toward the word and line limitations. The  
60 corporate disclosure statement, table of contents,  
61 table of citations, statement with respect to oral  
62 argument, any addendum containing statutes, rules,  
63 or regulations, and any certificates of counsel do not  
64 count toward the limitation.  
65 (3) *Certificate of Compliance*. A brief submitted



66                   either electronically or in paper form under paragraph (2)  
67                   must comply with Rule 8015(a)(7)(C).

68                   (e) TIME TO SERVE AND FILE A BRIEF. Briefs must  
69                   be served and filed as follows, unless the district court or BAP by  
70                   order in a particular case excuses the filing of briefs or specifies  
71                   different time limits:

72                   (1) the appellant's principal brief, within 30 days  
73                   after the docketing of notice that the record has been  
74                   transmitted or is available electronically;

75                   (2) the appellee's principal and response brief,  
76                   within 30 days after the appellant's principal brief is  
77                   served;

78                   (3) the appellant's response and reply brief, within  
79                   30 days after the appellee's principal and response brief is  
80                   served; and

81                   (4) the appellee's reply brief, within 14 days after  
82                   the appellant's response and reply brief is served, but at  
83                   least 7 days before scheduled argument unless the district  
84                   court or BAP, for good cause, allows a later filing.

## COMMITTEE NOTE

This rule is derived from F.R.App.P. 28.1. It governs the timing, content, length, filing, and service of briefs in bankruptcy appeals in which there is a cross-appeal. The former Part VIII rules did not separately address the topic of cross-appeals.

Subdivision (b) prescribes which party is designated the appellant when there is a cross-appeal. Generally, the first to file a notice of appeal will be the appellant.

Subdivision (c) specifies the briefs that the appellant and the appellee may file. Because of the dual role of the parties to the appeal and cross-appeal, each party is permitted to file a principal brief and a response to the opposing party's brief, as well as a reply brief. For the appellee, the principal brief in the cross-appeal and the response in the appeal are combined into a single brief. The appellant, on the other hand, initially files a principal brief in the appeal and later files a response to the appellee's principal brief in the cross-appeal, along with a reply brief in the appeal. The final brief that may be filed is the appellee's reply brief in the cross-appeal.

Subdivision (d), which prescribes page limits for briefs, is adopted from F.R.App.P. 28.1(e). It applies to briefs that are filed electronically, as well as to those filed in paper form. Like Rule 8015(a)(7), it imposes limits measured by either the number of pages or the number of words or lines of text.

Subdivision (e) governs the time for filing briefs in cases in which there is a cross-appeal. It adapts the provisions of F.R.App.P. 28.1(f).

**Rule 8017. Brief of an Amicus Curiae**

1           (a) WHEN PERMITTED. The United States or its officer  
2           or agency or a state may file an amicus-curiae brief without the  
3           consent of the parties or leave of court. Any other amicus curiae  
4           may file a brief only by leave of court or if the brief states that all  
5           parties have consented to its filing. On its own motion, and with  
6           notice to all parties to an appeal, the district court or BAP may  
7           request a brief by an amicus curiae.

8           (b) MOTION FOR LEAVE TO FILE. The motion must be  
9           accompanied by the proposed brief and state:

- 10                   (1) the movant’s interest; and  
11                   (2) the reason why an amicus brief is desirable and  
12                   why the matters asserted are relevant to the disposition of  
13                   the appeal.

14           (c) CONTENTS AND FORM. An amicus brief must  
15           comply with Rule 8015. In addition to the requirements of Rule  
16           8015, the cover must identify the party or parties supported and  
17           indicate whether the brief supports affirmance or reversal. If an  
18           amicus curiae is a corporation, the brief must include a disclosure  
19           statement like that required of parties by Rule 8012. An amicus  
20           brief need not comply with Rule 8014, but must include the  
21           following:

- 22 (1) a table of contents, with page references;
- 23 (2) a table of authorities—cases (alphabetically  
24 arranged), statutes, and other authorities—with references  
25 to the pages of the brief where they are cited;
- 26 (3) a concise statement of the identity of the amicus  
27 curiae, its interest in the case, and the source of its authority  
28 to file;
- 29 (4) unless the amicus curiae is one listed in the first  
30 sentence of subdivision (a), a statement that indicates  
31 whether:
- 32 (A) a party’s counsel authored the brief in  
33 whole or in part;
- 34 (B) a party or a party’s counsel contributed  
35 money that was intended to fund preparing or  
36 submitting the brief; and
- 37 (C) a person—other than the amicus curiae,  
38 its members, or its counsel—contributed money that  
39 was intended to fund preparing or submitting the  
40 brief and, if so, identifies each such person;
- 41 (5) an argument, which may be preceded by a  
42 summary and need not include a statement of the applicable  
43 standard of review; and

44 (6) a certificate of compliance, if required by Rule  
45 8015(a)(7)(C) or 8015(b).

46 (d) LENGTH. Except by the district court's or BAP's  
47 permission, an amicus brief must be no more than one-half the  
48 maximum length authorized by these rules for a party's principal  
49 brief. If the court grants a party permission to file a longer brief,  
50 that extension does not affect the length of an amicus brief.

51 (e) TIME FOR FILING. An amicus curiae must file its  
52 brief, accompanied by a motion for filing when necessary, no later  
53 than 7 days after the principal brief of the party being supported is  
54 filed. An amicus curiae that does not support either party must file  
55 its brief no later than 7 days after the appellant's principal brief is  
56 filed. The district court or BAP may grant leave for later filing,  
57 specifying the time within which an opposing party may answer.

58 (f) REPLY BRIEF. Except by the district court's or  
59 BAP's permission, an amicus curiae may not file a reply brief.

60 (g) ORAL ARGUMENT. An amicus curiae may  
61 participate in oral argument only with the district court's or BAP's  
62 permission.

## COMMITTEE NOTE

This rule is derived from F.R.App.P. 29. The former Part VIII rules did not address the participation by an amicus curiae in a bankruptcy appeal.

Subdivision (a) adopts the provisions of F.R.App.P. 29(a). In addition, it authorizes the district court or BAP on its own motion— with notice to the parties—to request the filing of a brief by an amicus curiae.

Subdivisions (b)-(g) adopt F.R.App.P. 29(b)-(g).

**Rule 8018. Serving and Filing Briefs; Appendices**

1           (a) TIME TO SERVE AND FILE A BRIEF. The  
2 following rules apply unless the district court or BAP by order in a  
3 particular case excuses the filing of briefs or specifies different  
4 time limits:

5                   (1) The appellant must serve and file a brief within  
6 30 days after the docketing of notice that the record has  
7 been transmitted or is available electronically.

8                   (2) The appellee must serve and file a brief within  
9 30 days after service of the appellant’s brief.

10                  (3) The appellant may serve and file a reply brief  
11 within 14 days after service of the appellee’s brief, but a  
12 reply brief must be filed at least 7 days before scheduled  
13 argument unless the district court or BAP, for good cause,  
14 allows a later filing.

15                  (4) If an appellant fails to file a brief on time or  
16 within an extended time authorized by the district court or  
17 BAP, an appellee may move to dismiss the appeal or the  
18 appellate court, after notice, may dismiss the appeal on its  
19 own motion. An appellee who fails to file a brief will not  
20 be heard at oral argument unless the district court or BAP  
21 grants permission.

22 (b) DUTY TO SERVE AND FILE AN APPENDIX TO  
23 THE BRIEF.

24 (1) *Appellant*. Subject to subdivision (e) and Rule  
25 8009(d), the appellant must serve and file with its principal  
26 brief excerpts of the record as an appendix. It must contain  
27 the following:

28 (A) the relevant entries in the bankruptcy  
29 docket;

30 (B) the complaint and answer, or other  
31 equivalent filings;

32 (C) the judgment, order, or decree from  
33 which the appeal is taken;

34 (D) any other orders, pleadings, jury  
35 instructions, findings, conclusions, or opinions  
36 relevant to the appeal;

37 (E) the notice of appeal; and

38 (F) any relevant transcript or portion of it.

39 (2) *Appellee*. The appellee may also serve and file  
40 with its brief an appendix that contains material required to  
41 be included by the appellant or relevant to the appeal or  
42 cross-appeal, but omitted by the appellant.

43 (3) *Cross-Appellee*. The appellant as cross-



44                   appellee may also serve and file with its response an  
45                   appendix that contains material relevant to matters raised  
46                   initially by the principal brief in the cross-appeal, but  
47                   omitted by the cross-appellant.

48                   (c) **FORMAT OF THE APPENDIX.** The appendix must  
49                   begin with a table of contents identifying the page at which each  
50                   part begins. The relevant docket entries must follow the table of  
51                   contents. Other parts of the record must follow chronologically.  
52                   When pages from the transcript of proceedings are placed in the  
53                   appendix, the transcript page numbers must be shown in brackets  
54                   immediately before the included pages. Omissions in the text of  
55                   documents or of the transcript must be indicated by asterisks.  
56                   Immaterial formal matters (captions, subscriptions,  
57                   acknowledgments, and the like) should be omitted.

58                   (d) **EXHIBITS.** Exhibits designated for inclusion in the  
59                   appendix may be reproduced in a separate volume or volumes,  
60                   suitably indexed.

61                   (e) **APPEAL ON THE ORIGINAL RECORD WITHOUT**  
62                   **AN APPENDIX.** The district court or BAP may, either by rule for  
63                   all cases or classes of cases or by order in a particular case,  
64                   dispense with the appendix and permit an appeal to proceed on the  
65                   original record, with the submission of any relevant parts of the

### COMMITTEE NOTE

This rule is derived from former Rule 8009 and F.R.App.P. 30 and 31. Like former Rule 8009, it addresses the timing of serving and filing briefs and appendices, as well as the content and format of appendices. Rule 8011 governs the methods of filing and serving briefs and appendices.

The rule retains the bankruptcy practice of permitting the appellee to file its own appendix, rather than requiring the appellant to include in its appendix matters designated by the appellee. Rule 8016 governs the timing of serving and filing briefs when a cross-appeal is taken. This rule's provisions about appendices apply to all appeals, including cross-appeals.

Subdivision (a) retains former Rule 8009's provision that allows the district court or BAP to dispense with briefing or to provide different time periods than this rule specifies. It increases some of the time periods for filing briefs from the periods prescribed by the former rule, while still retaining shorter time periods than some provided by F.R.App.P. 31(a). The time for filing the appellant's brief is increased from 14 to 30 days after the docketing of the notice of the transmission of the record or notice of the availability of the record. That triggering event is equivalent to docketing the appeal under former Rule 8007. Appellate Rule 31(a)(1), by contrast, provides the appellant 40 days after the record is filed to file its brief. The shorter time period for bankruptcy appeals reflects the frequent need for greater expedition in the resolution of bankruptcy appeals, while still providing the appellant more time to prepare its brief than the former rule provided.

Subdivision (a)(2) similarly expands the time period for filing the appellee's brief from 14 to 30 days after the service of the appellant's brief. This period is the same as F.R. App. 31(a)(1) provides.

Subdivision (a)(3) retains the 14-day time period for filing a reply brief that the former rule prescribed, but it qualifies that period to ensure that the final brief is filed at least 7 days before oral argument.

If a district court or BAP has a mediation procedure for bankruptcy appeals, that procedure could affect when briefs must be filed. *See* Rule 8027.

Subdivision (a)(4) is new. Based on F.R.App.P. 31(c), it provides for actions that may be taken—dismissal of the appeal or denial of participation in oral argument—if the appellant or appellee fails to file its brief.

Subdivisions (b) and (c) govern the content and format of the appendix to a brief. Subdivision (b) is similar to former Rule 8009(b), and subdivision (c) is derived from F.R.App.P. 30(d).

Subdivision (d), which addresses the inclusion of exhibits in the appendix, is derived from F.R.App.P. 30(e).

**Rule 8019. Oral Argument**

1           (a) PARTY’S STATEMENT. Any party may file, or a  
2           district court or BAP may require, a statement explaining why oral  
3           argument should, or need not, be permitted.

4           (b) PRESUMPTION OF ORAL ARGUMENT AND  
5           EXCEPTIONS. Oral argument must be allowed in every case  
6           unless the district judge—or all the BAP judges assigned to hear  
7           the appeal—examine the briefs and record and determine that oral  
8           argument is unnecessary because

9                       (1) the appeal is frivolous;

10                      (2) the dispositive issue or issues have been  
11           authoritatively decided; or

12                      (3) the facts and legal arguments are adequately  
13           presented in the briefs and record, and the decisional  
14           process would not be significantly aided by oral argument.

15           (c) NOTICE OF ARGUMENT; POSTPONEMENT. The  
16           district court or BAP must advise all parties of the date, time, and  
17           place for oral argument, and the time allowed for each side. A  
18           motion to postpone the argument or to allow longer argument must  
19           be filed reasonably in advance of the hearing date.

20           (d) ORDER AND CONTENTS OF ARGUMENT. The  
21           appellant opens and concludes the argument. Counsel must not

22 read at length from briefs, the record, or authorities.

23 (e) CROSS-APPEALS AND SEPARATE APPEALS. If  
24 there is a cross-appeal, Rule 8016(b) determines which party is the  
25 appellant and which is the appellee for the purposes of oral  
26 argument. Unless the district court or BAP directs otherwise, a  
27 cross-appeal or separate appeal must be argued when the initial  
28 appeal is argued. Separate parties should avoid duplicative  
29 argument.

30 (f) NONAPPEARANCE OF A PARTY. If the appellee  
31 fails to appear for argument, the district court or BAP may hear the  
32 appellant's argument. If the appellant fails to appear for argument,  
33 the district court or BAP may hear the appellee's argument. If  
34 neither party appears, the case will be decided on the briefs unless  
35 the district court or BAP orders otherwise.

36 (g) SUBMISSION ON BRIEFS. The parties may agree to  
37 submit a case for decision on the briefs, but the district court or  
38 BAP may direct that the case be argued.

39 (h) USE OF PHYSICAL EXHIBITS AT ARGUMENT;  
40 REMOVAL. Counsel intending to use physical exhibits other than  
41 documents at the argument must arrange to place them in the  
42 courtroom on the day of the argument before the court convenes.  
43 After the argument, counsel must remove the exhibits from the

44 courtroom unless the district court or BAP directs otherwise. The  
45 clerk may destroy or dispose of the exhibits if counsel does not  
46 reclaim them within a reasonable time after the clerk gives notice  
47 to remove them.

### COMMITTEE NOTE

This rule generally retains the provisions of former Rule 8012 and adds much of the additional detail of F.R.App.P. 34. By incorporating the more detailed provisions of the appellate rule, Rule 8019 promotes national uniformity regarding oral argument in bankruptcy appeals.

Subdivision (a), like F.R.App.P. 34(a)(1), now allows a party to submit a statement explaining why oral argument is or is not needed. It also authorizes a court to require this statement. Former Rule 8012 only authorized statements explaining why oral argument should be allowed.

Subdivision (b) retains the reasons set forth in former Rule 8012 for the district court or BAP to conclude that oral argument is not needed.

The remainder of this rule adopts the provisions of F.R.App.P. 34(b)-(g), with one exception. Rather than requiring the district court or BAP to hear appellant's argument if the appellee does not appear, subdivision (e) authorizes the district court or BAP to go forward with the argument in the appellee's absence. Should the court decide, however, to postpone the oral argument in that situation, it would be authorized to do so.

## **Rule 8020. Frivolous Appeal and Other Misconduct**

1           (a) FRIVOLOUS APPEAL—DAMAGES AND COSTS.

2           If the district court or BAP determines that an appeal is frivolous, it  
3           may, after a separately filed motion or notice from the court and  
4           reasonable opportunity to respond, award just damages and single  
5           or double costs to the appellee.

6           (b) OTHER MISCONDUCT. The district court or BAP  
7           may discipline or sanction an attorney or party appearing before it  
8           for other misconduct, including failure to comply with any court  
9           order. First, however, the court must afford the attorney or party  
10          reasonable notice, an opportunity to show cause to the contrary,  
11          and, if requested, a hearing.

### **COMMITTEE NOTE**

This rule is derived from former Rule 8020 and F.R.App.P. 38 and 46(c). Subdivision (a) permits an award of damages and costs to an appellee for a frivolous appeal. Subdivision (b) permits the district court or BAP to impose on parties as well as their counsel sanctions for misconduct other than taking a frivolous appeal. Failure to comply with a court order, for which sanctions may be imposed, may include a failure to comply with a local court rule.

**Rule 8021. Costs**

1 (a) AGAINST WHOM ASSESSED. The following rules  
2 apply unless the law provides or the district court or BAP orders  
3 otherwise:

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

6 (2) if a judgment, order, or decree is affirmed, costs  
7 are taxed against the appellant;

8 (3) if a judgment, order, or decree is reversed, costs  
9 are taxed against the appellee;

10 (4) if a judgment, order, or decree is affirmed or  
11 reversed in part, modified, or vacated, costs are taxed only  
12 as the district court or BAP orders.

13 (b) COSTS FOR AND AGAINST THE UNITED  
14 STATES. Costs for or against the United States, its agency, or its  
15 officer may be assessed under subdivision (a) only if authorized by  
16 law.

17 (c) COSTS ON APPEAL TAXABLE IN THE  
18 BANKRUPTCY COURT. The following costs on appeal are  
19 taxable in the bankruptcy court for the benefit of the party entitled  
20 to costs under this rule:

21 (1) the production of any required copies of a brief,



22 appendix, exhibit, or the record;

23 (2) the preparation and transmission of the record;

24 (3) the reporter's transcript, if needed to determine

25 the appeal;

26 (4) premiums paid for a supersedeas bond or other

27 bonds to preserve rights pending appeal; and

28 (5) the fee for filing the notice of appeal.

29 (d) BILL OF COSTS; OBJECTIONS. A party who wants

30 costs taxed must, within 14 days after entry of judgment on appeal,

31 file with the bankruptcy clerk, with proof of service, an itemized

32 and verified bill of costs. Objections must be filed within 14 days

33 after service of the bill of costs, unless the bankruptcy court

34 extends the time.

#### **COMMITTEE NOTE**

This rule is derived from former Rule 8014 and F.R.App.P. 39. It retains the former rule's authorization for taxing appellate costs against the losing party and its specification of the costs that may be taxed. The rule also incorporates some of the additional details regarding the taxing of costs contained in F.R.App.P. 39. Consistent with former Rule 8014, the bankruptcy clerk has the responsibility for taxing all costs. Subdivision (b), derived from F.R.App.P. 39(b), clarifies that additional authority is required for the taxation of costs by or against federal governmental parties.

**Rule 8022. Motion for Rehearing.**

1           (a) TIME TO FILE; CONTENTS; RESPONSE; ACTION  
2 BY THE DISTRICT COURT OR BAP IF GRANTED.

3           (1) *Time.* Unless the time is shortened or extended  
4 by order or local rule, any motion for rehearing by the  
5 district court or BAP must be filed within 14 days after  
6 entry of judgment on appeal.

7           (2) *Contents.* The motion must state with  
8 particularity each point of law or fact that the movant  
9 believes the district court or BAP has overlooked or  
10 misapprehended and must argue in support of the motion.  
11 Oral argument is not permitted.

12           (3) *Response.* Unless the district court or BAP  
13 requests, no response to a motion for rehearing is permitted.  
14 But ordinarily, rehearing will not be granted in the absence  
15 of such a request.

