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OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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MEMORANDUM

TO: Hon. David G. Campbell, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Sandra Segal Ikuta, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 22, 2017

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Nashville, Tennessee, on April 6, 2017. The draft minutes of that meeting are attached.

At the meeting the Committee considered comments that were submitted in response to the publication in August 2016 of one proposed new rule and proposed amendments to ten existing rules, as well as amendments to seven Official Forms and a new appendix. The majority of these rule and form amendments were proposed to conform to recent and proposed amendments to the civil and appellate rules and forms. After making some changes in response to comments, the Committee gave final approval to all but one of the published rules and to the published forms.

The Committee also approved conforming amendments to six rules that had not been published for comment. These amendments track the wording of proposed amendments to the civil and appellate rules regarding electronic filing, service, and signatures and the posting of security for stays of judgment.

The Committee considered new suggestions for rule amendments and voted to seek the publication of proposed amendments to five rules and an Official Form this summer.

Finally, following the spring meeting, the Committee voted by an email poll to approve without publication amendments to three Official Forms to conform to an amendment to Rule 3015 that was recently adopted by the Supreme Court and is scheduled to take effect on December 1, 2017.

The action items presented by the Committee are discussed below in Part II, organized as follows:

A. Items for Final Approval

(A1) Rules and Official Forms published for comment in August 2016—

- Rule 3002.1(b) and (e);
- Rule 5005(a)(2);
- Rules 8002(b) and (c), 8011(a)(2)(C), 8013, 8015, 8016, 8017, 8022, Official Forms 417A and 417C, and new Part VIII Appendix;
- Rules 8002(a), 8006, and new Rule 8018.1;
- Official Form 309F;
- Official Forms 25A, 25B, 25C, and 26; and

(A2) Conforming changes proposed without publication—

- Rule 8011(a), (c), (d), and (e);
- Rules 7062, 8007, 8010, 8021, and 9025;
- Official Forms 309G, 309H, and 309I.

B. Items for Publication

- Rule 4001(c)
- Rules 2002(g) and 9036 and Official Form 410;
- Rule 6007(b);
- Rule 9037(h).

Part III of this report consists of two information items regarding (i) the Committee's intent to seek the publication of amendments to Rule 2002(f)(7) and (h) in 2018, and (ii) the Committee's decision to reconsider a proposed amendment to Rule 8023 that was published for comment in 2016.

II. Action Items

A. Items for Final Approval

A1. Rules published for comment in August 2016.

The Committee recommends that the Standing Committee approve and transmit to the Judicial Conference the proposed rule amendments that were published for public comment in August 2016 and are discussed below. Bankruptcy Appendix A includes the rules and forms that are in this group.

Action Item 1. Rule 3002.1(b) and (e) (Notice Relating to Claims Secured by a Security Interest in the Debtor’s Principal Residence). This rule applies with respect to home mortgage claims in chapter 13 cases. It imposes noticing requirements on the creditor in order to enable the debtor or trustee to make mortgage payments in the correct amount while the bankruptcy case is pending. The published amendments to subdivisions (b) and (e) do three things: they (i) create flexibility regarding a notice of payment change for home equity lines of credit; (ii) create a procedure for objecting to a notice of payment change; and (iii) expand the category of parties who can seek a determination of fees, expenses, and charges that are owed at the end of the case.

Three comments were submitted in response to the publication. They were submitted by Aderant CompuLaw (BK-2016-0003-0006); the National Conference of Bankruptcy Judges (“NCBJ”) (BK-2016-0003-0007); and the Pennsylvania Bar Association (BK-2016-0003-0008). The Bar Association stated that it supports adoption of the amendments to Rule 3002.1(b) and (e). The other two commenters expressed support for these amendments but made some wording suggestions.

The NCBJ comment made stylistic suggestions, in response to which the Committee divided subdivision (b) into two paragraphs with separate captions and changed the word “that” to “who” in the first sentence of (b)(2).