16           (4) *Action by the District Court or BAP.* If a  
17 motion for rehearing is granted, the district court or BAP  
18 may do any of the following:

19                   (A) make a final disposition of the appeal  
20 without reargument;

21                   (B) restore the case to the calendar for

22 reargument or resubmission; or  
23 (C) issue any other appropriate order.  
24 (b) FORM OF THE MOTION; LENGTH. The motion  
25 must comply in form with Rule 8013(f)(1) and (2). Copies must be  
26 served and filed as provided by Rule 8011. Unless the district  
27 court or BAP by local rule or order provides otherwise, a motion  
28 for rehearing must not exceed 15 pages.

#### **COMMITTEE NOTE**

This rule is derived from former Rule 8015 and F.R.App.P. 40. It deletes the provision of former Rule 8015 regarding the time for appeal to the court of appeals because the matter is addressed by F.R.App.P. 6(b)(2)(A).

### **Rule 8023. Voluntary Dismissal**

1           The clerk of the district court or BAP must dismiss an  
2           appeal if the parties file a signed dismissal agreement specifying  
3           how costs are to be paid and pay any fees that are due. An appeal  
4           may be dismissed on the appellant's motion on terms agreed to by  
5           the parties or fixed by the district court or BAP.

### **COMMITTEE NOTE**

This rule is derived from former Rule 8001(c) and F.R.App.P. 42. The provision of the former rule regarding dismissal of appeals in the bankruptcy court prior to docketing of the appeal has been deleted. Now that docketing occurs promptly after a notice of appeal is filed, *see* Rules 8003(d) and 8004(c), an appeal likely will not be voluntarily dismissed before docketing.

The rule retains the provision of the former rule that the district or BAP clerk must dismiss an appeal upon the parties' agreement. District courts and BAPs continue to have discretion to dismiss an appeal on an appellant's motion. Nothing in the rule prohibits a district court or BAP from dismissing an appeal for other reasons authorized by law, such as the failure to prosecute an appeal.

**Rule 8024. Clerk’s Duties on Disposition of the Appeal**

1           (a) JUDGMENT ON APPEAL. The district or BAP clerk  
2           must prepare, sign, and enter the judgment after receiving the  
3           court’s opinion or, if there is no opinion, as the court instructs.  
4           Noting the judgment on the docket constitutes entry of judgment.

5           (b) NOTICE OF A JUDGMENT. Immediately upon the  
6           entry of a judgment, the district or BAP clerk must:

7                       (1) transmit a notice of the entry to each party to  
8                       the appeal, to the United States trustee, and to the  
9                       bankruptcy clerk, together with a copy of any opinion; and

10                      (2) note the date of the transmission on the docket.

11           (c) RETURNING PHYSICAL ITEMS. If any physical  
12           items were transmitted as the record on appeal, they must be  
13           returned to the bankruptcy clerk on disposition of the appeal.

**COMMITTEE NOTE**

This rule is derived from former Rule 8016, which was adapted from F.R.App.P. 36 and 45(c) and (d). The rule is reworded to reflect that only items in the record that are physically, as opposed to electronically, transmitted to the district court or BAP need to be returned to the bankruptcy clerk. Other changes to the former rule are stylistic.

**Rule 8025. Stay of a District Court or BAP Judgment**

1 (a) AUTOMATIC STAY OF JUDGMENT ON APPEAL.

2 Unless the district court or BAP orders otherwise, its judgment is  
3 stayed for 14 days after entry.

4 (b) STAY PENDING APPEAL TO THE COURT OF  
5 APPEALS.

6 (1) *In General.* On a party’s motion and notice to  
7 all other parties to the appeal, the district court or BAP may  
8 stay its judgment pending an appeal to the court of appeals.

9 (2) *Time Limit.* The stay must not exceed 30 days  
10 after the judgment is entered, except for cause shown.

11 (3) *Stay Continued.* If, before a stay expires, the  
12 party who obtained the stay appeals to the court of appeals,  
13 the stay continues until final disposition by the court of  
14 appeals.

15 (4) *Bond or Other Security.* A bond or other  
16 security may be required as a condition for granting or  
17 continuing a stay of the judgment. A bond or other security  
18 may be required if a trustee obtains a stay, but not if a stay  
19 is obtained by the United States or its officer or agency or at  
20 the direction of any department of the United States  
21 government.

22 (c) AUTOMATIC STAY OF AN ORDER, JUDGMENT,  
23 OR DECREE OF A BANKRUPTCY COURT. If the district court  
24 or BAP enters a judgment affirming an order, judgment, or decree  
25 of the bankruptcy court, a stay of the district court's or BAP's  
26 judgment automatically stays the bankruptcy court's order,  
27 judgment, or decree for the duration of the appellate stay.

28 (d) POWER OF A COURT OF APPEALS NOT  
29 LIMITED. This rule does not limit the power of a court of appeals  
30 or any of its judges to do the following:

- 31 (1) stay a judgment pending appeal;
- 32 (2) stay proceedings while an appeal is pending;
- 33 (3) suspend, modify, restore, vacate, or grant a stay  
34 or an injunction while an appeal is pending; or
- 35 (4) issue any order appropriate to preserve the  
36 status quo or the effectiveness of any judgment to be  
37 entered.

#### **COMMITTEE NOTE**

This rule is derived from former Rule 8017. Most of the changes to the former rule are stylistic. Subdivision (c) is new. It provides that if a district court or BAP affirms the bankruptcy court ruling and the appellate judgment is stayed, the bankruptcy court's order, judgment, or decree that is affirmed on appeal is automatically stayed to the same extent as the stay of the appellate judgment.

**Rule 8026. Rules by Circuit Councils and District Courts;  
Procedure When There is No Controlling Law**

1           (a) LOCAL RULES BY CIRCUIT COUNCILS AND  
2 DISTRICT COURTS.

3                   (1) *Adopting Local Rules.* A circuit council that  
4 has authorized a BAP under 28 U.S.C. § 158(b) may make  
5 and amend rules governing the practice and procedure on  
6 appeal from a judgment, order, or decree of a bankruptcy  
7 court to the BAP. A district court may make and amend  
8 rules governing the practice and procedure on appeal from a  
9 judgment, order, or decree of a bankruptcy court to the  
10 district court. Local rules must be consistent with, but not  
11 duplicative of, Acts of Congress and these Part VIII rules.  
12 Rule 83 F.R.Civ.P. governs the procedure for making and  
13 amending rules to govern appeals.

14                   (2) *Numbering.* Local rules must conform to any  
15 uniform numbering system prescribed by the Judicial  
16 Conference of the United States.

17                   (3) *Limitation on Imposing Requirements of Form.*  
18 A local rule imposing a requirement of form must not be  
19 enforced in a way that causes a party to lose any right  
20 because of a nonwillful failure to comply.



21 (b) PROCEDURE WHEN THERE IS NO  
22 CONTROLLING LAW.

23 (1) *In General.* A district court or BAP may  
24 regulate practice in any manner consistent with federal law,  
25 applicable federal rules, the Official Forms, and local rules.

26 (2) *Limitation on Sanctions.* No sanction or other  
27 disadvantage may be imposed for noncompliance with any  
28 requirement not in federal law, applicable federal rules, the  
29 Official Forms, or local rules unless the alleged violator has  
30 been furnished in the particular case with actual notice of  
31 the requirement.

#### COMMITTEE NOTE

This rule is derived from former Rule 8018. The changes to the former rule are stylistic.

**Rule 8027. Notice of a Mediation Procedure**

1            If the district court or BAP has a mediation procedure  
2            applicable to bankruptcy appeals, the clerk must notify the parties  
3            promptly after docketing the appeal of:  
4            (a) the requirements of the mediation procedure; and  
5            (b) any effect the mediation procedure has on the time to  
6            file briefs.

**COMMITTEE NOTE**

This rule is new. It requires the district or BAP clerk to advise the parties promptly after an appeal is docketed of any court mediation procedure that is applicable to bankruptcy appeals. The notice must state what the mediation requirements are and how the procedure affects the time for filing briefs.

### **Rule 8028. Suspension of Rules in Part VIII**

1           In the interest of expediting decision or for other cause in a  
2           particular case, the district court or BAP, or where appropriate the  
3           court of appeals, may suspend the requirements or provisions of  
4           the rules in Part VIII, except Rules 8001, 8002, 8003, 8004, 8005,  
5           8006, 8007, 8012, 8020, 8024, 8025, 8026, and 8028.

### **COMMITTEE NOTE**

This rule is derived from former Rule 8019 and F.R.App.P. 2. To promote uniformity of practice and compliance with statutory authority, the rule includes a more extensive list of requirements that may not be suspended than either the former rule or the Federal Rules of Appellate Procedure provide. Rules governing the following matters may not be suspended:

- scope of the rules; definition of “BAP”; method of transmission;
- time for filing a notice of appeal;
- taking an appeal as of right;
- taking an appeal by leave;
- election to have an appeal heard by a district court instead of a BAP;
- certification of direct appeal to a court of appeals;
- stay pending appeal;
- corporate disclosure statement;
- sanctions for frivolous appeals and other misconduct;
- clerk’s duties on disposition of an appeal;
- stay of a district court’s or BAP’s judgment;
- local rules; and
- suspension of the Part VIII rules.

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# TAB 9A.2

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# FEDERAL RULES OF BANKRUPTCY PROCEDURE

## PART VIII. BANKRUPTCY APPEALS

### Rule

- 8001. Scope of Part VIII Rules; Definition of “BAP”; Method of Transmission
- 8002. Time for Filing Notice of Appeal
- 8003. Appeal as of Right—How Taken; Docketing the Appeal
- 8004. Appeal by Leave—How Taken; Docketing the Appeal
- 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP
- 8006. Certifying a Direct Appeal to the Court of Appeals
- 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings
- 8008. Indicative Rulings
- 8009. Record on Appeal; Sealed Documents
- 8010. Completing and Transmitting the Record
- 8011. Filing and Service; Signature
- 8012. Corporate Disclosure Statement
- 8013. Motions; Intervention
- 8014. Briefs
- 8015. Form and Length of Briefs; Form of Appendices and Other Papers
- 8016. Cross-Appeals
- 8017. Brief of an Amicus Curiae
- 8018. Serving and Filing Briefs; Appendices
- 8019. Oral Argument

- 8020. Frivolous Appeal and Other Misconduct
- 8021. Costs
- 8022. Motion for Rehearing
- 8023. Voluntary Dismissal
- 8024. Clerk's Duties on Disposition of the Appeal
- 8025. Stay of a District Court or BAP Judgment
- 8026. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law
- 8027. Notice of a Mediation Procedure
- 8028. Suspension of Rules in Part VIII



**Rule 8001. Scope of Part VIII Rules; Definition of “BAP”;  
Method of Transmission**

1           (a) GENERAL SCOPE. These Part VIII rules govern the  
2 procedure in a United States district court and a bankruptcy  
3 appellate panel on appeal from a judgment, order, or decree of a  
4 bankruptcy court. They also govern certain procedures on appeal  
5 to a United States court of appeals under 28 U.S.C. § 158(d).

6           (b) DEFINITION OF “BAP.” “BAP” means a bankruptcy  
7 appellate panel established by a circuit’s judicial council and  
8 authorized to hear appeals from a bankruptcy court under 28  
9 U.S.C. § 158.

10           (c) METHOD OF TRANSMITTING DOCUMENTS. A  
11 document must be sent electronically under these Part VIII rules,  
12 unless it is being sent by or to an individual who is not represented  
13 by counsel or the court’s governing rules permit or require mailing  
14 or other means of delivery.

**COMMITTEE NOTE**

These Part VIII rules apply to appeals under 28 U.S.C. § 158(a) from bankruptcy courts to district courts and BAPs. The Federal Rules of Appellate Procedure generally govern bankruptcy appeals to courts of appeals.

Eight of the Part VIII rules do, however, relate to appeals to courts of appeals. Rule 8004(e) provides that the authorization by a court of appeals of a direct appeal of a bankruptcy court’s interlocutory order or decree constitutes a grant of leave to appeal. Rule 8006 governs the procedure for certification under 28 U.S.C. § 158(d)(2) of a direct appeal from a judgment, order, or decree of a bankruptcy court to a court of appeals. Rule 8007 addresses stays pending a direct appeal to a court of

appeals. Rule 8008 authorizes a bankruptcy court to issue an indicative ruling while an appeal is pending in a court of appeals. Rules 8009 and 8010 govern the record on appeal in a direct appeal to a court of appeals. Rule 8025 governs the granting of a stay of a district court or BAP judgment pending an appeal to the court of appeals. And Rule 8028 authorizes the court of appeals to suspend applicable Part VIII rules in a particular case, subject to certain enumerated exceptions.

These rules take account of the evolving technology in the federal courts for the electronic filing, storage, and transmission of documents. Except as applied to pro se parties, the Part VIII rules require documents to be sent electronically, unless applicable court rules or orders expressly require or permit another means of sending a particular document.

**Rule 8002. Time for Filing Notice of Appeal**

1 (a) IN GENERAL.

2 (1) *Fourteen-Day Period.* Except as provided in  
3 subdivisions (b) and (c), a notice of appeal must be filed  
4 with the bankruptcy clerk within 14 days after entry of the  
5 judgment, order, or decree being appealed.

6 (2) *Filing Before the Entry of Judgment.* A notice  
7 of appeal filed after the bankruptcy court announces a  
8 decision or order—but before entry of the judgment, order,  
9 or decree—is treated as filed on the date of and after the  
10 entry.

11 (3) *Multiple Appeals.* If one party files a timely  
12 notice of appeal, any other party may file a notice of appeal  
13 within 14 days after the date when the first notice was filed,  
14 or within the time otherwise allowed by this rule,  
15 whichever period ends later.

16 (4) *Mistaken Filing in Another Court.* If a notice  
17 of appeal is mistakenly filed in a district court, BAP, or  
18 court of appeals, the clerk of that court must state on the  
19 notice the date on which it was received and transmit it to  
20 the bankruptcy clerk. The notice of appeal is then

21 considered filed in the bankruptcy court on the date so  
22 stated.

23 (b) EFFECT OF A MOTION ON THE TIME TO  
24 APPEAL.

25 (1) *In General.* If a party timely files in the  
26 bankruptcy court any of the following motions, the time to  
27 file an appeal runs for all parties from the entry of the order  
28 disposing of the last such remaining motion:

29 (A) to amend or make additional findings  
30 under Rule 7052, whether or not granting the  
31 motion would alter the judgment;

32 (B) to alter or amend the judgment under  
33 Rule 9023;

34 (C) for a new trial under Rule 9023; or

35 (D) for relief under Rule 9024 if the motion  
36 is filed within 14 days after the judgment is entered.

37 (2) *Filing an Appeal Before the Motion is Decided.*

38 If a party files a notice of appeal after the court announces  
39 or enters a judgment, order, or decree—but before it  
40 disposes of any motion listed in subdivision (b)(1)—the  
41 notice becomes effective when the order disposing of the  
42 last such remaining motion is entered.

43 (3) *Appealing the Motion.* If a party intends to

44 challenge an order disposing of any motion listed in  
45 subdivision (b)(1)—or the alteration or amendment of a  
46 judgment, order, or decree upon the motion—the party  
47 must file a notice of appeal or an amended notice of appeal.  
48 The notice or amended notice must comply with Rule 8003  
49 or 8004 and be filed within the time prescribed by this rule,  
50 measured from the entry of the order disposing of the last  
51 such remaining motion.

52 (4) *No Additional Fee.* No additional fee is  
53 required to file an amended notice of appeal.

54 (c) APPEAL BY AN INMATE CONFINED IN AN  
55 INSTITUTION.

56 (1) *In General.* If an inmate confined in an  
57 institution files a notice of appeal from a judgment, order,  
58 or decree of a bankruptcy court ~~to a district court or BAP,~~  
59 the notice is timely if it is deposited in the institution's  
60 internal mail system on or before the last day for filing. If  
61 the institution has a system designed for legal mail, the  
62 inmate must use that system to receive the benefit of this  
63 rule. Timely filing may be shown by a declaration in  
64 compliance with 28 U.S.C. § 1746 or by a notarized  
65 statement, either of which must set forth the date of deposit  
66 and state that first-class postage has been prepaid.

67                   (2) *Multiple Appeals*. If an inmate files under this  
68                   subdivision the first notice of appeal, the 14-day period  
69                   provided in subdivision (a)(3) for another party to file a  
70                   notice of appeal runs from the date when the bankruptcy  
71                   clerk docket the first notice.

72                   (d) EXTENDING THE TIME TO APPEAL.

73                   (1) *When the Time May be Extended*. Except as  
74                   provided in subdivision (d)(2), the bankruptcy court may  
75                   extend the time to file a notice of appeal upon a party's  
76                   motion that is filed:

77                                   (A) within the time prescribed by this rule;

78                                   or

79                                   (B) within 21 days after that time, if the  
80                   party shows excusable neglect.

81                   (2) *When the Time May Not be Extended*. The  
82                   bankruptcy court may not extend the time to file a notice of  
83                   appeal if the judgment, order, or decree appealed from:

84                                   (A) grants relief from an automatic stay  
85                   under § 362, 922, 1201, or 1301 of the Code;

86                                   (B) authorizes the sale or lease of property  
87                   or the use of cash collateral under § 363 of the  
88                   Code;

89                                   (C) authorizes the obtaining of credit under

90 § 364 of the Code;

91 (D) authorizes the assumption or

92 assignment of an executory contract or unexpired

93 lease under § 365 of the Code;

94 (E) approves a disclosure statement under

95 § 1125 of the Code; or

96 (F) confirms a plan under § 943, 1129,

97 1225, or 1325 of the Code.

98 (3) *Time Limits on an Extension.* No extension of

99 time may exceed 21 days after the time prescribed by this

100 rule, or 14 days after the order granting the motion to

101 extend time is entered, whichever is later.

### COMMITTEE NOTE

This rule is derived from former Rule 8002 and F.R.App.P. 4(a) and (c). With the exception of subdivision (c), the changes to the former rule are stylistic. The rule retains the former rule's 14-day time period for filing a notice of appeal, as opposed to the longer periods permitted for appeals in civil cases under F.R.App.P. 4(a).

Subdivision (a) continues to allow any other party to file a notice of appeal within 14 days after the first notice of appeal is filed, or thereafter to the extent otherwise authorized by this rule. Subdivision (a) also retains provisions of the former rule that prescribe the date the notice of appeal is deemed filed if the appellant files it prematurely or in the wrong court.

Subdivision (b), like former Rule 8002(b) and F.R.App.P. 4(a), tolls the time for filing a notice of appeal when certain postjudgment motions are filed, and it prescribes the effective date of a notice of appeal that is filed before the court disposes of all of the specified motions. As under the former rule, a party that wants to appeal the court's disposition of the motion or the alteration or amendment of a judgment, order, or decree in response to such a motion must file a notice of appeal or, if it has already

filed one, an amended notice of appeal.

Although Rule 8003(a)(3)(C) requires a notice of appeal to be accompanied by the required fee, no additional fee is required for the filing of an amended notice of appeal.

Subdivision (c) mirrors the provisions of F.R.App.P. 4(c)(1) and (2), which specify timing rules for a notice of appeal filed by an inmate confined in an institution.

Subdivision (d) continues to allow the court to grant an extension of time to file a notice of appeal, except with respect to certain specified judgments, orders, and decrees.



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

1 (a) FILING THE NOTICE OF APPEAL.

2 (1) *In General.* An appeal from a judgment, order,  
3 or decree of a bankruptcy court to a district court or BAP  
4 under 28 U.S.C. § 158(a)(1) or (a)(2) may be taken only by  
5 filing a notice of appeal with the bankruptcy clerk within  
6 the time allowed by Rule 8002.

7 (2) *Effect of Not Taking Other Steps.* An  
8 appellant's failure to take any step other than the timely  
9 filing of a notice of appeal does not affect the validity of  
10 the appeal, but is ground only for the district court or BAP  
11 to act as it considers appropriate, including dismissing the  
12 appeal.

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

14 (A) conform substantially to the appropriate  
15 Official Form;

16 (B) be accompanied by the judgment, order,  
17 or decree, or the part of it, being appealed; and

18 (C) be accompanied by the prescribed fee.

19 (4) *Additional Copies.* If requested to do so, the  
20 appellant must furnish the bankruptcy clerk with enough  
21 copies of the notice to enable the clerk to comply with  
22 subdivision (c).

23 (b) JOINT OR CONSOLIDATED APPEALS.

24 (1) *Joint Notice of Appeal.* When two or more  
25 parties are entitled to appeal from a judgment, order, or  
26 decree of a bankruptcy court and their interests make  
27 joinder practicable, they may file a joint notice of appeal.  
28 They may then proceed on appeal as a single appellant.

29 (2) *Consolidating Appeals.* When parties have  
30 separately filed timely notices of appeal, the district court  
31 or BAP may join or consolidate the appeals.

32 | (c) ~~SERVING~~TRANSMITTING THE NOTICE OF  
33 APPEAL.

34 (1) *Transmitting to the United States Trustee and*  
35 *Other Parties.* The bankruptcy clerk must transmit the  
36 notice of appeal to the United States trustee and to counsel  
37 of record for each party to the appeal, excluding the  
38 appellant. If a party is proceeding pro se, the clerk must  
39 send the notice of appeal to the party's last known address.  
40 The clerk must note, on each copy, the date when the notice  
41 of appeal was filed.

42 (2) *Effect of Failing to Transmit Notice.* The  
43 bankruptcy clerk's failure to transmit notice to a party or  
44 the United States trustee does not affect the validity of  
45 the appeal.

46 (3) Noting ServiceTransmission on the Docket. |

47 The clerk must note on the docket the names of the parties

48 served to whom the notice of appeal was transmitted and the |

49 date and method of the service transmission. |

50 (d) TRANSMITTING THE NOTICE OF APPEAL TO  
51 THE DISTRICT COURT OR BAP; DOCKETING THE APPEAL.

52 (1) *Transmitting the Notice.* The bankruptcy clerk

53 must promptly transmit the notice of appeal to the BAP

54 clerk if a BAP has been established for appeals from that

55 district and the appellant has not elected to have the district

56 court hear the appeal. Otherwise, the bankruptcy clerk

57 must promptly transmit the notice to the district clerk.

58 (2) *Docketing in the District Court or BAP.* Upon

59 receiving the notice of appeal, the district or BAP clerk

60 must docket the appeal under the title of the bankruptcy

61 court action case and the title of the adversary proceeding, if |

62 any, and must identify the appellant, adding the appellant's |

63 name if necessary.

### COMMITTEE NOTE

This rule is derived from several former Bankruptcy Rule and Appellate Rule provisions. It addresses appeals as of right, joint and consolidated appeals, service of the notice of appeal, and the timing of the docketing of an appeal in the district court or BAP.

Subdivision (a) incorporates, with stylistic changes, much of the content of former Rule 8001(a) regarding the taking of an appeal as of right

under 28 U.S.C. § 158(a)(1) or (2). The rule now requires that the judgment, order, or decree being appealed be attached to the notice of appeal.

Subdivision (b), which is an adaptation of F.R.App.P. 3(b), permits the filing of a joint notice of appeal by multiple appellants that have sufficiently similar interests that their joinder is practicable. It also allows the district court or BAP to consolidate appeals taken separately by two or more parties.

Subdivision (c) is derived from former Rule 8004 and F.R.App.P. 3(d). Under Rule 8001(c), the former rule's requirement that service of the notice of appeal be accomplished by mailing is generally modified to require that the bankruptcy clerk ~~serve~~transmit the notice of appeal to counsel by electronic means. ~~Service on~~Transmission to pro se parties must be made by sending the notice to the address most recently provided to the court.

Subdivision (d) modifies the provision of former Rule 8007(b), which delayed the docketing of an appeal by the district court or BAP until the record was complete and the bankruptcy clerk transmitted it. The new provision, adapted from F.R.App.P. 3(d) and 12(a), requires the bankruptcy clerk to promptly transmit the notice of appeal to the clerk of the district court or BAP. Upon receipt of the notice of appeal, the district or BAP clerk must docket the appeal. Under this procedure, motions filed in the district court or BAP prior to completion and transmission of the record can generally be placed on the docket of an already pending appeal.

**Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal**

1           (a) NOTICE OF APPEAL AND MOTION FOR LEAVE  
2 TO APPEAL. To appeal from an interlocutory order or decree of a  
3 bankruptcy court under 28 U.S.C. § 158(a)(3), a party must file  
4 with the bankruptcy clerk a notice of appeal as prescribed by Rule  
5 8003(a). The notice must:

- 6                   (1) be filed within the time allowed by Rule 8002;
- 7                   (2) be accompanied by a motion for leave to appeal  
8 prepared in accordance with subdivision (b); and
- 9                   (3) unless served electronically using the court’s  
10 transmission equipment, include proof of service in  
11 accordance with Rule 8011(d).

12           (b) CONTENTS OF THE MOTION; RESPONSE.

13                   (1) *Contents.* A motion for leave to appeal under  
14 28 U.S.C. § 158(a)(3) must include the following:

- 15                           (A) the facts necessary to understand the  
16 question presented;
- 17                           (B) the question itself;
- 18                           (C) the relief sought;
- 19                           (D) the reasons why leave to appeal should  
20 be granted; and
- 21                           (E) a copy of the interlocutory order or  
22 decree and any related opinion or memorandum.

23                           (2) *Response.* A party may file with the district or  
24                           BAP clerk a response in opposition or a cross-motion  
25                           within 14 days after the motion is served.

26                           (c) TRANSMITTING THE NOTICE OF APPEAL AND  
27                           THE MOTION; DOCKETING THE APPEAL; DETERMINING  
28                           THE MOTION.

29                           (1) *Transmitting to the District Court or BAP.* The  
30                           bankruptcy clerk must promptly transmit the notice of  
31                           appeal and the motion for leave to the BAP clerk if a BAP  
32                           has been established for appeals from that district and the  
33                           appellant has not elected to have the district court hear the  
34                           appeal. Otherwise, the bankruptcy clerk must promptly  
35                           transmit the notice and motion to the district clerk.

36                           (2) *Docketing in the District Court or BAP.* Upon  
37                           receiving the notice and motion, the district or BAP clerk  
38                           must docket the appeal under the title of the bankruptcy  
39                           | ~~court action~~ case and the title of the adversary proceeding,  
40                           | if any, and must identify the appellant, adding the  
41                           appellant's name if necessary.

42                           (3) *Oral Argument Not Required.* The motion and  
43                           any response or cross-motion are submitted without oral  
44                           argument unless the district court or BAP orders otherwise.  
45                           ~~If the motion is denied, the district court or BAP must~~

46

~~dismiss the appeal.~~

47

(d) FAILURE TO FILE A MOTION WITH A NOTICE

48

OF APPEAL. If an appellant timely files a notice of appeal under

49

this rule but does not include a motion for leave, the district court

50

or BAP may order the appellant to file a motion for leave, or treat

51

the notice of appeal as a motion for leave and either grant or deny

52

it. If the court orders that a motion for leave be filed, the appellant

53

must do so within 14 days after the order is entered, unless the

54

order provides otherwise.

55

(e) DIRECT APPEAL TO A COURT OF APPEALS. If

56

leave to appeal an interlocutory order or decree is required under

57

28 U.S.C. § 158(a)(3), an authorization of a direct appeal by the

58

court of appeals under 28 U.S.C. § 158(d)(2) satisfies the

59

requirement.

### COMMITTEE NOTE

This rule is derived from former Rules 8001(b) and 8003 and F.R.App.P. 5. It retains the practice for interlocutory bankruptcy appeals of requiring a notice of appeal to be filed along with a motion for leave to appeal. Like current Rule 8003, it alters the timing of the docketing of the appeal in the district court or BAP.

Subdivision (a) requires a party seeking leave to appeal under 28 U.S.C. § 158(a)(3) to file with the bankruptcy clerk both a notice of appeal and a motion for leave to appeal.

Subdivision (b) prescribes the contents of the motion, retaining the requirements of former Rule 8003(a). It also continues to allow another party to file a cross-motion or response to the appellant's motion. Because of the prompt docketing of the appeal under the current rule, the cross-motion or response must be filed in the district court or BAP, rather than in

the bankruptcy court as the former rule required.

Subdivision (c) requires the bankruptcy clerk to transmit promptly to the district court or BAP the notice of appeal and the motion for leave to appeal. Upon receipt of the notice and the motion, the district or BAP clerk must docket the appeal. Unless the district court or BAP orders otherwise, no oral argument will be held on the motion.

Subdivision (d) retains the provisions of former Rule 8003(c). It provides that if the appellant timely files a notice of appeal, but fails to file a motion for leave to appeal, the court can either direct that a motion be filed or treat the notice of appeal as the motion and either grant or deny leave.

Subdivision (e), like former Rule 8003(d), treats the authorization of a direct appeal by the court of appeals as a grant of leave to appeal under 28 U.S.C. § 158(a)(3) if the district court or BAP has not already granted leave. Thus, a separate order granting leave to appeal is not required. If the court of appeals grants permission to appeal, the record must be assembled and transmitted in accordance with Rules 8009 and 8010.



**Rule 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP**

1 (a) FILING OF A STATEMENT OF ELECTION. To  
2 elect to have an appeal heard by the district court, a party must:

3 (1) file a statement of election ~~that conforms~~  
4 ~~substantially to~~using the appropriate Official Form; and |

5 (2) do so within the time prescribed by 28 U.S.C.  
6 § 158(c)(1).

7 (b) TRANSFERRING THE DOCUMENTS RELATED  
8 TO THE APPEAL. Upon receiving an appellant's timely  
9 statement of election, the bankruptcy clerk must transmit to the  
10 district clerk all documents related to the appeal. Upon receiving a  
11 timely statement of election by a party other than the appellant, the  
12 BAP clerk must transmit to the district clerk all documents related  
13 to the appeal and notify the bankruptcy clerk of the transfer. |

14 (c) DETERMINING THE VALIDITY OF AN  
15 ELECTION. A party seeking a determination of the validity of an  
16 election must file a motion in the court where the appeal is then  
17 pending. The motion must be filed within 14 days after the  
18 statement of election is filed.

19 (d) MOTION FOR LEAVE WITHOUT A NOTICE OF  
20 APPEAL—EFFECT ON THE TIMING OF AN ELECTION. If  
21 an appellant moves for leave to appeal under Rule 8004 but fails to  
22 file a separate notice of appeal with the motion, the motion must be

23 treated as a notice of appeal for purposes of determining the  
24 timeliness of a statement of election.

### COMMITTEE NOTE

This rule, which implements 28 U.S.C. § 158(c)(1), is derived from former Rule 8001(e). It applies only in districts in which an appeal to a BAP is authorized.

As the former rule required, subdivision (a) provides that an appellant that elects to have a district court, rather than a BAP, hear its appeal must file with the bankruptcy clerk a statement of election when it files its notice of appeal. The statement must ~~conform substantially to be~~ made using the appropriate Official Form. For appellants, that statement is included in the Notice of Appeal Official Form. If a BAP has been established for appeals from the bankruptcy court and the appellant does not file a timely statement of election, any other party that elects to have the district court hear the appeal must file a statement of election, using the appropriate Official Form, with the BAP clerk no later than 30 days after service of the notice of appeal.

Subdivision (b) requires the bankruptcy clerk to transmit all appeal documents to the district clerk if the appellant files a timely statement of election. If the appellant does not make that election, the bankruptcy clerk must transmit those documents to the BAP clerk, ~~and to~~. Upon a timely election by any other party, the BAP clerk must promptly transmit the appeal documents to the district clerk and notify the bankruptcy clerk that the appeal has been transferred.

Subdivision (c) provides a new procedure for the resolution of disputes regarding the validity of an election. A motion seeking the determination of the validity of an election must be filed no later than 14 days after the statement of election is filed. Nothing in this rule prevents a court from determining the validity of an election on its own motion.

Subdivision (d) provides that, in the case of an appeal by leave, if the appellant files a motion for leave to appeal but fails to file a notice of appeal, the filing and service of the motion will be treated for timing purposes under this rule as the filing and service of the notice of appeal.

**Rule 8006. Certifying a Direct Appeal to the Court of Appeals**

1 (a) EFFECTIVE DATE OF A CERTIFICATION. A  
2 certification of a judgment, order, or decree of a bankruptcy court  
3 for direct review in a court of appeals under 28 U.S.C. § 158(d)(2)  
4 is effective when:

- 5 (1) the certification has been filed;
- 6 (2) a timely appeal has been taken under Rule 8003  
7 or 8004; and
- 8 (3) the notice of appeal has become effective under  
9 Rule 8002.

10 (b) FILING THE CERTIFICATION. The certification  
11 must be filed with the clerk of the court where the matter is  
12 pending. For purposes of this rule, a matter remains pending in the  
13 bankruptcy court for 30 days after the effective date under Rule |  
14 8002 of the first notice of appeal from the judgment, order, or |  
15 decree for which direct review is sought. A matter is pending in  
16 the district court or BAP thereafter.

17 (c) JOINT CERTIFICATION BY ALL APPELLANTS  
18 AND APPELLEES. A joint certification by all the appellants and  
19 appellees under 28 U.S.C. § 158(d)(2)(A) must be made by using  
20 the appropriate Official Form. The parties may supplement the  
21 certification with a short statement of the basis for the certification,  
22 which may include the information listed in subdivision (f)(2).

23 (d) THE COURT THAT MAY MAKE THE  
24 CERTIFICATION. Only the court where the matter is pending, as  
25 provided in subdivision (b), may certify a direct review on request  
26 of parties or on its own motion.

27 (e) CERTIFICATION ON THE COURT'S OWN  
28 MOTION.

29 (1) *How Accomplished.* A certification on the  
30 court's own motion must be set forth in a separate  
31 document. The clerk of the certifying court must serve it  
32 on the parties to the appeal in the manner required for  
33 service of a notice of appeal under Rule 8003(c)(1). The  
34 certification must be accompanied by an opinion or  
35 memorandum that contains the information required by  
36 subdivision (f)(2)(A)-(D).

37 (2) *Supplemental Statement by a Party.* Within 14  
38 days after the court's certification, a party may file with the  
39 clerk of the certifying court a short supplemental statement  
40 regarding the merits of certification.

41 (f) CERTIFICATION BY THE COURT ON REQUEST.

42 (1) *How Requested.* A request by a party for  
43 certification that a circumstance specified in 28 U.S.C.  
44 §158(d)(2)(A)(i)-(iii) applies—or a request by a majority of  
45 the appellants and a majority of the appellees—must be

46 filed with the clerk of the court where the matter is pending  
47 within 60 days after the entry of the judgment, order, or  
48 decree.

49 (2) *Service and Contents.* The request must be  
50 served on all parties to the appeal in the manner required  
51 for service of a notice of appeal under Rule 8003(c)(1), and  
52 it must include the following:

53 (A) the facts necessary to understand the  
54 question presented;

55 (B) the question itself;

56 (C) the relief sought;

57 (D) the reasons why the direct appeal  
58 should be allowed, including which circumstance  
59 specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)  
60 applies; and

61 (E) a copy of the judgment, order, or decree  
62 and any related opinion or memorandum.

63 (3) *Time to File a Response or a Cross-Request.* A  
64 party may file a response to the request within 14 days after  
65 the request is served, or such other time as the court where  
66 the matter is pending allows. A party may file a cross-  
67 request for certification within 14 days after the request is  
68 served, or within 60 days after the entry of the judgment,

69 order, or decree, whichever occurs first.

70 (4) *Oral Argument Not Required.* The request,  
71 cross-request, and any response are ~~not governed by Rule~~  
72 ~~9014 and are~~ submitted without oral argument unless the  
73 court where the matter is pending orders otherwise.

74 (5) *Form and Service of the Certification.* If the  
75 court certifies a direct appeal in response to the request, it  
76 must do so in a separate document. The certification must  
77 be served on the parties to the appeal in the manner  
78 required for service of a notice of appeal under Rule  
79 8003(c)(1).

80 (g) PROCEEDING IN THE COURT OF APPEALS  
81 FOLLOWING A CERTIFICATION. Within 30 days after the  
82 date the certification becomes effective under subdivision (a), a  
83 request for permission to take a direct appeal to the court of  
84 | appeals must be filed with the circuit clerk in accordance with F.  
85 | R. App. P. 6(c).

#### COMMITTEE NOTE

This rule is derived from former Rule 8001(f), and it provides the procedures for the certification of a direct appeal of a judgment, order, or decree of a bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2). Once a case has been certified in the bankruptcy court, the district court, or the BAP for direct appeal and a request for permission to appeal has been timely filed with the circuit clerk, the Federal Rules of Appellate Procedure govern further proceedings in the court of appeals.

Subdivision (a), like the former rule, requires that an appeal be properly taken—now under Rule 8003 or 8004—before a certification for direct review in the court of appeals takes effect. This rule requires the timely filing of a notice of appeal under Rule 8002 and accounts for the delayed effectiveness of a notice of appeal under the circumstances specified in that rule. Ordinarily, a notice of appeal is effective when it is filed in the bankruptcy court. Rule 8002, however, delays the effectiveness of a notice of appeal when (1) it is filed after the announcement of a decision or order but prior to the entry of the judgment, order, or decree; or (2) it is filed after the announcement or entry of a judgment, order, or decree but before the bankruptcy court disposes of certain postjudgment motions.

When the bankruptcy court enters an interlocutory order or decree that is appealable under 28 U.S.C. § 158(a)(3), certification for direct review in the court of appeals may take effect before the district court or BAP grants leave to appeal. The certification is effective when the actions specified in subdivision (a) have occurred. Rule 8004(e) provides that if the court of appeals grants permission to take a direct appeal before leave to appeal an interlocutory ruling has been granted, the authorization by the court of appeals is treated as the granting of leave to appeal.

Subdivision (b) provides that a certification must be filed in the court where the matter is pending, as determined by this subdivision. This provision modifies the former rule. Because of the prompt docketing of appeals in the district court or BAP under Rules 8003 and 8004, a matter is deemed—for purposes of this rule only—to remain pending in the bankruptcy court for 30 days after the effective date of the notice of appeal. This provision will in appropriate cases give the bankruptcy judge, who will be familiar with the matter being appealed, an opportunity to decide whether certification for direct review is appropriate. Similarly, subdivision (d) provides that only the court where the matter is then pending according to subdivision (b) may make a certification on its own motion or on the request of one or more parties.