Aderant noted the impact of Rule 9006(f) on the timing provisions of the proposed amendment to subdivision (b). It pointed out that if a notice of a payment change is served by mail, Rule 9006(f) would give an objector three extra days to file a motion that would keep the change from going into effect. As a result, a timely objection could be filed on or after the effective date of the payment change. For example, if the notice were served by mail 21 days before the payment due date, under the rule an objector would have 24 days to file its motion, thereby permitting a motion designed to stop the change to be filed three days after the change went into effect. Aderant suggested that to avoid this confusion, the rule should require a motion that would stop the payment change from taking effect to be filed “by the day prior to the date

the new amount is due.” The Committee made revisions, using slightly different language, in response to this suggestion.

With those changes and additional ones suggested by the style consultants, the Committee unanimously approved the amendments to Rule 3002.1(b) and (e).

Action Item 2. Rule 5005(a)(2) (Electronic Filing and Signing). Rule 5005(a)(2) governs the filing of documents electronically in federal bankruptcy cases. Consistent with the Standing Committee’s suggestion that the advisory committees work collaboratively on electronic filing and service issues, the Committee worked with the Civil, Criminal, and Appellate Advisory Committees on matters relating to Rule 5005(a)(2). Bankruptcy Rule 7005 makes Civil Rule 5 applicable in adversary proceedings. Therefore, an amendment to Civil Rule 5(d)(3) automatically applies in adversary proceedings unless Rule 7005 is amended to provide otherwise. The Bankruptcy Rules, however, also address electronic filing in Rule 5005(a)(2). That rule largely tracks the language of current Civil Rule 5(d)(3). Because Rule 7005 incorporates any amendments to Civil Rule 5(d)(3), and Rule 5005(a)(2) should be consistent with Rule 7005, the Committee proposed amending Rule 5005(a)(2) in a similar manner.

The amendments to Rule 5005(a)(2) that were published for public comment in August 2016 were consistent, to the greatest extent possible, with the proposed amendments to Civil Rule 5(d)(3). The variations between the proposed amendments to Rule 5005(a)(2) and Civil Rule 5(d)(3) relate primarily to different terminology used by the Bankruptcy Rules and the Bankruptcy Code.¹

The Committee received six public comments on the proposed amendments to Rule 5005(a)(2). Notably, the majority of these comments concerned the language of Rule 5005(a)(2)(C), which, as published, read:

(C) *Signing.* The user name and password of an attorney of record, together with the attorney’s name on a signature block, serves as the attorney’s signature.²

¹ The civil rule uses the term “person,” which under § 101(41) of the Bankruptcy Code includes an “individual, partnership, and corporation.” Because only human beings may proceed without an attorney, the proposed bankruptcy rule uses the term “individual” rather than “person.” Where the civil rule refers to “a person proceeding with an attorney,” the bankruptcy rule uses the term “entity,” which under § 101(15) of the Bankruptcy Code includes estates, trusts, governmental units, and United States trustees, as well as persons.

² Comments addressing the signature provision were submitted by Carolyn Buffington (BK-2016-0003-0005), NCBJ (BK-2016-0003-0007), the Pennsylvania Bar Association (BK-2016-0003-0008), Heather Dixon (BK-2016-0003-0010), and the New York City Bar Association (BK-2016-0003-0011).

Several comments suggested that this language is confusing and does not clearly state who can file the document, who can sign the document, or the information required on the signature block. The other advisory committees received similar comments on their proposed amendments akin to the language of Rule 5005(a)(2)(C). In addition, our Committee received one comment (also submitted to the other advisory committees) from an individual named Sai (BK-2016-0003-0012) who opposed the default rule that pro se parties cannot file electronically. We received another comment—from the New York City Bar Association—that requested that the following language, which appears in the Committee Note to the proposed amendments to Civil Rule 5, be added to the Committee Note to Rule 5005(a)(2):

Care should be taken to ensure that an order to file electronically does not impede access to the court, and reasonable exceptions must be included in a local rule that requires electronic filing by a pro se litigant.

At the spring meeting, the Committee considered all of these comments and a suggested revision to Rule 5005(a)(2)(C) that the reporters to the various advisory committees had discussed and that the other committees would consider at their spring meetings. The Committee voted unanimously to approve the following language for the provision:

(C) *Signing.* A filing made through a person’s electronic-filing account, together with the person’s name on a signature block, constitutes the person’s signature.