Section 158(d)(2) provides three different ways in which an appeal may be certified for direct review. Implementing these options, the rule provides in subdivision (c) for the joint certification by all appellants and appellees; in subdivision (e) for the bankruptcy court's, district court's, or BAP's certification on its own motion; and in subdivision (f) for the bankruptcy court's, district court's, or BAP's certification on request of a party or a majority of appellants and a majority of appellees.

Subdivision (g) requires that, once a certification for direct review is made, a request to the court of appeals for permission to take a direct appeal to that court must be filed with the clerk of the court of appeals no later than

30 days after the effective date of the certification. Federal Rule of Appellate Procedure 6(c), which incorporates all of F.R.App.P. 5 except subdivision (a)(3), prescribes the procedure for requesting the permission of the court of appeals and governs proceedings that take place thereafter in that court.



**Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings**

1 (a) INITIAL MOTION IN THE BANKRUPTCY COURT.

2 (1) *In General.* Ordinarily, a party must move first  
3 in the bankruptcy court for the following relief:

4 (A) a stay of a judgment, order, or decree of  
5 the bankruptcy court pending appeal;

6 (B) the approval of a supersedeas bond;

7 (C) an order suspending, modifying,  
8 restoring, or granting an injunction while an appeal  
9 is pending; or

10 (D) the suspension or continuation of  
11 proceedings in a case or other relief permitted by  
12 subdivision (e).

13 (2) *Time to File.* The motion may be made either  
14 before or after the notice of appeal is filed.

15 (b) MOTION IN THE DISTRICT COURT, THE BAP, |  
16 OR THE COURT OF APPEALS ON DIRECT APPEAL, ~~THE~~ |  
17 ~~DISTRICT COURT, OR THE BAP.~~

18 (1) *Request for Relief.* A motion for the relief  
19 specified in subdivision (a)(1)—or to vacate or modify a  
20 bankruptcy court’s order granting such relief—may be  
21 made in the court where the appeal is pending ~~or where it~~  
22 ~~will be taken.~~

23 (2) *Showing or Statement Required.* The motion  
24 must:

25 (A) show that moving first in the  
26 bankruptcy court would be impracticable; or

27 (B) if a motion was made in the bankruptcy  
28 court, either state that the court has not yet ruled on  
29 the motion, or state that the court has ruled and set  
30 out any reasons given for the ruling.

31 (3) *Additional Content.* The motion must also  
32 include:

33 (A) the reasons for granting the relief  
34 requested and the facts relied upon;

35 (B) affidavits or other sworn statements  
36 supporting facts subject to dispute; and

37 (C) relevant parts of the record.

38 (4) *Serving Notice.* The movant must give  
39 reasonable notice of the motion to all parties.

40 (c) **FILING A BOND OR OTHER SECURITY.** The  
41 district court, BAP, or court of appeals may condition relief on  
42 filing a bond or other appropriate security with the bankruptcy  
43 court.

44 (d) **BOND FOR A TRUSTEE OR THE UNITED**  
45 **STATES.** The court may require a trustee to file a bond or other

46 appropriate security when the trustee appeals. A bond or other  
47 security is not required when an appeal is taken by the United  
48 States, its officer, or its agency or by direction of any department  
49 of the federal government.

50 (e) CONTINUED PROCEEDINGS IN THE  
51 BANKRUPTCY COURT. Despite Rule 7062 and subject to the  
52 authority of the district court, BAP, or court of appeals, the  
53 bankruptcy court may:

- 54 (1) suspend or ~~continue~~order the continuation of |  
55 other proceedings in the case; or  
56 (2) issue any other appropriate orders during the  
57 pendency of an appeal to protect the rights of all parties in  
58 interest.

### COMMITTEE NOTE

This rule is derived from former Rule 8005 and F.R.App.P. 8. It now applies to direct appeals in courts of appeals.

Subdivision (a), like the former rule, requires a party ordinarily to seek relief pending an appeal in the bankruptcy court. Subdivision (a)(1) expands the list of relief enumerated in F.R.App.P. 8(a)(1) to reflect bankruptcy practice. It includes the suspension or continuation of other proceedings in the bankruptcy case, as authorized by subdivision (e). Subdivision (a)(2) clarifies that a motion for a stay pending appeal, approval of a supersedeas bond, or any other relief specified in paragraph (1) may be made in the bankruptcy court before or after the filing of a notice of appeal.

Subdivision (b) authorizes a party to seek the relief specified in (a)(1), or the vacation or modification of the granting of such relief, by means of a motion filed in the court where the appeal is ~~pending or will be taken—district~~pending—district court, BAP, or the court of appeals on |

direct appeal. Accordingly, a notice of appeal need not be filed with respect to a bankruptcy court's order granting or denying such a motion. The motion for relief in the district court, BAP, or court of appeals must state why it was impracticable to seek relief initially in the bankruptcy court, if a motion was not filed there, or why the bankruptcy court denied the relief sought.

Subdivisions (c) and (d) retain the provisions of the former rule that permit the district court or BAP—and now the court of appeals—to condition the granting of relief on the posting of a bond by the appellant, except when that party is a federal government entity. Rule 9025 governs proceedings against sureties.

Subdivision (e) retains the provision of the former rule that authorizes the bankruptcy court to decide whether to suspend or allow the continuation of other proceedings in the bankruptcy case while the matter for which a stay has been sought is pending on appeal.

**Rule 8008. Indicative Rulings**

1 (a) RELIEF PENDING APPEAL. If a party files a timely  
2 motion in the bankruptcy court for relief that the court lacks  
3 authority to grant because of an appeal that has been docketed and  
4 is pending, the bankruptcy court may:

5 (1) defer considering the motion;

6 (2) deny the motion; or

7 (3) state that the court would grant the motion if the  
8 court where the appeal is pending remands for that purpose,  
9 or state that the motion raises a substantial issue.

10 (b) NOTICE TO THE COURT WHERE THE APPEAL IS  
11 PENDING. The movant must promptly notify the clerk of the  
12 court where the appeal is pending if the bankruptcy court states  
13 that it would grant the motion or that the motion raises a  
14 substantial issue.

15 (c) REMAND AFTER AN INDICATIVE RULING. If the  
16 bankruptcy court states that it would grant the motion or that the  
17 motion raises a substantial issue, the district court or BAP may  
18 remand for further proceedings, but it retains jurisdiction unless it  
19 expressly dismisses the appeal. If the district court or BAP  
20 remands but retains jurisdiction, the parties must promptly notify

21 the clerk of that court when the bankruptcy court has decided the  
22 motion on remand.

### COMMITTEE NOTE

This rule is an adaptation of F.R.Civ.P. 62.1 and F.R.App.P. 12.1. It provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue. The rule does not attempt to define the circumstances in which an appeal limits or defeats the bankruptcy court's authority to act in the face of a pending appeal. In contrast, Rule 8002(b) identifies motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before the last such motion is resolved. In those circumstances, the bankruptcy court has authority to resolve the motion without resorting to the indicative ruling procedure.

Subdivision (b) requires the movant to notify the court where an appeal is pending if the bankruptcy court states that it would grant the motion or that it raises a substantial issue. This provision applies to appeals pending in the district court, the BAP, or the court of appeals.

Federal Rules of Appellate Procedure 6 and 12.1 govern the procedure in the court of appeals following notification of the bankruptcy court's indicative ruling.

Subdivision (c) of this rule governs the procedure in the district court or BAP upon notification that the bankruptcy court has issued an indicative ruling. The district court or BAP may remand to the bankruptcy court for a ruling on the motion for relief. The district court or BAP may also remand all proceedings, thereby terminating the initial appeal, if it expressly states that it is dismissing the appeal. It should do so, however, only when the appellant has stated clearly its intention to abandon the appeal. Otherwise, the district court or BAP may remand for the purpose of ruling on the motion, while retaining jurisdiction to proceed with the appeal after the bankruptcy court rules, provided that the appeal is not then moot and a party wishes to proceed.

**Rule 8009. Record on Appeal; Sealed Documents**

1 (a) DESIGNATING THE RECORD ON APPEAL;  
2 STATEMENT OF THE ISSUES.

3 (1) *Appellant.*

4 (A) The appellant must file with the  
5 bankruptcy clerk and serve on the appellee a  
6 designation of the items to be included in the record  
7 on appeal and a statement of the issues to be  
8 presented.

9 (B) The appellant must file and serve the  
10 designation and statement within 14 days after:

11 (i) the appellant's notice of appeal as  
12 of right becomes effective under Rule 8002;

13 or

14 (ii) an order granting leave to appeal  
15 is entered.

16 A designation and statement served prematurely  
17 must be treated as served on the first day on which  
18 filing is timely.

19 (2) *Appellee and Cross-Appellant.* Within 14 days  
20 after being served, the appellee may file with the |  
21 bankruptcy clerk and serve on the appellant a designation |  
22 of additional items to be included in the record. An

23                   appellee who files a cross-appeal must file and serve a  
24                   designation of additional items to be included in the record  
25                   and a statement of the issues to be presented on the cross-  
26                   appeal.

27                   (3) *Cross-Appellee*. Within 14 days after service of  
28                   the cross-appellant’s designation and statement, a cross-  
29 |                   appellee may file with the bankruptcy clerk and serve on  
30                   the cross-appellant a designation of additional items to be  
31                   included in the record.

32                   (4) *Record on Appeal*. The record on appeal must  
33 |                   include the following:

34 |                   1.       the docket entries maintained by the  
35 |                   bankruptcy clerk;

- 36 |                   •       items designated by the parties;
- 37                   •       the notice of appeal;
- 38                   •       the judgment, order, or decree being  
39                   appealed;
- 40                   •       any order granting leave to appeal;
- 41                   •       any certification required for a direct appeal  
42                   to the court of appeals;
- 43                   •       any opinion, findings of fact, and  
44                   conclusions of law relating to the issues on appeal,  
45                   including transcripts of all oral rulings;



- 46                   •       any transcript ordered under subdivision (b);  
47                   •       any statement required by subdivision (c);  
48                   and  
49                   •       any additional items from the record that the  
50                   court where the appeal is pending orders.

51                   (5) *Copies for the Bankruptcy Clerk.* If paper  
52                   copies are needed, a party filing a designation of items  
53                   must provide a copy of any of those items that the  
54                   bankruptcy clerk requests. If the party fails to do so, the  
55                   bankruptcy clerk must prepare the copy at the party's  
56                   expense.

57                   (b) TRANSCRIPT OF PROCEEDINGS.

58                   (1) *Appellant's Duty to Order.* Within the time  
59                   period prescribed by subdivision (a)(1), the appellant must:

60                               (A) order in writing from the reporter, as  
61                               defined in Rule 8010(a)(1), a transcript of such  
62                               parts of the proceedings not already on file as the  
63                               appellant considers necessary for the appeal, and  
64                               file a copy of the order with the bankruptcy clerk;  
65                               or

66                               (B) file with the bankruptcy clerk a  
67                               certificate stating that the appellant is not ordering a  
68                               transcript.

69                           (2) *Cross-Appellant's Duty to Order.* Within 14  
70 days after the appellant files a copy of the transcript order  
71 or a certificate of not ordering a transcript, the appellee as  
72 cross-appellant must:

73                           (A) order in writing from the reporter, as  
74 defined in Rule 8010(a)(1), a transcript of such  
75 additional parts of the proceedings as the cross-  
76 appellant considers necessary for the appeal, and  
77 file a copy of the order with the bankruptcy clerk;  
78 or

79                           (B) file with the bankruptcy clerk a  
80 certificate stating that the cross-appellant is not  
81 ordering a transcript.

82                           (3) *Appellee's or Cross-Appellee's Right to Order.*

83 Within 14 days after the appellant or cross-appellant files a  
84 copy of a transcript order or certificate of not ordering a  
85 transcript, the appellee or cross-appellee may order in  
86 writing from the reporter a transcript of such additional  
87 parts of the proceedings as the appellee or cross-appellee  
88 considers necessary for the appeal. A copy of the order  
89 must be filed with the bankruptcy clerk.

90                           (4) *Payment.* At the time of ordering, a party must  
91 make satisfactory arrangements with the reporter for paying

92 the cost of the transcript.

93 (5) *Unsupported Finding or Conclusion.* If the  
94 appellant intends to argue on appeal that a finding or  
95 conclusion is unsupported by the evidence or is contrary to  
96 the evidence, the appellant must include in the record a  
97 transcript of all relevant testimony and copies of all  
98 relevant exhibits.

99 (c) STATEMENT OF THE EVIDENCE WHEN A  
100 TRANSCRIPT IS UNAVAILABLE. If a transcript of a hearing or  
101 trial is unavailable, the appellant may prepare a statement of the  
102 evidence or proceedings from the best available means, including  
103 the appellant's recollection. The statement must be filed within  
104 the time prescribed by subdivision (a)(1) and served on the  
105 appellee, who may serve objections or proposed amendments  
106 within 14 days after being served. The statement and any  
107 objections or proposed amendments must then be submitted to the  
108 bankruptcy court for settlement and approval. As settled and  
109 approved, the statement must be included by the bankruptcy clerk  
110 in the record on appeal.

111 (d) AGREED STATEMENT AS THE RECORD ON  
112 APPEAL. Instead of the record on appeal as defined in  
113 subdivision (a), the parties may prepare, sign, and submit to the  
114 bankruptcy court a statement of the case showing how the issues

115 presented by the appeal arose and were decided in the bankruptcy  
116 court. The statement must set forth only those facts alleged and  
117 proved or sought to be proved that are essential to the court's  
118 resolution of the issues. If the statement is accurate, it—together  
119 with any additions that the bankruptcy court may consider  
120 necessary to a full presentation of the issues on appeal—must be  
121 approved by the bankruptcy court and must then be certified to the  
122 court where the appeal is pending as the record on appeal. The  
123 bankruptcy clerk must then transmit it to the clerk of that court  
124 within the time provided by Rule 8010. A copy of the agreed  
125 statement may be filed in place of the appendix required by Rule  
126 8018(b) or, in the case of a direct appeal to the court of appeals, by  
127 F.R.App.P. 30.

128 (e) CORRECTING OR MODIFYING THE RECORD.

129 (1) *Submitting to the Bankruptcy Court.* If any  
130 difference arises about whether the record accurately  
131 discloses what occurred in the bankruptcy court, the  
132 difference must be submitted to and settled by the  
133 bankruptcy court and the record conformed accordingly. If  
134 an item has been improperly designated as part of the  
135 record on appeal, a party may move to strike that item.

136 (2) *Correcting in Other Ways.* If anything material  
137 to either party is omitted from or misstated in the record by

138 error or accident, the omission or misstatement may be  
139 corrected, and a supplemental record may be certified and  
140 transmitted:

141 (A) on stipulation of the parties;

142 (B) by the bankruptcy court before or after  
143 the record has been forwarded; or

144 (C) by the court where the appeal is  
145 pending.

146 (3) *Remaining Questions.* All other questions as to  
147 the form and content of the record must be presented to the  
148 court where the appeal is pending.

149 (f) **SEALED DOCUMENTS.** A document placed under  
150 seal by the bankruptcy court may be designated as part of the  
151 record on appeal. In doing so, a party must identify it without  
152 revealing confidential or secret information, but the bankruptcy  
153 clerk must not transmit it to the clerk of the court where the appeal  
154 is pending as part of the record. Instead, a party must file a motion  
155 with the court where the appeal is pending to accept the document  
156 under seal. If the motion is granted, the movant must notify the  
157 bankruptcy court of the ruling, and the bankruptcy clerk must  
158 promptly transmit the sealed document to the clerk of the court  
159 where the appeal is pending.

160 (g) **OTHER NECESSARY ACTIONS.** All parties to an

161 appeal must take any other action necessary to enable the  
162 bankruptcy clerk to assemble and transmit the record.

### COMMITTEE NOTE

This rule is derived from former Rule 8006 and F.R.App.P. 10 and 11(a). The provisions of this rule and Rule 8010 are applicable to appeals taken directly to a court of appeals under 28 U.S.C. § 158(d)(2), as well as to appeals to a district court or BAP. See F.R.App.P. 6(c)(2)(A) and (B).

The rule retains the practice of former Rule 8006 of requiring the parties to designate items to be included in the record on appeal. In this respect, the bankruptcy rule differs from the appellate rule. Among other things, F.R.App.P. 10(a) provides that the record on appeal consists of all the documents and exhibits filed in the case. This requirement would often be unworkable in a bankruptcy context because thousands of items might have been filed in the overall bankruptcy case.

Subdivision (a) provides the time period for an appellant to file a designation of items to be included in the record on appeal and a statement of the issues to be presented. It then provides for the designation of additional items by the appellee, cross-appellant, and cross-appellee, as well as for the cross-appellant's statement of the issues to be presented in its appeal. Subdivision (a)(4) prescribes the content of the record on appeal. Ordinarily, the bankruptcy clerk will not need to have paper copies of the designated items because the clerk will either transmit them to the appellate court electronically or otherwise make them available electronically. If the bankruptcy clerk requires a paper copy of some or all of the items designated as part of the record, the clerk may request the party that designated the item to provide the necessary copies, and the party must comply with the request or bear the cost of the clerk's copying.

Subdivision (b) governs the process for ordering a complete or partial transcript of the bankruptcy court proceedings. In situations in which a transcript is unavailable, subdivision (c) allows for the parties' preparation of a statement of the evidence or proceedings, which must be approved by the bankruptcy court.

Subdivision (d) adopts the practice of F.R.App.P. 10(d) of permitting the parties to agree on a statement of the case in place of the record on appeal. The statement must show how the issues on appeal arose and were decided in the bankruptcy court. It must be approved by the bankruptcy court in order to be certified as the record on appeal.

Subdivision (e), modeled on F.R.App.P. 10(e), provides a procedure for correcting the record on appeal if an item is improperly designated, omitted, or misstated.

Subdivision (f) is a new provision that governs the handling of any document that remains sealed by the bankruptcy court and that a party wants to include in the record on appeal. The party must request the court where the appeal is pending to accept the document under seal, and that motion must be granted before the bankruptcy clerk may transmit the sealed document to the district, BAP, or circuit clerk.

Subdivision (g) requires the parties' cooperation with the bankruptcy clerk in assembling and transmitting the record. It retains the requirement of former Rule 8006, which was adapted from F.R.App.P. 11(a).

## Rule 8010. Completing and Transmitting the Record

1 (a) REPORTER'S DUTIES.

2 (1) *Proceedings Recorded Without a Reporter*

3 *Present.* If proceedings were recorded without a reporter

4 | being present, the person or service ~~that the~~selected in

5 | accordance with bankruptcy court ~~designates~~procedures to

6 transcribe the recording is the reporter for purposes of this

7 rule.

8 (2) *Preparing and Filing the Transcript.* The

9 reporter must prepare and file a transcript as follows:

10 | (A) Upon receiving an order for a transcript

11 | in accordance with Rule 8009(b), the reporter must

12 file in the bankruptcy court an acknowledgment of

13 the request that shows when it was received, and

14 when the reporter expects to have the transcript

15 completed.

16 (B) After completing the transcript, the

17 reporter must file it with the bankruptcy clerk, who

18 will notify the district, BAP, or circuit clerk of its

19 filing.

20 (C) If the transcript cannot be completed

21 within 30 days after receiving the order, the reporter

22 must request an extension of time from the



23 bankruptcy clerk. The clerk must enter on the  
24 docket and notify the parties whether the extension  
25 is granted.