The Committee decided against inserting the word “authorized” before the word “filing” (a change adopted by some of the other advisory committees) because Rule 5005(a)(2)(C) does not indicate who would authorize the filing or how the authorization would be accomplished. Rather than introduce such ambiguity into this provision, the Committee decided to revise the Committee Note to indicate that the filing must comply with court rules, which may specify when someone may file a document electronically using someone else’s CM/ECF credentials. The following language was approved for inclusion in the Committee Note:

A filing made through a person’s electronic-filing account, together with the person’s name on a signature block, constitutes the person’s signature. A person’s electronic-filing account means an account established by the court for use of the court’s electronic-filing system, which account the person accesses with the user name and password (or other credentials) issued to that person by the court. The filing also must comply with the rules of the court governing electronic filing.

The Committee also accepted the New York City Bar Association’s suggestion that the Committee Note include the language from the civil rule’s Committee Note about ensuring access to courts.

Along with the other advisory committees, our Committee chose not to adopt a default rule permitting electronic filing by pro se litigants. In reaching this conclusion, the Committee examined other potential default rules, including one that would mandate electronic filing by pro se litigants and one that would allow pro se litigants to elect to file either electronically or manually, both subject to certain exceptions and qualifications. It decided that, on balance, it was preferable to maintain the proposed language of the electronic filing and service rules, which would allow a pro se party to request permission to file electronically and allow courts to adopt a local rule that mandated electronic filing by pro se parties, provided that such rule included reasonable exceptions.

Action Item 3. Proposed amendments to the bankruptcy appellate rules and forms to conform to recent and proposed amendments to the Federal Rules of Appellate Procedure (“FRAP”). Part VIII of the Bankruptcy Rules (Appeals) was completely revised in 2014 to conform as closely as possible to parallel FRAP provisions. Rather than incorporating FRAP provisions by reference, the Part VIII rules largely track the language of FRAP.

A large set of FRAP amendments went into effect on December 1, 2016. With one exception, the Part VIII amendments included in this action item were proposed to bring the Bankruptcy Rules into conformity with the relevant FRAP provisions that were amended. One other amendment, discussed below, was proposed to conform to a parallel FRAP provision that was also published for comment last summer.

Three comments were submitted in response to the publication of these rules, forms, and appendix. One commenter—the NCBJ—stated that it supports all of the published bankruptcy appellate rules (BK-2016-0003-0007). It did not comment on the forms or appendix. The other two comments were submitted by the Pennsylvania Bar Association (BK-2016-0003-0008) and attorney Heather Dixon (BK-2016-0003-0009). The Bar Association expressed support for all of the published appellate rules, form, and appendix, except as noted below. Ms. Dixon proposed alternative language for Rule 8017.

The Committee unanimously approved all of these rules, forms, and appendix as published.

A. Rules 8002(c), 8011(a)(2)(C), and Official Form 417A (inmate filing provisions). Bankruptcy Rules 8002(c) (Time for Filing Notice of Appeal) and 8011(a)(2)(C) (Filing and Service; Signature) include inmate-filing provisions that are virtually identical to the former provisions of Appellate Rules 4(c) and 25(a)(2)(C). These rules treat notices of appeal and other papers as timely filed by such inmates if the documents are deposited in the

institution's internal mail system on or before the last day for filing and several other specified requirements are satisfied. The 2016 FRAP amendments were made to clarify certain issues that have produced conflicts in the case law. They (1) make clear that prepayment of postage is required for an inmate to benefit from the inmate-filing provisions; (2) clarify that a document is timely filed if it is accompanied by evidence—a declaration, notarized statement, or other evidence such as postmark and date stamp—showing that the document was deposited on or before the due date and that postage was prepaid; and (3) clarify that if sufficient evidence does not accompany the initial filing, the court of appeals has discretion to permit the later filing of a declaration or notarized statement to establish timely deposit. The Committee's proposed amendments to Rules 8002(c) and 8011(a)(2)(C) track these changes.