26 (D) If the reporter does not file the  
27 transcript on time, the bankruptcy clerk must notify  
28 the bankruptcy judge.

29 (b) CLERK'S DUTIES.

30 (1) *Transmitting the Record—In General.* Subject  
31 to Rule 8009(f) and subdivision (b)(5) of this rule, when  
32 the record is complete, the bankruptcy clerk must transmit  
33 to the clerk of the court where the appeal is pending either  
34 the record or a notice that the record is available  
35 electronically.

36 (2) *Multiple Appeals.* If there are multiple appeals  
37 from a judgment, order, or decree, the bankruptcy clerk  
38 must transmit a single record.

39 (3) *Receiving the Record.* Upon receiving the  
40 record or notice that it is available electronically, the  
41 district, BAP, or circuit clerk must enter that information  
42 on the docket and promptly notify all parties to the appeal.

43 (4) *If Paper Copies Are Ordered.* If the court  
44 where the appeal is pending directs that paper copies of the  
45 record be provided, the clerk of that court must so notify

46 the appellant. If the appellant fails to provide them, the  
47 bankruptcy clerk must prepare them at the appellant's  
48 expense.

49 (5) *When Leave to Appeal is Requested.* Subject to  
50 subdivision (c), if a motion for leave to appeal has been  
51 filed under Rule 8004, the bankruptcy clerk must prepare  
52 and transmit the record only after the district court, BAP, or  
53 court of appeals grants leave.

54 (c) RECORD FOR A PRELIMINARY MOTION IN THE  
55 DISTRICT COURT, BAP, OR COURT OF APPEALS. This  
56 subdivision (c) applies if, before the record is transmitted, a party  
57 moves in the district court, BAP, or court of appeals for any of the  
58 following relief:

- 59 • leave to appeal;
- 60 • dismissal;
- 61 • a stay pending appeal;
- 62 • approval of a supersedeas bond, or additional  
63 security on a bond or undertaking on appeal; or
- 64 • any other intermediate order.

65 The bankruptcy clerk must then transmit to the clerk of the court  
66 where the relief is sought any parts of the record designated by a  
67 party to the appeal or a notice that those parts are available  
68 electronically.

## COMMITTEE NOTE

This rule is derived from former Rule 8007 and F.R.App. P 11. It applies to an appeal taken directly to a court of appeals under 28 U.S.C. § 158(d)(2), as well as to an appeal to a district court or BAP.

Subdivision (a) generally retains the procedure of former Rule 8007(a) regarding the reporter's duty to prepare and file a transcript if a party requests one. It clarifies that the person or service that transcribes the recording of a proceeding is considered the reporter under this rule if the proceeding is recorded without a reporter being present in the courtroom. It also makes clear that the reporter must file with the bankruptcy court the acknowledgment of the request for a transcript and statement of the expected completion date, the completed transcript, and any request for an extension of time beyond 30 days for completion of the transcript.

Subdivision (b) requires the bankruptcy clerk to transmit the record to the district, BAP or circuit clerk when the record is complete and, in the case of appeals under 28 U.S.C. §158(a)(3), leave to appeal has been granted. This transmission will be made electronically, either by sending the record itself or sending notice that the record can be accessed electronically. The court where the appeal is pending may, however, require that a paper copy of some or all of the record be furnished, in which case the clerk of that court will direct the appellant to provide the copies. If the appellant does not do so, the bankruptcy clerk must prepare the copies at the appellant's expense.

In a change from former Rule 8007(b), subdivision (b) of this rule no longer directs the clerk of the appellate court to docket the appeal upon receipt of the record from the bankruptcy clerk. Instead, under Rules 8003(d) and 8004(c) and F.R.App.P. 12(a), the district, BAP, or circuit clerk docket the appeal upon receipt of the notice of appeal or, in the case of appeals under 28 U.S.C. § 158(a)(3), the notice of appeal and the motion for leave to appeal. Accordingly, by the time the district, BAP, or circuit clerk receives the record, the appeal will already be docketed in that court. The clerk of the appellate court must indicate on the docket and give notice to the parties to the appeal when the transmission of the record is received. Under Rule 8018(a) and F.R.App.P. 31, the briefing schedule is generally based on that date.

Subdivision (c) is derived from former Rule 8007(c) and F.R.App.P. 11(g). It provides for the transmission of parts of the record that the parties designate for consideration by the district court, BAP, or court of appeals in ruling on specified preliminary motions filed prior to the preparation and transmission of the record on appeal.

**Rule 8011. Filing and Service; Signature**

1 (a) FILING.

2 (1) *With the Clerk.* A document required or  
3 permitted to be filed in a district court or BAP must be filed  
4 with the clerk of that court.

5 (2) *Method and Timeliness.*

6 (A) *In general.* Filing may be  
7 accomplished by transmission to the clerk of the  
8 district court or BAP. Except as provided in  
9 subdivision (a)(2)(B) and (C), filing is timely only  
10 if the clerk receives the document within the time  
11 fixed for filing.

12 (B) *Brief or Appendix.* A brief or appendix  
13 is also timely filed if, on or before the last day for  
14 filing, it is:

15 (i) mailed to the clerk by first-class  
16 mail—or other class of mail that is at least  
17 as expeditious—postage prepaid, if the  
18 district court’s or BAP’s procedures permit  
19 or require a brief or appendix to be filed by  
20 mailing; or

21 (ii) dispatched to a third-party  
22 commercial carrier for delivery within 3

23 days to the clerk, if the court's procedures so  
24 permit or require.

25 (C) *Inmate Filing*. A document filed by an  
26 inmate confined in an institution is timely if  
27 deposited in the institution's internal mailing  
28 system on or before the last day for filing. If the  
29 institution has a system designed for legal mail, the  
30 inmate must use that system to receive the benefit  
31 of this rule. Timely filing may be shown by a  
32 declaration in compliance with 28 U.S.C. § 1746 or  
33 by a notarized statement, either of which must set  
34 forth the date of deposit and state that first-class  
35 postage has been prepaid.

36 (D) *Copies*. If a document is filed  
37 electronically, no paper copy is required. If a  
38 document is filed by mail or delivery to the district  
39 court or BAP, no additional copies are required.  
40 But the district court or BAP may require by local  
41 rule or by order in a particular case the filing or  
42 furnishing of a specified number of paper copies.

43 (3) *Clerk's Refusal of Documents*. The court's  
44 clerk must not refuse to accept for filing any document  
45 transmitted for that purpose solely because it is not

46 presented in proper form as required by these rules or by  
47 any local rule or practice.

48 (b) SERVICE OF ALL DOCUMENTS REQUIRED.

49 Unless a rule requires service by the clerk, a party must, at or  
50 before the time of the filing of a document, serve it on the other  
51 parties to the appeal. Service on a party represented by counsel  
52 must be made on the party's counsel.

53 (c) MANNER OF SERVICE.

54 (1) *Methods*. Service must be made electronically,  
55 unless it is being made by or on an individual who is not  
56 represented by counsel or the court's governing rules  
57 permit or require service by mail or other means of  
58 delivery. Service may be made by or on an unrepresented  
59 party by any of the following methods:

60 (A) personal delivery;

61 (B) mail; or

62 (C) third-party commercial carrier for  
63 delivery within 3 days.

64 (2) *When Service Is Complete*. Service by  
65 electronic means is complete on transmission, unless the  
66 party making service receives notice that the document was  
67 not transmitted successfully. Service by mail or by  
68 commercial carrier is complete on mailing or delivery to

69 the carrier.

70 (d) PROOF OF SERVICE.

71 (1) *What Is Required.* A document presented for  
72 filing must contain either:

73 (A) an acknowledgment of service by the  
74 person served; or

75 (B) proof of service consisting of a  
76 statement by the person who made service  
77 certifying:

78 (i) the date and manner of service;

79 (ii) the names of the persons served;

80 and

81 (iii) the mail or electronic address,

82 the fax number, or the address of the place

83 of delivery, as appropriate for the manner of

84 service, for each person served.

85 (2) *Delayed Proof.* The district or BAP clerk may  
86 permit documents to be filed without acknowledgment or  
87 proof of service, but must require the acknowledgment or  
88 proof to be filed promptly thereafter.

89 (3) *Brief or Appendix.* When a brief or appendix is  
90 filed, the proof of service must also state the date and  
91 manner by which it was filed.

92 (e) SIGNATURE. Every document filed electronically  
93 must include the electronic signature of the person filing it or, if  
94 the person is represented, the electronic signature of counsel. The  
95 electronic signature must be provided by electronic means that are  
96 consistent with any technical standards that the Judicial  
97 Conference of the United States establishes. Every document filed  
98 in paper form must be signed by the person filing the document or,  
99 if the person is represented, by counsel.

#### COMMITTEE NOTE

This rule is derived from former Rule 8008 and F.R.App.P. 25. It adopts some of the additional details of the appellate rule, and it provides greater recognition of the possibility of electronic filing and service.

Subdivision (a) governs the filing of documents in the district court or BAP. Consistent with other provisions of these Part VIII rules, subdivision (a)(2) requires electronic filing of documents, including briefs and appendices, unless the district court's or BAP's procedures permit or require other methods of delivery to the court. An electronic filing is timely if it is received by the district or BAP clerk within the time fixed for filing. No additional copies need to be submitted when documents are filed electronically, by mail, or by delivery unless the district court or BAP requires them.

Subdivision (a)(3) provides that the district or BAP clerk may not refuse to accept a document for filing solely because its form does not comply with these rules or any local rule or practice. The district court or BAP may, however, direct the correction of any deficiency in any document that does not conform to the requirements of these rules or applicable local rules, and may prescribe such other relief as the court deems appropriate.

Subdivisions (b) and (c) address the service of documents in the district court or BAP. Except for documents that the district or BAP clerk must serve, a party that makes a filing must serve copies of the document on the other parties to the appeal. Service on represented parties must be made on counsel. Subdivision (c) expresses the general requirement under these Part VIII rules that documents be sent electronically. *See* Rule 8001(c).



Local court rules, however, may provide for other means of service, and subdivision (c) specifies non-electronic methods of service by or on an unrepresented party. Electronic service is complete upon transmission, unless the party making service receives notice that the transmission did not reach the person intended to be served in a readable form.

Subdivision (d) retains the former rule's provisions regarding proof of service of a document filed in the district court or BAP. In addition, it provides that a certificate of service must state the mail or electronic address or fax number to which service was made.

Subdivision (e) is a new provision that requires an electronic signature of counsel or an unrepresented filer for documents that are filed electronically in the district court or BAP. A local rule may specify a method of providing an electronic signature that is consistent with any standards established by the Judicial Conference of the United States. Paper copies of documents filed in the district court or BAP must bear an actual signature of counsel or the filer. By requiring a signature, subdivision (e) ensures that a readily identifiable attorney or party takes responsibility for every document that is filed.

## Rule 8012. Corporate Disclosure Statement

1           (a) WHO MUST FILE. Any nongovernmental corporate  
2 party appearing in the district court or BAP must file a statement  
3 that identifies any parent corporation and any publicly held  
4 corporation that owns 10% or more of its stock or states that there  
5 is no such corporation.

6           (b) TIME TO FILE; SUPPLEMENTAL FILING. A party  
7 must file the statement with its principal brief or upon filing a  
8 motion, response, petition, or answer in the district court or BAP,  
9 whichever occurs first, unless a local rule requires earlier filing.  
10 Even if the statement has already been filed, the party's principal  
11 brief must include a statement before the table of contents. A party  
12 must supplement its statement whenever the required information  
13 changes.

### COMMITTEE NOTE

This rule is derived from F.R.App.P. 26.1. It requires the filing of corporate disclosure statements and supplemental statements in order to assist district court and BAP judges in determining whether they should recuse themselves. Rule 9001 makes the definitions in § 101 of the Code applicable to these rules. Under § 101(9) the word "corporation" includes a limited liability company, limited liability partnership, business trust, and certain other entities that are not designated under applicable law as corporations.

If filed separately from a brief, motion, response, petition, or answer, the statement must be filed and served in accordance with Rule 8011. Under Rule 8015(a)(7)(B)(iii), the corporate disclosure statement is not included in calculating applicable word-count limitations.

**Rule 8013. Motions; Intervention**

1 (a) CONTENTS OF A MOTION; RESPONSE; REPLY.

2 (1) *Request for Relief.* A request for an order or  
3 other relief is made by filing a motion with the district or  
4 BAP clerk, with proof of service on the other parties to the  
5 appeal.

6 (2) *Contents of a Motion.*

7 (A) *Grounds and the Relief Sought.* A  
8 motion must state with particularity the grounds for  
9 the motion, the relief sought, and the legal argument  
10 necessary to support it.

11 (B) *Motion to Expedite an Appeal.* A  
12 motion to expedite an appeal must explain what  
13 justifies considering the appeal ahead of other  
14 matters. If the district court or BAP grants the  
15 motion, it may accelerate the time to transmit the  
16 record, the deadline for filing briefs and other  
17 documents, oral argument, and the resolution of the  
18 appeal. A motion to expedite an appeal may be  
19 filed as an emergency motion under subdivision (d).

20 (C) *Accompanying Documents.*

21 (i) Any affidavit or other document  
22 necessary to support a motion must be

23 served and filed with the motion.

24 (ii) An affidavit must contain only  
25 factual information, not legal argument.

26 (iii) A motion seeking substantive  
27 relief must include a copy of the bankruptcy  
28 court's judgment, order, or decree, and any  
29 accompanying opinion as a separate exhibit.

30 (D) *Documents Barred or Not Required.*

31 (i) A separate brief supporting or  
32 responding to a motion must not be filed.

33 | (ii) Unless the court orders  
34 | otherwise, a notice of motion is not required.

35 | (iii) Unless the court orders  
36 | otherwise, a proposed order is not required.

37 (3) *Response and Reply; Time to File.* Unless the  
38 district court or BAP orders otherwise,

39 (A) any party to the appeal may file a  
40 response to the motion within 7 days after service of  
41 the motion; and

42 (B) the movant may file a reply to a  
43 response within 7 days after service of the response,  
44 but may only address matters raised in the response.

45 (b) DISPOSITION OF A MOTION FOR A

46 PROCEDURAL ORDER. The district court or BAP may rule on a  
47 motion for a procedural order—including a motion under Rule  
48 9006(b) or (c)—at any time without awaiting a response. A party  
49 adversely affected by the ruling may move to reconsider, vacate, or  
50 modify it within 7 days after the procedural order is served.

51 (c) ORAL ARGUMENT. A motion will be decided  
52 without oral argument unless the district court or BAP orders  
53 otherwise.

54 (d) EMERGENCY MOTION.

55 (1) *Noting the Emergency.* When a movant  
56 requests expedited action on a motion because irreparable  
57 harm would occur during the time needed to consider a  
58 response, the movant must insert the word “Emergency”  
59 before the title of the motion.

60 (2) *Contents of the Motion.* The emergency motion  
61 must

62 (A) be accompanied by an affidavit setting  
63 out the nature of the emergency;

64 (B) state whether all grounds for it were  
65 submitted to the bankruptcy court and, if not, why  
66 the motion should not be remanded for the  
67 bankruptcy court to ~~reconsider~~consider;

68 (C) include the e-mail addresses, office

69 addresses, and telephone numbers of moving  
70 counsel and, when known, of opposing counsel and  
71 any unrepresented parties to the appeal; and

72 (D) be served as prescribed by Rule 8011.

73 (3) *Notifying Opposing Parties.* Before filing an  
74 emergency motion, the movant must make every  
75 practicable effort to notify opposing counsel and any  
76 unrepresented parties in time for them to respond. The  
77 affidavit accompanying the emergency motion must state  
78 when and how notice was given or state why giving it was  
79 impracticable.

80 (e) POWER OF A SINGLE BAP JUDGE TO  
81 ENTERTAIN A MOTION.

82 (1) *Single Judge's Authority.* A BAP judge may  
83 act alone on any motion, but may not dismiss or otherwise  
84 determine an appeal, deny a motion for leave to appeal, or  
85 deny a motion for a stay pending appeal if denial would  
86 make the appeal moot.

87 (2) *Reviewing a Single Judge's Action.* The BAP  
88 may review a single judge's action, either on its own  
89 motion or on a party's motion.

90 (f) FORM OF DOCUMENTS; PAGE LIMITS; NUMBER  
91 OF COPIES.

92                           (1) *Format of a Paper Document.* Rule 27(d)(1)  
93                           F.R.App.P. applies in the district court or BAP to a paper  
94                           version of a motion, response, or reply.

95                           (2) *Format of an Electronically Filed Document.*  
96                           A motion, response, or reply filed electronically must  
97                           comply with the requirements for a paper version regarding  
98                           covers, line spacing, margins, typeface, and type style. It  
99                           must also comply with the page limits under paragraph (3).

100                          (3) *Page Limits.* Unless the district court or BAP  
101                          orders otherwise:

102   (A) a motion or a response to a motion must  
103   not exceed 20 pages, exclusive of the corporate  
104   disclosure statement and accompanying documents  
105   authorized by subdivision (a)(2)(C); and

106   (B) a reply to a response must not exceed  
107   10 pages.

108                          (4) *Paper Copies.* Paper copies must be provided  
109                          only if required by local rule or by an order in a particular  
110                          case.

111                          (g) INTERVENING IN AN APPEAL. Unless a statute  
112                          provides otherwise, an entity that seeks to intervene in an appeal  
113                          pending in the district court or BAP must move for leave to  
114                          intervene and serve a copy of the motion on the parties to the

115 appeal. The motion or other notice of intervention authorized by  
116 statute must be filed within 30 days after the appeal is docketed. It  
117 must concisely state the movant's interest, the grounds for  
118 intervention, whether intervention was sought in the bankruptcy  
119 court, why intervention is being sought at this stage of the  
120 proceeding, and why participating as an amicus curiae would not  
121 be adequate.

### COMMITTEE NOTE

This rule is derived from former Rule 8011 and F.R.App.P. 15(d) and 27. It adopts many of the provisions of the appellate rules that specify the form and page limits of motions and accompanying documents, while also adjusting those requirements for electronic filing. In addition, it prescribes the procedure for seeking to intervene in the district court or BAP.

Subdivision (a) retains much of the content of former Rule 8011(a) regarding the contents of a motion, response, and reply. It also specifies the documents that may accompany a motion. Unlike the former rule, which allowed the filing of separate briefs supporting a motion, subdivision (a) now adopts the practice of F.R.App.P. 27(a) of prohibiting the filing of briefs supporting or responding to a motion. The motion or response itself must include the party's legal arguments.

Subdivision (a)(2)(B) clarifies the procedure for seeking to expedite an appeal. A motion under this provision seeks to expedite the time for the disposition of the appeal as a whole, whereas an emergency motion—which is addressed by subdivision (d)—typically involves an urgent request for relief short of disposing of the entire appeal (for example, an emergency request for a stay pending appeal to prevent imminent mootness). In appropriate cases—such as when there is an urgent need to resolve the appeal quickly to prevent harm—a party may file a motion to expedite the appeal as an emergency motion.

Subdivision (b) retains the substance of former Rule 8011(b). It authorizes the district court or BAP to act on a motion for a procedural order without awaiting a response to the motion. It specifies that a party seeking reconsideration, vacation, or modification of the order must file a motion within 7 days after service of the order.