To implement the FRAP amendments, a new appellate form was adopted to provide a suggested form for an inmate declaration under Rules 4 and 25. For bankruptcy appeals, the Committee has recommended that a similar form—Director's Form 4170 (Inmate Filer's Declaration)—be adopted for that purpose. As a Director's Form rather than an Official Form, its use would not be mandatory, just as will be true for Appellate Form 7. In addition, the Committee published an amendment to Official Form 417A (Notice of Appeal and Statement of Election), similar to the amendment to Appellate Forms 1 and 5, that will alert inmate filers to the existence of Director's Form 4170.

No comments were submitted that specifically addressed these proposed amendments.

B. Rule 8002(b) (timeliness of tolling motions). Rule 8002(b) and its counterpart, Appellate Rule 4(a)(4), set out a list of postjudgment motions that toll the time for filing an appeal. Prior to amendment, the appellate rule provided that the motion must be “timely file[d]” in order to have a tolling effect. The 2016 amendment to Rule 4(a)(4) resolved a circuit split on the question whether a tolling motion filed outside the time period specified by the relevant rule, but nevertheless ruled on by the district court, is timely filed for purposes of Rule 4(a)(4). Adopting the majority view on this issue, the amendment added an explicit requirement that the motion must be filed within the time period specified by the rule under which it is made in order to have a tolling effect for the purpose of determining the deadline for filing a notice of appeal. A similar amendment to Rule 8002(b) was published in August 2016, and no comments were submitted specifically addressing this provision.

C. Rules 8013, 8015, 8016, 8022, Official Form 417C, and Part VIII Appendix (length limits). The 2016 amendments to Appellate Rules 5, 21, 27, 35, and 40 converted the existing page limits to word limits for documents prepared using a computer. For documents prepared without the aid of a computer, the page limits set out in those rules were retained. The amendments employed a conversion ratio of 260 words per page. The previous ratio was 280 words per page.

The FRAP amendments also reduced the word limits of Rule 32 for briefs to reflect the 260 words-per-page ratio. The 14,000-word limit for a party's principal brief became a 13,000-word limit; the limit for a reply brief changed from 7,000 to 6,500 words. The 2016 amendments correspondingly reduced the word limits set by Rule 28.1 for cross-appeals.

Rule 32(f) sets out a uniform list of the items that can be excluded when computing a document's length. The local variation provision of Rule 32(e) highlights a court's authority (by order or local rule) to set length limits that exceed those in FRAP. Appellate Form 6 (Certificate of Compliance with Rule 32(a)) was amended to reflect the changed length limits. Finally, a new appendix was adopted that collects all the FRAP length limits in one chart.

The Committee proposed parallel amendments to Rules 8013(f) (Motions), 8015(a)(7) and (f) (Form and Length of Briefs), 8016(d) (Cross-Appeals), and 8022(b) (Motion for Rehearing), along with Official Form 417C (Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)). In addition, it proposed an appendix to Part VIII, which is similar to the FRAP appendix.

In response to publication, no comments were submitted that specifically addressed the amendments to these provisions or to the appendix.

D. Rule 8017 (amicus filings). Rule 8017 is the bankruptcy counterpart to Appellate Rule 29. The recent amendment to Rule 29 provides a default rule concerning the timing and length of amicus briefs filed in connection with petitions for panel rehearing or rehearing en banc. The rule previously did not address the topic; it was limited to amicus briefs filed in connection with the original hearing of an appeal. The 2016 amendment does not require courts to accept amicus briefs regarding rehearing, but it provides guidelines for such briefs that are permitted.

Our Committee proposed a parallel amendment to Rule 8017. The proposed amendment designates the existing rule as subdivision (a) and governs amicus briefs during a court's initial consideration of a case on the merits. It adds a new subdivision (b), which governs amicus briefs when a district court or bankruptcy appellate panel (BAP) considers whether to grant rehearing. The latter subdivision could be overridden by a local rule or order in a case.

In August 2016 the Appellate Rules Advisory Committee published another amendment to Appellate Rule 29(a). It would authorize a court of appeals to prohibit or strike the filing of an amicus brief to which the parties consented if the filing would result in the disqualification of a judge. Our Committee proposed and published a similar amendment to Rule 8017 in order to maintain consistency between the two sets of rules.