Subdivision (c) continues the practice of former Rule 8011(c) and F.R.App.P. 27(e) of dispensing with oral argument of motions in the district court or BAP unless the court orders otherwise.

Subdivision (d), which carries forward the content of former Rule 8011(d), governs emergency motions that the district court or BAP may rule on without awaiting a response when necessary to prevent irreparable harm. A party seeking expedited action on a motion in the district court or BAP must explain the nature of the emergency, whether all grounds in support of the motion were first presented to the bankruptcy court, and, if not, why the district court or BAP should not remand for reconsideration. The moving party must also explain the steps taken to notify opposing counsel and any unrepresented parties in advance of filing the emergency motion and, if they were not notified, why it was impracticable to do so.

Subdivision (e), like former Rule 8011(e) and similar to F.R.App.P. 27(c), authorizes a single BAP judge to rule on certain motions. This authority, however, does not extend to issuing rulings that would dispose of the appeal. For that reason, the rule now prohibits a single BAP judge from denying a motion for a stay pending appeal when the effect of that ruling would be to require dismissal of the appeal as moot. A ruling by a single judge is subject to review by the BAP.

Subdivision (f) incorporates by reference the formatting and appearance requirements of F.R.App.P. 27(d)(1). When paper versions of the listed documents are filed, they must comply with the requirements of the specified rules regarding reproduction, covers, binding, appearance, and format. When these documents are filed electronically, they must comply with the relevant requirements of the specified rules regarding covers and format. Subdivision (f) also specifies page limits for motions, responses, and replies, which is a matter that former Rule 8011 did not address.

Subdivision (g) clarifies the procedure for seeking to intervene in a proceeding that has been appealed. It is based on F.R.App.P. 15(d), but it also requires the moving party to explain why intervention is being sought at the appellate stage. The former Part VIII rules did not address intervention.

**Rule 8014. Briefs**

1 (a) APPELLANT’S BRIEF. The appellant’s brief must  
2 contain the following under appropriate headings and in the order  
3 indicated:

4 (1) a corporate disclosure statement, if required by  
5 Rule 8012;

6 (2) a table of contents, with page references;

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

10 (4) a jurisdictional statement, including:

11 (A) the basis for the bankruptcy court’s  
12 subject-matter jurisdiction, with citations to  
13 applicable statutory provisions and stating relevant  
14 facts establishing jurisdiction;

15 (B) the basis for the district court’s or  
16 BAP’s jurisdiction, with citations to applicable  
17 statutory provisions and stating relevant facts  
18 establishing jurisdiction;

19 (C) the filing dates establishing the  
20 timeliness of the appeal; and

21 (D) an assertion that the appeal is from a  
22 final judgment, order, or decree, or information

23                                establishing the district court's or BAP's  
24                                jurisdiction on another basis;

25                                (5) a statement of the issues presented and, for each  
26                                one, a concise statement of the applicable standard of  
27                                appellate review;

28                                (6) a concise statement of the case setting out the  
29                                facts relevant to the issues submitted for review, describing  
30                                the relevant procedural history, and identifying the rulings  
31                                presented for review, with appropriate references to the  
32                                record;

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

37                                (8) the argument, which must contain the  
38                                appellant's contentions and the reasons for them, with  
39                                citations to the authorities and parts of the record on which  
40                                the appellant relies;

41                                (9) a short conclusion stating the precise relief  
42                                sought; and

43                                (10) the certificate of compliance, if required by  
44                                Rule 8015(a)(7) or (b).

45                                (b) APPELLEE'S BRIEF. The appellee's brief must

46 conform to the requirements of subdivision (a)(1)-(8) and (10),  
47 except that none of the following need appear unless the appellee  
48 is dissatisfied with the appellant's statement:

49 (1) the jurisdictional statement;

50 (2) the statement of the issues and the applicable  
51 standard of appellate review; and

52 (3) the statement of the case.

53 (c) **REPLY BRIEF.** The appellant may file a brief in reply  
54 to the appellee's brief. A reply brief must comply with the  
55 requirements of subdivision (a)(2)-(3).

56 (d) **STATUTES, RULES, REGULATIONS, OR**  
57 **SIMILAR AUTHORITY.** If the court's determination of the  
58 issues presented requires the study of the Code or other statutes,  
59 rules, regulations, or similar authority, the relevant parts must be  
60 set out in the brief or in an addendum.

61 (e) **BRIEFS IN A CASE INVOLVING MULTIPLE**  
62 **APPELLANTS OR APPELLEES.** In a case involving more than  
63 one appellant or appellee, including consolidated cases, any  
64 number of appellants or appellees may join in a brief, and any  
65 party may adopt by reference a part of another's brief. Parties may  
66 also join in reply briefs.

67 (f) **CITATION OF SUPPLEMENTAL AUTHORITIES.**  
68 If pertinent and significant authorities come to a party's attention

79 after the party’s brief has been filed—or after oral argument but  
80 before a decision—a party may promptly advise the district or  
81 BAP clerk by a signed submission setting forth the citations. The  
82 submission, which must be served on the other parties to the  
83 appeal, must state the reasons for the supplemental citations,  
84 referring either to the pertinent page of a brief or to a point argued  
85 orally. The body of the submission must not exceed 350 words.  
86 Any response must be made within 7 days after the party is served,  
87 unless the court orders otherwise, and must be similarly limited.

#### **COMMITTEE NOTE**

This rule is derived from former Rule 8010(a) and (b) and F.R.App.P. 28. Adopting much of the content of Rule 28, it provides greater detail than former Rule 8010 contained regarding appellate briefs.

Subdivision (a) prescribes the content and structure of the appellant’s brief. It largely follows former Rule 8010(a)(1), but, to ensure national uniformity, it eliminates the provision authorizing a district court or BAP to alter these requirements. Subdivision (a)(1) provides that when Rule 8012 requires an appellant to file a corporate disclosure statement, it must be placed at the beginning of the appellant’s brief. Subdivision (a)(10) is new. It implements the requirement under Rule 8015(a)(7)(C) and (b) for the filing of a certificate of compliance with the limit on the number of words or lines allowed to be in a brief.

Subdivision (b) carries forward the provisions of former Rule 8010(a)(2).

Subdivision (c) is derived from F.R.App.P. 28(c). It authorizes an appellant to file a reply brief, which will generally complete the briefing process.

Subdivision (d) is similar to former Rule 8010(b), but it is reworded to reflect the likelihood that briefs will generally be filed electronically rather than in paper form.

Subdivision (e) mirrors F.R.App.P. 28(i). It authorizes multiple appellants or appellees to join in a single brief. It also allows a party to incorporate by reference portions of another party's brief.

Subdivision (f) adopts the procedures of F.R.App.P. 28(j) with respect to the filing of supplemental authorities with the district court or BAP after a brief has been filed or after oral argument. Unlike the appellate rule, it specifies a period of 7 days for filing a response to a submission of supplemental authorities. The supplemental submission and response must comply with the signature requirements of Rule 8011(e).

**Rule 8015. Form and Length of Briefs; Form of Appendices and Other Papers.**

1 (a) PAPER COPIES OF A BRIEF. If a paper copy of a  
2 brief may or must be filed, the following provisions apply:

3 (1) *Reproduction.*

4 (A) A brief may be reproduced by any  
5 process that yields a clear black image on light  
6 paper. The paper must be opaque and unglazed.  
7 Only one side of the paper may be used.

8 (B) Text must be reproduced with a clarity  
9 that equals or exceeds the output of a laser printer.

10 (C) Photographs, illustrations, and tables  
11 may be reproduced by any method that results in a  
12 good copy of the original. A glossy finish is  
13 acceptable if the original is glossy.

14 (2) *Cover.* The front cover of a brief must contain:

15 (A) the number of the case centered at the  
16 top;

17 (B) the name of the court;

18 (C) the title of the case as prescribed by  
19 Rule 8003(d)(2) or 8004(c)(2);

20 (D) the nature of the proceeding and the  
21 name of the court below;

22 (E) the title of the brief, identifying the

23 party or parties for whom the brief is filed; and  
24 (F) the name, office address, telephone  
25 number, and e-mail address of counsel representing  
26 the party for whom the brief is filed.

27 (3) *Binding*. The brief must be bound in any  
28 manner that is secure, does not obscure the text, and  
29 permits the brief to lie reasonably flat when open.

30 (4) *Paper Size, Line Spacing, and Margins*. The  
31 brief must be on 8½-by-11 inch paper. The text must be  
32 double-spaced, but quotations more than two lines long  
33 may be indented and single-spaced. Headings and  
34 footnotes may be single-spaced. Margins must be at least  
35 one inch on all four sides. Page numbers may be placed in  
36 the margins, but no text may appear there.

37 (5) *Typeface*. Either a proportionally spaced or  
38 monospaced face may be used.

39 (A) A proportionally spaced face must  
40 include serifs, but sans-serif type may be used in  
41 headings and captions. A proportionally spaced  
42 face must be 14-point or larger.

43 (B) A monospaced face may not contain  
44 more than 10½ characters per inch.

45 (6) *Type Styles*. A brief must be set in plain, roman



46 style, although italics or boldface may be used for  
47 emphasis. Case names must be italicized or underlined.

48 (7) *Length.*

49 (A) *Page limitation.* A principal brief must  
50 not exceed 30 pages, or a reply brief 15 pages,  
51 unless it complies with (B) and (C).

52 (B) *Type-volume limitation.*

53 (i) A principal brief is acceptable if:

- 54 • it contains no more  
55 than 14,000 words; or
- 56 • it uses a monospaced  
57 face and contains no more  
58 than 1,300 lines of text.

59 (ii) A reply brief is acceptable if it  
60 contains no more than half of the type  
61 volume specified in item (i).

62 (iii) Headings, footnotes, and  
63 quotations count toward the word and line  
64 limitations. The corporate disclosure  
65 statement, table of contents, table of  
66 citations, statement with respect to oral  
67 argument, any addendum containing  
68 statutes, rules, or regulations, and any

69 certificates of counsel do not count toward  
70 the limitation.

71 (C) *Certificate of Compliance.*

72 (i) A brief submitted under  
73 subdivision (a)(7)(B) must include a  
74 certificate signed by the attorney, or an  
75 unrepresented party, that the brief complies  
76 with the type-volume limitation. The person  
77 preparing the certificate may rely on the  
78 word or line count of the word-processing  
79 system used to prepare the brief. The  
80 certificate must state either:

- 81 • the number of words in the
- 82 brief; or
- 83 • the number of lines of
- 84 monospaced type in the brief.

85 (ii) The certification requirement is  
86 satisfied by a certificate of compliance that  
87 conforms substantially to the appropriate  
88 Official Form.

89 (b) ELECTRONICALLY FILED BRIEFS. A brief filed  
90 electronically must comply with subdivision (a), except for (a)(1),  
91 (a)(3), and the paper requirement of (a)(4).

92 (c) PAPER COPIES OF APPENDICES. A paper copy of  
93 an appendix must comply with subdivision (a)(1), (2), (3), and (4),  
94 with the following exceptions:

95 (1) An appendix may include a legible photocopy  
96 of any document found in the record or of a printed  
97 decision.

98 (2) When necessary to facilitate inclusion of odd-  
99 sized documents such as technical drawings, an appendix  
100 may be a size other than 8½-by-11 inches, and need not lie  
101 reasonably flat when opened.

102 (d) ELECTRONICALLY FILED APPENDICES. An  
103 appendix filed electronically must comply with subdivision (a)(2)  
104 and (4), except for the paper requirement of (a)(4).

105 (e) OTHER DOCUMENTS.

106 (1) *Motion*. Rule 8013(f) governs the form of a  
107 motion, response, or reply.

108 (2) *Paper Copies of Other Documents*. A paper  
109 copy of any other document, other than a submission under  
110 Rule 8014(f), must comply with subdivision (a), with the  
111 following exceptions:

112 (A) A cover is not necessary if the caption  
113 and signature page together contain the information  
114 required by subdivision (a)(2).

115 (B) Subdivision (a)(7) does not apply.

116 (3) *Other Documents Filed Electronically.* Any  
117 other document filed electronically, other than a  
118 submission under Rule 8014(f), must comply with the  
119 appearance requirements of paragraph (2).

120 (f) LOCAL VARIATION. A district court or BAP must  
121 accept documents that comply with the applicable requirements of  
122 this rule. By local rule ~~or order in a particular case~~, a district court  
123 or BAP may accept documents that do not meet all of the  
124 requirements of this rule.

#### COMMITTEE NOTE

This rule is derived primarily from F.R.App.P. 32. Former Rule 8010(c) prescribed page limits for principal briefs and reply briefs. Those limits are now addressed by subdivision (a)(7) of this rule. In addition, the rule incorporates most of the detail of F.R.App.P. 32 regarding the appearance and format of briefs, appendices, and other documents, along with new provisions that apply when those documents are filed electronically.

Subdivision (a) prescribes the form requirements for briefs that are filed in paper form. It incorporates F.R.App.P. 32(a), except it does not include color requirements for brief covers, it requires the cover of a brief to include counsel's e-mail address, and cross-references to the appropriate bankruptcy rules are substituted for references to the Federal Rules of Appellate Procedure.

Subdivision (a)(7) decreases the ~~page limits~~length of briefs, as measured by the number of pages, that ~~were~~was permitted by former Rule 8010(c) ~~from~~. Page limits are reduced from 50 to 30 pages for a principal brief and from 25 to 15 for a reply ~~brief~~brief in order to achieve consistency with F.R.App.P. 32(a)(7). ~~It~~But as permitted by the appellate rule, subdivision (a)(7) also permits the limits on the length of a brief to be measured by a word or line count, as an alternative to a page limit. ~~By adopting~~Basing the ~~same limits on brief length that the Federal Rules of~~

~~Appellate Procedure impose, the amendment seeks to prevent a party whose case is eventually appealed to the court of appeals from having to substantially reduce the length of its brief in that court.~~ calculation of brief length on either of the type-volume methods specified in subdivision (a)(7)(B) will result in briefs that may exceed the designated page limits in (a)(7)(A) and that may be approximately as long as allowed by the prior page limits.

Subdivision (b) adapts for briefs that are electronically filed subdivision (a)'s form requirements. With the use of electronic filing, the method of reproduction, method of binding, and use of paper become irrelevant. But information required on the cover, formatting requirements, and limits on brief length remain the same.

Subdivisions (c) and (d) prescribe the form requirements for appendices. Subdivision (c), applicable to paper appendices, is derived from F.R.App.P. 32(b), and subdivision (d) adapts those requirements for electronically filed appendices.

Subdivision (e), which is based on F.R.App.P. 32(c), addresses the form required for documents—in paper form or electronically filed—that these rules do not otherwise cover.

Subdivision (f), like F.R.App.P. 32(e), provides assurance to lawyers and parties that compliance with this rule's form requirements will allow a brief or other document to be accepted by any district court or BAP. A court may, however, by local rule or under Rule 8028 by order in a particular case, choose to accept briefs and documents that do not comply with all of this rule's requirements. The decision whether to accept a brief that appears not to be in compliance with the rules must be made by the court. Under Rule 8011(a)(3), the clerk may not refuse to accept a document for filing solely because it is not presented in proper form as required by these rules or any local rule or practice.

Under Rule 8011(e), the party filing the document or, if represented, its counsel must sign all briefs and other submissions. If the document is filed electronically, an electronic signature must be provided in accordance with Rule 8011(e).

**Rule 8016. Cross-Appeals**

1           (a) APPLICABILITY. This rule applies to a case in which  
2 a cross-appeal is filed. Rules 8014(a)-(c), 8015(a)(7)(A)-(B), and  
3 8018(a) do not apply to such a case, except as otherwise provided  
4 in this rule.

5           (b) DESIGNATION OF APPELLANT. The party who  
6 files a notice of appeal first is the appellant for purposes of this  
7 rule and Rules 8018(b) and 8019. If notices are filed on the same  
8 day, the plaintiff, petitioner, applicant, or movant in the proceeding  
9 below is the appellant. These designations may be modified by the  
10 parties' agreement or by court order.

11           (c) BRIEFS. In a case involving a cross-appeal:

12                   (1) *Appellant's Principal Brief.* The appellant must  
13 file a principal brief in the appeal. That brief must comply  
14 with Rule 8014(a).

15                   (2) *Appellee's Principal and Response Brief.* The  
16 appellee must file a principal brief in the cross-appeal and  
17 must, in the same brief, respond to the principal brief in the  
18 appeal. That brief must comply with Rule 8014(a), except  
19 that the brief need not include a statement of the case  
20 unless the appellee is dissatisfied with the appellant's  
21 statement.

22                   (3) *Appellant's Response and Reply Brief.* The

23 appellant must file a brief that responds to the principal  
24 brief in the cross-appeal and may, in the same brief, reply  
25 to the response in the appeal. That brief must comply with  
26 Rule 8014(a)(2)-(8) and (10), except that none of the  
27 following need appear unless the appellant is dissatisfied  
28 with the appellee's statement in the cross-appeal:

29 (A) the jurisdictional statement;

30 (B) the statement of the issues and the  
31 applicable standard of appellate review; and

32 (C) the statement of the case.

33 (4) *Appellee's Reply Brief*. The appellee may file a  
34 brief in reply to the response in the cross-appeal. That brief  
35 must comply with Rule 8014(a)(2)-(3) and (10) and must  
36 be limited to the issues presented by the cross-appeal.

37 (d) LENGTH.

38 (1) *Page Limitation*. Unless it complies with  
39 paragraphs (2) and (3), the appellant's principal brief must  
40 not exceed 30 pages; the appellee's principal and response  
41 brief, 35 pages; the appellant's response and reply brief, 30  
42 pages; and the appellee's reply brief, 15 pages.

43 (2) *Type-Volume Limitation*.

44 (A) The appellant's principal brief or the  
45 appellant's response and reply brief is acceptable if:

46 (i) it contains no more than 14,000  
47 words; or

48 (ii) it uses a monospaced face and  
49 contains no more than 1,300 lines of text.

50 (B) The appellee's principal and response  
51 brief is acceptable if:

52 (i) it contains no more than 16,500  
53 words; or

54 (ii) it uses a monospaced face and  
55 contains no more than 1,500 lines of text.

56 (C) The appellee's reply brief is acceptable  
57 if it contains no more than half of the type volume  
58 specified in subparagraph (A).

59 | (D) Headings, footnotes, and quotations  
60 | count toward the word and line limitations. The  
61 | corporate disclosure statement, table of contents,  
62 | table of citations, statement with respect to oral  
63 | argument, any addendum containing statutes, rules,  
64 | or regulations, and any certificates of counsel do not  
65 | count toward the limitation.

66 | (3) *Certificate of Compliance.* A brief submitted  
67 either electronically or in paper form under paragraph (2)  
68 must comply with Rule 8015(a)(7)(C).



69 (e) TIME TO SERVE AND FILE A BRIEF. Briefs must  
70 be served and filed as follows, unless the district court or BAP by  
71 order in a particular case excuses the filing of briefs or specifies  
72 different time limits:

73 (1) the appellant's principal brief, within 30 days  
74 after the docketing of notice that the record has been  
75 transmitted or is available electronically;

76 (2) the appellee's principal and response brief,  
77 within 30 days after the appellant's principal brief is  
78 served;

79 (3) the appellant's response and reply brief, within  
80 30 days after the appellee's principal and response brief is  
81 served; and

82 (4) the appellee's reply brief, within 14 days after  
83 the appellant's response and reply brief is served, but at  
84 least 7 days before scheduled argument unless the district  
85 court or BAP, for good cause, allows a later filing.

~~(f) FAILURE TO FILE ON TIME. If an appellant or appellee fails to file a principal brief on time, or within an extended time authorized by the district court or BAP, the appeal or cross-appeal may be dismissed. Unless the district court or BAP orders otherwise, an appellee who fails to file a responsive brief will not be heard at oral argument on the appeal, and an appellant who fails to file a responsive brief will not be heard at oral argument on the cross-appeal.~~

## COMMITTEE NOTE

This rule is derived from F.R.App.P. 28.1. It governs the timing, content, length, filing, and service of briefs in bankruptcy appeals in which there is a cross-appeal. The former Part VIII rules did not separately address the topic of cross-appeals.

Subdivision (b) prescribes which party is designated the appellant when there is a cross-appeal. Generally, the first to file a notice of appeal will be the appellant.

Subdivision (c) specifies the briefs that the appellant and the appellee may file. Because of the dual role of the parties to the appeal and cross-appeal, each party is permitted to file a principal brief and a response to the opposing party's brief, as well as a reply brief. For the appellee, the principal brief in the cross-appeal and the response in the appeal are combined into a single brief. The appellant, on the other hand, initially files a principal brief in the appeal and later files a response to the appellee's principal brief in the cross-appeal, along with a reply brief in the appeal. The final brief that may be filed is the appellee's reply brief in the cross-appeal.

Subdivision (d), which prescribes page limits for briefs, is adopted from F.R.App.P. 28.1(e). It applies to briefs that are filed electronically, as well as to those filed in paper form. Like Rule 8015(a)(7), it imposes limits measured by either the number of pages or the number of words or lines of text.

Subdivision (e) governs the time for filing briefs in cases in which there is a cross-appeal. It adapts the provisions of F.R.App.P. 28.1(f).

~~Subdivision (f) authorizes the dismissal of an appeal or cross-appeal if the appellant or cross-appellant fails to timely file a principal brief, and it denies oral argument to a party who fails to file a responsive brief unless the district court or BAP orders otherwise.~~

**Rule 8017. Brief of an Amicus Curiae**

1 (a) WHEN PERMITTED. The United States or its officer  
2 or agency or a state may file an amicus-curiae brief without the  
3 consent of the parties or leave of court. Any other amicus curiae  
4 may file a brief only by leave of court or if the brief states that all  
5 parties have consented to its filing. On its own motion, and with  
6 notice to all parties to an appeal, the district court or BAP may  
7 request a brief by an amicus curiae.

8 (b) MOTION FOR LEAVE TO FILE. The motion must  
9 be accompanied by the proposed brief and state:

- 10 (1) the movant’s interest; and  
11 (2) the reason why an amicus brief is desirable and  
12 why the matters asserted are relevant to the disposition of  
13 the appeal.

14 (c) CONTENTS AND FORM. An amicus brief must  
15 comply with Rule 8015. In addition to the requirements of Rule  
16 8015, the cover must identify the party or parties supported and  
17 indicate whether the brief supports affirmance or reversal. If an  
18 amicus curiae is a corporation, the brief must include a disclosure  
19 statement like that required of parties by Rule 8012. An amicus  
20 brief need not comply with Rule 8014, but must include the  
21 following:

- 22 (1) a table of contents, with page references;

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

26 (3) a concise statement of the identity of the amicus  
27 curiae, its interest in the case, and the source of its  
28 authority to file;

29 (4) unless the amicus curiae is one listed in the first  
30 sentence of subdivision (a), a statement that indicates  
31 whether:

32 (A) a party’s counsel authored the brief in  
33 whole or in part;

34 (B) a party or a party’s counsel contributed  
35 money that was intended to fund preparing or  
36 submitting the brief; and

37 (C) a person—other than the amicus curiae,  
38 its members, or its counsel—contributed money that  
39 was intended to fund preparing or submitting the  
40 brief and, if so, identifies each such person;

41 (5) an argument, which may be preceded by a  
42 summary and need not include a statement of the applicable  
43 standard of review; and

44 (6) a certificate of compliance, if required by Rule  
45 8015(a)(7)(C) or 8015(b).

46 (d) LENGTH. Except by the district court's or BAP's  
47 permission, an amicus brief must be no more than one-half the  
48 maximum length authorized by these rules for a party's principal  
49 brief. If the court grants a party permission to file a longer brief,  
50 that extension does not affect the length of an amicus brief.

51 (e) TIME FOR FILING. An amicus curiae must file its  
52 brief, accompanied by a motion for filing when necessary, no later  
53 than 7 days after the principal brief of the party being supported is  
54 filed. An amicus curiae that does not support either party must file  
55 its brief no later than 7 days after the appellant's principal brief is  
56 filed. The district court or BAP may grant leave for later filing,  
57 specifying the time within which an opposing party may answer.

58 (f) REPLY BRIEF. Except by the district court's or  
59 BAP's permission, an amicus curiae may not file a reply brief.

60 (g) ORAL ARGUMENT. An amicus curiae may  
61 participate in oral argument only with the district court's or BAP's  
62 permission.

#### COMMITTEE NOTE

This rule is derived from F.R.App.P. 29. The former Part VIII rules did not address the participation by an amicus curiae in a bankruptcy appeal.

Subdivision (a) adopts the provisions of F.R.App.P. 29(a). In addition, it authorizes the district court or BAP on its own motion— with notice to the parties—to request the filing of a brief by an amicus curiae.

Subdivisions (b)-(g) adopt F.R.App.P. 29(b)-(g).

**Rule 8018. Serving and Filing Briefs; Appendices**

1 (a) TIME TO SERVE AND FILE A BRIEF. The  
2 following rules apply unless the district court or BAP by order in a  
3 particular case excuses the filing of briefs or specifies different  
4 time limits:

5 (1) The appellant must serve and file a brief within  
6 30 days after the docketing of notice that the record has  
7 been transmitted or is available electronically.

8 (2) The appellee must serve and file a brief within  
9 30 days after service of the appellant’s brief.

10 (3) The appellant may serve and file a reply brief  
11 within 14 days after service of the appellee’s brief, but a  
12 reply brief must be filed at least 7 days before scheduled  
13 argument unless the district court or BAP, for good cause,  
14 allows a later filing.

15 (4) If an appellant fails to file a brief on time or  
16 within an extended time authorized by the district court or  
17 BAP, ~~the appeal may be dismissed~~an appellee may move to  
18 dismiss the appeal or the appellate court, after notice, may  
19 dismiss the appeal on its own motion. An appellee who  
20 fails to file a brief will not be heard at oral argument unless  
21 the district court or BAP grants permission.

22 (b) DUTY TO SERVE AND FILE AN APPENDIX TO

23 THE BRIEF.

24 (1) *Appellant*. Subject to subdivision (e) and Rule  
25 8009(d), the appellant must serve and file with its principal  
26 brief excerpts of the record as an appendix. It must contain  
27 the following:

28 (A) the relevant entries in the bankruptcy  
29 docket;

30 (B) the complaint and answer, or other  
31 equivalent filings;

32 (C) the judgment, order, or decree from  
33 which the appeal is taken;

34 (D) any other orders, pleadings, jury  
35 instructions, findings, conclusions, or opinions  
36 relevant to the appeal;

37 (E) the notice of appeal; and

38 (F) any relevant transcript or portion of it.

39 (2) *Appellee*. The appellee may also serve and file  
40 with its brief an appendix that contains material required to  
41 be included by the appellant or relevant to the appeal or  
42 cross-appeal, but omitted by the appellant.

43 (3) *Cross-Appellee*. The appellant as cross-  
44 appellee may also serve and file with its response an  
45 appendix that contains material relevant to matters raised

46 initially by the principal brief in the cross-appeal, but  
47 omitted by the cross-appellant.

48 (c) **FORMAT OF THE APPENDIX.** The appendix must  
49 begin with a table of contents identifying the page at which each  
50 part begins. The relevant docket entries must follow the table of  
51 contents. Other parts of the record must follow chronologically.  
52 When pages from the transcript of proceedings are placed in the  
53 appendix, the transcript page numbers must be shown in brackets  
54 immediately before the included pages. Omissions in the text of  
55 documents or of the transcript must be indicated by asterisks.  
56 Immaterial formal matters (captions, subscriptions,  
57 acknowledgments, and the like) should be omitted.

58 (d) **EXHIBITS.** Exhibits designated for inclusion in the  
59 appendix may be reproduced in a separate volume or volumes,  
60 suitably indexed.

61 (e) **APPEAL ON THE ORIGINAL RECORD WITHOUT**  
62 **AN APPENDIX.** The district court or BAP may, either by rule for  
63 all cases or classes of cases or by order in a particular case,  
64 dispense with the appendix and permit an appeal to proceed on the  
65 original record, with the submission of any relevant parts of the  
66 record that the district court or BAP orders the parties to file.



## COMMITTEE NOTE

This rule is derived from former Rule 8009 and F.R.App.P. 30 and 31. Like former Rule 8009, it addresses the timing of serving and filing briefs and appendices, as well as the content and format of appendices. Rule 8011 governs the methods of filing and serving briefs and appendices.

The rule retains the bankruptcy practice of permitting the appellee to file its own appendix, rather than requiring the appellant to include in its appendix matters designated by the appellee. Rule 8016 governs the timing of serving and filing briefs when a cross-appeal is taken. This rule's provisions about appendices apply to all appeals, including cross-appeals.

Subdivision (a) retains former Rule 8009's provision that allows the district court or BAP to dispense with briefing or to provide different time periods than this rule specifies. It increases some of the time periods for filing briefs from the periods prescribed by the former rule, while still retaining shorter time periods than some provided by F.R.App.P. 31(a). The time for filing the appellant's brief is increased from 14 to 30 days after the docketing of the notice of the transmission of the record or notice of the availability of the record. That triggering event is equivalent to docketing the appeal under former Rule 8007. Appellate Rule 31(a)(1), by contrast, provides the appellant 40 days after the record is filed to file its brief. The shorter time period for bankruptcy appeals reflects the frequent need for greater expedition in the resolution of bankruptcy appeals, while still providing the appellant more time to prepare its brief than the former rule provided.

Subdivision (a)(2) similarly expands the time period for filing the appellee's brief from 14 to 30 days after the service of the appellant's brief. This period is the same as F.R. App. 31(a)(1) provides.

Subdivision (a)(3) retains the 14-day time period for filing a reply brief that the former rule prescribed, but it qualifies that period to ensure that the final brief is filed at least 7 days before oral argument.

If a district court or BAP has a mediation procedure for bankruptcy appeals, that procedure could affect when briefs must be filed. *See* Rule 8027.

Subdivision (a)(4) is new. Based on F.R.App.P. 31(c), it provides for actions that may be taken—dismissal of the appeal or denial of participation in oral argument—if the appellant or appellee fails to file its brief.

Subdivisions (b) and (c) govern the content and format of the

appendix to a brief. Subdivision (b) is similar to former Rule 8009(b), and subdivision (c) is derived from F.R.App.P. 30(d).

Subdivision (d), which addresses the inclusion of exhibits in the appendix, is derived from F.R.App.P. 30(e).

**Rule 8019. Oral Argument**

1           (a) PARTY’S STATEMENT. Any party may file, or a  
2           district court or BAP may require, a statement explaining why oral  
3           argument should, or need not, be permitted.

4           (b) PRESUMPTION OF ORAL ARGUMENT AND  
5           EXCEPTIONS. Oral argument must be allowed in every case  
6           unless the district judge—or all the BAP judges assigned to hear  
7           the appeal—examine the briefs and record and determine that oral  
8           argument is unnecessary because

- 9                           (1) the appeal is frivolous;
- 10                          (2) the dispositive issue or issues have been  
11                          authoritatively decided; or
- 12                          (3) the facts and legal arguments are adequately  
13                          presented in the briefs and record, and the decisional  
14                          process would not be significantly aided by oral argument.

15           (c) NOTICE OF ARGUMENT; POSTPONEMENT. The  
16           district court or BAP must advise all parties of the date, time, and  
17           place for oral argument, and the time allowed for each side. A  
18           motion to postpone the argument or to allow longer argument must  
19           be filed reasonably in advance of the hearing date.

20           (d) ORDER AND CONTENTS OF ARGUMENT. The  
21           appellant opens and concludes the argument. Counsel must not  
22           read at length from briefs, the record, or authorities.

23                   (e) CROSS-APPEALS AND SEPARATE APPEALS. If  
24                   there is a cross-appeal, Rule 8016(b) determines which party is the  
25                   appellant and which is the appellee for the purposes of oral  
26                   argument. Unless the district court or BAP directs otherwise, a  
27                   cross-appeal or separate appeal must be argued when the initial  
28                   appeal is argued. Separate parties should avoid duplicative  
29                   argument.

30                   (f) NONAPPEARANCE OF A PARTY. If the appellee  
31                   fails to appear for argument, the district court or BAP may hear the  
32                   appellant's argument. If the appellant fails to appear for argument,  
33                   the district court or BAP may hear the appellee's argument. If  
34                   neither party appears, the case will be decided on the briefs unless  
35                   the district court or BAP orders otherwise.

36                   (g) SUBMISSION ON BRIEFS. The parties may agree to  
37                   submit a case for decision on the briefs, but the district court or  
38                   BAP may direct that the case be argued.

39                   (h) USE OF PHYSICAL EXHIBITS AT ARGUMENT;  
40                   REMOVAL. Counsel intending to use physical exhibits other than  
41                   documents at the argument must arrange to place them in the  
42                   courtroom on the day of the argument before the court convenes.  
43                   After the argument, counsel must remove the exhibits from the  
44                   courtroom unless the district court or BAP directs otherwise. The  
45                   clerk may destroy or dispose of the exhibits if counsel does not

46           reclaim them within a reasonable time after the clerk gives notice  
47           to remove them.

### **COMMITTEE NOTE**

This rule generally retains the provisions of former Rule 8012 and adds much of the additional detail of F.R.App.P. 34. By incorporating the more detailed provisions of the appellate rule, Rule 8019 promotes national uniformity regarding oral argument in bankruptcy appeals.

Subdivision (a), like F.R.App.P. 34(a)(1), now allows a party to submit a statement explaining why oral argument is or is not needed. It also authorizes a court to require this statement. Former Rule 8012 only authorized statements explaining why oral argument should be allowed.

Subdivision (b) retains the reasons set forth in former Rule 8012 for the district court or BAP to conclude that oral argument is not needed.

The remainder of this rule adopts the provisions of F.R.App.P. 34(b)-(g), with one exception. Rather than requiring the district court or BAP to hear appellant's argument if the appellee does not appear, subdivision (e) authorizes the district court or BAP to go forward with the argument in the appellee's absence. Should the court decide, however, to postpone the oral argument in that situation, it would be authorized to do so.

## **Rule 8020. Frivolous Appeal and Other Misconduct**

- 1           (a) FRIVOLOUS APPEAL—DAMAGES AND COSTS.  
2           If the district court or BAP determines that an appeal is frivolous,  
3           it may, after a separately filed motion or notice from the court and  
4           reasonable opportunity to respond, award just damages and single  
5           or double costs to the appellee.
- 6           (b) OTHER MISCONDUCT. The district court or BAP  
7           may discipline or sanction an attorney or party appearing before it  
8           for other misconduct, including failure to comply with any court  
9           order. First, however, the court must afford the attorney or party  
10          reasonable notice, an opportunity to show cause to the contrary,  
11          and, if requested, a hearing.

### **COMMITTEE NOTE**

This rule is derived from former Rule 8020 and F.R.App.P. 38 and 46(c). Subdivision (a) permits an award of damages and costs to an appellee for a frivolous appeal. Subdivision (b) permits the district court or BAP to impose on parties as well as their counsel sanctions for misconduct other than taking a frivolous appeal. Failure to comply with a court order, for which sanctions may be imposed, may include a failure to comply with a local court rule.

**Rule 8021. Costs**

1           (a) AGAINST WHOM ASSESSED. The following rules  
2 apply unless the law provides or the district court or BAP orders  
3 otherwise:

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

6                   (2) if a judgment, order, or decree is affirmed, costs  
7 are taxed against the appellant;

8                   (3) if a judgment, order, or decree is reversed, costs  
9 are taxed against the appellee;

10                   (4) if a judgment, order, or decree is affirmed or  
11 reversed in part, modified, or vacated, costs are taxed only  
12 as the district court or BAP orders.

13           (b) COSTS FOR AND AGAINST THE UNITED  
14 STATES. Costs for or against the United States, its agency, or its  
15 officer may be assessed under subdivision (a) only if authorized  
16 by law.

17           (c) COSTS ON APPEAL TAXABLE IN THE  
18 BANKRUPTCY COURT. The following costs on appeal are  
19 taxable in the bankruptcy court for the benefit of the party entitled  
20 to costs under this rule:

21                   (1) the production of any required copies of a brief,  
22 appendix, exhibit, or the record;

- 23 (2) the preparation and transmission of the record;
- 24 (3) the reporter's transcript, if needed to determine
- 25 the appeal;
- 26 (4) premiums paid for a supersedeas bond or other
- 27 bonds to preserve rights pending appeal; and
- 28 (5) the fee for filing the notice of appeal.
- 29 (d) BILL OF COSTS; OBJECTIONS. A party who wants
- 30 costs taxed must, within 14 days after entry of judgment on appeal,
- 31 file with the bankruptcy clerk, with proof of service, an itemized
- 32 and verified bill of costs. Objections must be filed within 14 days
- 33 after service of the bill of costs, unless the bankruptcy court
- 34 extends the time.

#### **COMMITTEE NOTE**

This rule is derived from former Rule 8014 and F.R.App.P. 39. It retains the former rule's authorization for taxing appellate costs against the losing party and its specification of the costs that may be taxed. The rule also incorporates some of the additional details regarding the taxing of costs contained in F.R.App.P. 39. Consistent with former Rule 8014, the bankruptcy clerk has the responsibility for taxing all costs. Subdivision (b), derived from F.R.App.P. 39(b), clarifies that additional authority is required for the taxation of costs by or against federal governmental parties.



**Rule 8022. Motion for Rehearing.**

1           (a) TIME TO FILE; CONTENTS; RESPONSE; ACTION  
2 BY THE DISTRICT COURT OR BAP IF GRANTED.

3           (1) *Time.* Unless the time is shortened or extended  
4 by order or local rule, any motion for rehearing by the  
5 district court or BAP must be filed within 14 days after  
6 entry of judgment on appeal.

7           (2) *Contents.* The motion must state with  
8 particularity each point of law or fact that the movant  
9 believes the district court or BAP has overlooked or  
10 misapprehended and must argue in support of the motion.  
11 Oral argument is not permitted.

12           (3) *Response.* Unless the district court or BAP  
13 requests, no response to a motion for rehearing is  
14 permitted. But ordinarily, rehearing will not be granted in  
15 the absence of such a request.

16           (4) *Action by the District Court or BAP.* If a  
17 motion for rehearing is granted, the district court or BAP  
18 may do any of the following:

19                   (A) make a final disposition of the appeal  
20 without reargument;

21                   (B) restore the case to the calendar for  
22 reargument or resubmission; or

23 (C) issue any other appropriate order.

24 (b) FORM OF THE MOTION; LENGTH. The motion  
25 must comply in form with Rule 8013(f)(1) and (2). Copies must  
26 be served and filed as provided by Rule 8011. Unless the district  
27 court or BAP by local rule or order provides otherwise, a motion  
28 for rehearing must not exceed 15 pages.

#### **COMMITTEE NOTE**

This rule is derived from former Rule 8015 and F.R.App.P. 40. It deletes the provision of former Rule 8015 regarding the time for appeal to the court of appeals because the matter is addressed by F.R.App.P. 6(b)(2)(A).

### **Rule 8023. Voluntary Dismissal**

1           The clerk of the district court or BAP must dismiss an  
2           appeal if the parties file a signed dismissal agreement specifying  
3           how costs are to be paid and pay any fees that are due. An appeal  
4           may be dismissed on the appellant's motion on terms agreed to by  
5           the parties or fixed by the district court or BAP.

### **COMMITTEE NOTE**

This rule is derived from former Rule 8001(c) and F.R.App.P. 42. The provision of the former rule regarding dismissal of appeals in the bankruptcy court prior to docketing of the appeal has been deleted. Now that docketing occurs promptly after a notice of appeal is filed, *see* Rules 8003(d) and 8004(c), an appeal likely will not be voluntarily dismissed before docketing.

The rule retains the provision of the former rule that the district or BAP clerk must dismiss an appeal upon the parties' agreement. District courts and BAPs continue to have discretion to dismiss an appeal on an appellant's motion. Nothing in the rule prohibits a district court or BAP from dismissing an appeal for other reasons authorized by law, such as the failure to prosecute an appeal.

## Rule 8024. Clerk's Duties on Disposition of the Appeal

1           (a) JUDGMENT ON APPEAL. The district or BAP clerk  
2           must prepare, sign, and enter the judgment after receiving the  
3           court's opinion or, if there is no opinion, as the court instructs.  
4           Noting the judgment on the docket constitutes entry of judgment.

5           (b) NOTICE OF A JUDGMENT. Immediately upon the  
6           entry of a judgment, the district or BAP clerk must:

7                   (1) transmit a notice of the entry to each party to  
8                   the appeal, to the United States trustee, and to the  
9                   bankruptcy clerk, together with a copy of any opinion; and

10                   (2) note the date of the transmission on the docket.

11           (c) RETURNING ~~ORIGINAL DOCUMENTS~~PHYSICAL  
12           | ITEMS. If any ~~original documents~~physical items were transmitted  
13           as the record on appeal, they must be returned to the bankruptcy  
14           clerk on disposition of the appeal.

### COMMITTEE NOTE

This rule is derived from former Rule 8016, which was adapted from F.R.App.P. 36 and 45(c) and (d). The rule is reworded to reflect that  
| only items in the record ~~often will not be~~that are physically, as opposed to  
| electronically, transmitted to the district court or BAP ~~and thus there~~  
| will need to be ~~no documents to~~returned to the bankruptcy clerk. Other  
changes to the former rule are stylistic.

**Rule 8025. Stay of a District Court or BAP Judgment**

1 (a) AUTOMATIC STAY OF JUDGMENT ON APPEAL.

2 Unless the district court or BAP orders otherwise, its judgment is  
3 stayed for 14 days after entry.

4 (b) STAY PENDING APPEAL TO THE COURT OF  
5 APPEALS.

6 (1) *In General.* On a party's motion and notice to  
7 all other parties to the appeal, the district court or BAP may  
8 stay its judgment pending an appeal to the court of appeals.

9 (2) *Time Limit.* The stay must not exceed 30 days  
10 after the judgment is entered, except for cause shown.

11 (3) *Stay Continued.* If, before a stay expires, the  
12 party who obtained the stay appeals to the court of appeals,  
13 the stay continues until final disposition by the court of  
14 appeals.

15 (4) *Bond or Other Security.* A bond or other  
16 security may be required as a condition for granting or  
17 continuing a stay of the judgment. A bond or other security  
18 may be required if a trustee obtains a stay, but not if a stay  
19 is obtained by the United States or its officer or agency or  
20 at the direction of any department of the United States  
21 government.

22 (c) AUTOMATIC STAY OF AN ORDER, JUDGMENT,

23 OR DECREE OF A BANKRUPTCY COURT. If the district court  
24 or BAP enters a judgment affirming an order, judgment, or decree  
25 of the bankruptcy court, a stay of the district court's or BAP's  
26 judgment automatically stays the bankruptcy court's order,  
27 judgment, or decree for the duration of the appellate stay.

28 (d) POWER OF A COURT OF APPEALS NOT  
29 LIMITED. This rule does not limit the power of a court of appeals  
30 or any of its judges to do the following:

- 31 (1) stay a judgment pending appeal;
- 32 (2) stay proceedings while an appeal is pending;
- 33 (3) suspend, modify, restore, vacate, or grant a stay  
34 or an injunction while an appeal is pending; or
- 35 (4) issue any order appropriate to preserve the  
36 status quo or the effectiveness of any judgment to be  
37 entered.

#### COMMITTEE NOTE

This rule is derived from former Rule 8017. Most of the changes to the former rule are stylistic. Subdivision (c) is new. It provides that if a district court or BAP affirms the bankruptcy court ruling and the appellate judgment is stayed, the bankruptcy court's order, judgment, or decree that is affirmed on appeal is automatically stayed to the same extent as the stay of the appellate judgment.

**Rule 8026. Rules by Circuit Councils and District Courts;  
Procedure When There is No Controlling Law**

1           (a) LOCAL RULES BY CIRCUIT COUNCILS AND  
2 DISTRICT COURTS.

3                   (1) *Adopting Local Rules.* A circuit council that  
4 has authorized a BAP under 28 U.S.C. § 158(b) may make  
5 and amend rules governing the practice and procedure on  
6 appeal from a judgment, order, or decree of a bankruptcy  
7 court to the BAP. A district court may make and amend  
8 rules governing the practice and procedure on appeal from  
9 a judgment, order, or decree of a bankruptcy court to the  
10 district court. Local rules must be consistent with, but not  
11 duplicative of, Acts of Congress and these Part VIII rules.  
12 Rule 83 F.R.Civ.P. governs the procedure for making and  
13 amending rules to govern appeals.

14                   (2) *Numbering.* Local rules must conform to any  
15 uniform numbering system prescribed by the Judicial  
16 Conference of the United States.

17                   (3) *Limitation on Imposing Requirements of Form.*  
18 A local rule imposing a requirement of form must not be  
19 enforced in a way that causes a party to lose any right  
20 because of a nonwillful failure to comply.

21           (b) PROCEDURE WHEN THERE IS NO  
22 CONTROLLING LAW.

23                               (1) *In General.* A district court or BAP may  
24 regulate practice in any manner consistent with federal law,  
25 applicable federal rules, the Official Forms, and local rules.

26                               (2) *Limitation on Sanctions.* No sanction or other  
27 disadvantage may be imposed for noncompliance with any  
28 requirement not in federal law, applicable federal rules, the  
29 Official Forms, or local rules unless the alleged violator has  
30 been furnished in the particular case with actual notice of  
31 the requirement.

#### **COMMITTEE NOTE**

This rule is derived from former Rule 8018. The changes to the former rule are stylistic.



**Rule 8027. Notice of a Mediation Procedure**

1           If the district court or BAP has a mediation procedure  
2           applicable to bankruptcy appeals, the clerk must notify the parties  
3           promptly after docketing the appeal of:  
4           (a) the requirements of the mediation procedure; and  
5           (b) any effect the mediation procedure has on the time to  
6           file briefs.

**COMMITTEE NOTE**

This rule is new. It requires the district or BAP clerk to advise the parties promptly after an appeal is docketed of any court mediation procedure that is applicable to bankruptcy appeals. The notice must state what the mediation requirements are and how the procedure affects the time for filing briefs.

### **Rule 8028. Suspension of Rules in Part VIII**

1                   In the interest of expediting decision or for other cause in a  
2                   particular case, the district court or BAP, or where appropriate the  
3                   court of appeals, may suspend the requirements or provisions of  
4                   the rules in Part VIII, except Rules 8001, 8002, 8003, 8004, 8005,  
5                   8006, 8007, 8012, 8020, 8024, 8025, 8026, and 8028.

### **COMMITTEE NOTE**

This rule is derived from former Rule 8019 and F.R.App.P. 2. To promote uniformity of practice and compliance with statutory authority, the rule includes a more extensive list of requirements that may not be suspended than either the former rule or the Federal Rules of Appellate Procedure provide. Rules governing the following matters may not be suspended:

- scope of the rules; definition of “BAP”; method of transmission;
- time for filing a notice of appeal;
- taking an appeal as of right;
- taking an appeal by leave;
- election to have an appeal heard by a district court instead of a BAP;
- certification of direct appeal to a court of appeals;
- stay pending appeal;
- corporate disclosure statement;
- sanctions for frivolous appeals and other misconduct;
- clerk’s duties on disposition of an appeal;
- stay of a district court’s or BAP’s judgment;
- local rules; and
- suspension of the Part VIII rules.

# TAB 11

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# TAB 11.1

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## MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: ELIZABETH GIBSON, REPORTER  
RE: COMMENTS ON PROPOSED AMENDMENT OF RULE 1014(b)  
DATE: MARCH 22, 2013

Rule 1014(b) governs the procedure for determining where cases will proceed if petitions are filed in different districts by, against, or regarding the same debtor or related debtors. The rule provides that, upon motion, the court in which the first-filed petition is pending may determine—in the interest of justice or for the convenience of the parties—the district or districts in which the cases will proceed. Except as otherwise ordered by that court, proceedings in the cases in the other districts “shall be stayed by the courts in which they have been filed” until the first court makes its determination.

At the fall 2011 meeting, the Rules Committee voted to recommend for publication an amendment of Rule 1014(b) to provide that proceedings in subsequently filed cases are stayed only upon order of the court in which the first-filed petition is pending. It also approved some stylistic changes to the rule to provide greater clarity. The Committee reconsidered the amendment at the spring 2012 meeting and approved an additional amendment that expanded the list of persons entitled to receive notice of a motion in the first court for a determination of where the related cases should proceed. With that change, the Committee sent the amendment to the Standing Committee, which approved it for publication in August 2012. The published version of the rule amendment and its accompanying committee note are included at the end of this memorandum.

## Comments

Four sets of comments were submitted concerning the proposed amendment of Rule 1014(b). They raised issues about (1) whether the first court has authority to enjoin parties to cases in other courts; (2) whether the first court has the exclusive authority to determine the venue of the related cases; (3) who may seek a venue determination in the first court; and (4) whether the proposed rule would reduce inter-court cooperation. Some of the comments also suggested wording changes. The following is a summary of the comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – I do not understand how a judge has jurisdiction to enter orders affecting parties in a case pending in another district in front of a different judge.

12-BK-008—National Conference of Bankruptcy Judges – The NCBJ is concerned that the court hearing the first-filed case would lack jurisdiction to order parties in the other cases, some of whom may not be parties to the first-filed case, not to proceed further. The Committee Note does not explain the source of that power. In addition, the rule should make clearer who is to receive notice of the motion in the first-filed case. Change “with notice to the following entities in these cases: . . . .” to “with notice to the following entities: the United States trustee, entities entitled to notice under Rule 2002(a) in the affected cases, and other entities as the court directs.”

12-BK-010—States’ Association of Bankruptcy Attorneys – The rule as drafted may not achieve what was intended by the Committee. The rule does not expressly state that the court where the first petition is filed shall be the only one to determine the issue of where the cases should proceed. It is also not clear who can initiate such a determination or whether the court may or should do so sua sponte. While the Committee Note says that the court can order the



moving party to provide notice to parties in the other cases, the rule does not say so.

Furthermore, it is not clear that the moving party will always have that information. Finally, a time limit should be set for filing a motion for a determination in the first court since the stay is no longer automatic. Alternative wording of the rule is provided.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – The proposed change to Rule 1014(b) may create more problems than it solves. The current rule-mandated stay has generally worked well. Judges in the later-filed cases must stay the proceedings pending a venue decision by the first court. Under the proposed amendment, the later-filed cases can proceed unabated until the first court orders the later-filed cases to stop. Stays are less likely to occur (judges do not like telling other judges what to do), resulting in a greater chance of multiple, inconsistent orders being issued in the respective cases involving the same or related debtors. The current rule works well once the judges coordinate with each other, and the mandatory stay operates as an incentive for the judges to talk to each other. The Committee Note’s reference to disruption of other cases does not reflect my actual experience.

#### Discussion

In considering these comments, the Committee should keep in mind why the amendment of Rule 1014(b) was proposed. The Committee hoped to clarify what event triggers the stay of proceedings in the court in which a subsequent petition is filed. As stated by the Collier treatise, “The language of the rule is not completely clear regarding whether such a stay goes into effect immediately upon the filing of the second petition or only upon the filing of a motion to determine where the case should proceed.” 9 COLLIER ON BANKRUPTCY ¶ 1014.04 (16<sup>th</sup> ed. rev. 2011). Rather than selecting either the filing of a subsequent petition or the filing of a motion under the rule as the event that commences the stay, the Committee decided that an order by the

first court should be required. That requirement would eliminate any uncertainty about whether a stay was in effect. It would also permit a judicial determination—not just a party’s assertion—that the rule applied and that a stay of other proceedings was needed.

*Kressel and NCBJ comments on jurisdiction.* The comments questioning the authority of the first court to order parties to cases in other courts not to proceed further arise from the unusual nature of this rule—in its current form as well as in the proposed amended version. As the Committee has discussed, it is a rare venue provision in that it allows a court to order a change of venue of cases pending in other courts. The accompanying stay provision is intended to prevent the entry of inconsistent orders while the venue situation is resolved by the first court.

The proposed amendment both clarifies and narrows the scope of the stay provision. The current rule applies a blanket rule that all the later-filed cases are stayed while the first court makes the venue determination. The amended rule would limit the stay to situations in which the first court finds that the rule in fact applies and that a stay is needed. Bankruptcy courts have long been held to have jurisdiction to issue stays to protect the estate being administered, including stays to protect the individuals managing the estate. *Ex parte Christy*, 44 U.S. 292, 318 (1845) (recognizing the power of a court presiding over a bankruptcy case to issue stays of other proceedings); *Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995) (enforcing a bankruptcy court’s injunction preventing judgment creditors from proceeding against sureties). Consistent with this authority, the legitimacy of the existing rule’s stay authority has not been questioned. An amendment that reduces the scope of that authority would be equally valid.

*NCBJ comment about recipients of notice.* The NCBJ suggests that the sentence about notice should be modified as follows: “The court may so determine on motion and after a hearing, with notice to the following entities ~~in these cases~~: the United States trustee, entities entitled to

notice under Rule 2002(a) in the affected cases, and other entities as the court directs.” The suggested language may be an improvement, but I believe the proposed placement of that phrase is incorrect. The phrase should just be substituted for “these cases,” so that all of those entitled to receive notice, including the U.S. trustee and other entities as the court directs, would be participants in the affected cases.

*SABA comments.* Contrary to SABA’s comments, I believe that the rule, by giving authority only to the first court to determine where the cases should proceed, does indicate that the first court has exclusive authority. That is how the current rule has been interpreted, and the proposed amendments do not provide a basis for reaching a different conclusion.

The amended rule also follows the existing rule in requiring a motion for a determination, but in not specifying who can make the motion. Although the current wording has not caused problems, it does differ from the wording of Rule 1014(a)(1) and (2), which both say, “on the timely motion of a party in interest or on its own motion.” That difference in wording may have been intentional, however. Because a party to a case in another court might make the motion, “party in interest” might have been thought to be too limiting, and the failure to refer to the court’s own motion suggests that the court may not act sua sponte. The original Committee Note explained that the court in which the first petition is filed may “entertain a motion seeking a determination . . . .”

In proposing the amendment, the Committee decided to follow the current rule of requiring notice and a hearing without specifying who must provide the notice. The Committee Note suggests that the clerk of the court making the determination will provide notice, unless the court orders the moving party to do so. I believe that is satisfactory.

Finally, I do not recommend imposing a time limit for a making a motion for a venue determination in the first court. Although the current rule imposes an automatic stay, under the majority interpretation it does not take effect until a motion is made, and there is no time limit for making the motion. The amended rule, therefore, does not create a new problem.

*Klein comments.* Judge Klein's comments are based on his experience with the existing rule, which he believes has worked well, and his concern that the proposed amended rule will reduce cooperation among the judges presiding over the related cases. The lack of clarity about when the stay goes into effect provides a reason for amending the rule, as well as the existence of reported cases in which courts and parties were unaware for some time that their cases had been stayed by operation of the rule. I see no reason why courts that are willing to cooperate under the existing rule will be less inclined to do so under the amended version. If Judge Klein is correct that judges are reluctant to tell other judges what to do, the judge in the first court may be more inclined to discuss the situation with the judges presiding over the related cases before deciding whether a stay is needed.

## Rule 1014. Dismissal and Change of Venue

\* \* \* \* \*

1  
2 (b) PROCEDURE WHEN PETITIONS INVOLVING  
3 THE SAME OR RELATED DEBTORS ARE FILED IN  
4 DIFFERENT COURTS. If petitions commencing cases under the  
5 Code or seeking recognition under chapter 15 are filed in different  
6 districts by, regarding, or against (1) the same debtor, (2) a  
7 partnership and one or more of its general partners, (3) two or  
8 more general partners, or (4) a debtor and an affiliate, ~~on motion~~  
9 ~~filed~~ the court in the district in which the first-filed petition ~~filed~~  
10 ~~first is pending and after hearing on notice to the petitioners, the~~  
11 ~~United States trustee, and other entities as directed by the court,~~  
12 ~~the court~~ may determine, in the interest of justice or for the  
13 convenience of the parties, the district or districts in which ~~the case~~  
14 ~~or any of the cases~~ should proceed. The court may so determine  
15 on motion and after a hearing, with notice to the following entities  
16 in these cases: the United States trustee, entities entitled to notice  
17 under Rule 2002(a), and other entities as the court directs. Except  
18 ~~as otherwise ordered by t~~The court in the district in which the  
19 ~~petition filed first is pending,~~ may order the parties to the later-  
20 filed cases not to proceed further ~~the proceedings on the other~~  
21 ~~petitions shall be stayed by the courts in which they have been~~  
22 ~~filed until~~ it makes the determination is ~~made~~.

## COMMITTEE NOTE

Subdivision (b) provides a practical solution for resolving venue issues when related cases are filed in different districts. It designates the court in which the first-filed petition is pending as the decision maker if a party seeks a determination of where the related cases should proceed. Subdivision (b) is amended to clarify when proceedings in the subsequently filed cases are stayed. It requires an order of the court in which the first-filed petition is pending to stay proceedings in the related cases. Requiring a court order to trigger the stay will prevent the disruption of other cases unless there is a judicial determination that this subdivision of the rule applies and that a stay of related cases is needed while the court makes its venue determination.

Notice of the hearing must be given to all debtors, trustees, creditors, indenture trustees, and United States trustees in the affected cases, as well as any other entity that the court directs. Because the clerk of the court that makes the determination often may lack access to the names and addresses of entities in other cases, a court may order the moving party to provide notice.

The other changes to subdivision (b) are stylistic.