In response to publication, two comments were submitted that addressed the proposed amendment to Rule 8017(a) regarding the striking of amicus briefs to avoid a judge's

disqualification. Both the Pennsylvania Bar Association and attorney Heather Dixon incorporated comments that they had submitted in response to publication of the parallel amendments to Appellate Rule 29. The Bar Association stated that it opposed this amendment in both sets of rules because amicus briefs are usually filed before an appeal is assigned to a panel of judges and thus the amicus and its counsel would have no way of knowing whether recusal would later be required. The Association suggested that under those circumstances the better course would be for the judge to recuse. Striking of the amicus brief might be appropriate, the Association commented, if it appeared that the brief was filed for the purpose of obtaining a recusal, but the proposed provision is not so limited. The Association further stated that when an amicus retains counsel for the purpose of prompting a recusal of a judge, the lawyer could be disqualified instead.

Ms. Dixon expressed opposition to the wording of the Appellate Rule 29/Bankruptcy Rule 8017 amendments as published. She proposed a revision of Rule 29(a) and (b) that would eliminate the filing of amicus briefs with the consent of all parties, would not require the amicus brief to accompany a motion for leave to file, and would specify the circumstances under which it would be permissible to file an amicus brief that would cause a judge's recusal.

The Committee voted unanimously to approve Rule 8017 as published, subject to reconsideration if the Appellate Rules Committee concluded that changes to the Appellate Rule 29(a) amendment should be made.³ The Committee concluded that Ms. Dixon's proposal represented a more fundamental change in the rule than either advisory committee had in mind when it proposed an amendment to address the narrow situation of authorizing the denial of amicus participation, despite the consent of all parties, when recusal would otherwise result. As for the Pennsylvania Bar Association's concern about the potential unfairness of striking amicus briefs, members noted that, because the proposed rule is permissive, an appellate court could weigh competing considerations in deciding whether recusal, lawyer disqualification, or striking the brief would be appropriate in a particular case.

Action Item 4. **Additional amendments to the bankruptcy appellate rules.** In addition to the conforming amendments to Part VIII rules discussed in the previous action item, three additional bankruptcy appellate rule amendments and a new bankruptcy appellate rule were published last summer in response to a suggestion and comments that the Committee had received.

In response to publication, no comments were submitted specifically addressing these amendments. Following discussion of them at the spring meeting, the Committee voted unanimously to seek final approval of all of them as published, except for Rule 8023, which was

³ The Committee was subsequently informed that the Appellate Rules Committee voted not to make any changes to its proposed amendment in response to the comments. It did, however, make some stylistic changes and added to subdivision (b), in addition to (a), the proposed provision regarding amicus briefs that may cause a judge's disqualification. Our Committee made similar changes.

sent back to a subcommittee for further consideration. Rule 8023 is discussed as an information item in Part III of this report.

A. Rule 8002(a) (separate document requirement). In response to the August 2012 publication of the proposed revision of the Part VIII rules, Judge Christopher M. Klein (Bankr. E.D. Cal.), commented that it would be useful for Rule 8002 to have a provision similar to Appellate Rule 4(a)(7), which addresses when a judgment or order is entered for purposes of Rule 4(a). He noted that the provision would help clarify timing issues presented by the separate-document requirement.

Appellate Rule 4(a)(7) specifies when a judgment or order is entered for purposes of Rule 4(a) (Appeal in a Civil Case). It provides that, if Civil Rule 58(a) does not require a separate document, the judgment or order is entered when it is entered in the civil docket under Civil Rule 79(a). If Rule 58(a) does require a separate document, the judgment or order is entered when it is entered in the civil docket and either (1) the judgment or order is set forth on a separate document, or (2) 150 days have run from the entry in the civil docket, whichever occurs first. The rule was amended in 2002 to resolve several circuit splits that arose out of uncertainties about how Rule 4(a)(7)'s definition of when a judgment or order is “entered” interacted with the requirement in Civil Rule 58 that, to be “effective,” a judgment must be set forth on a separate document.

The Bankruptcy Rules have adopted Civil Rule 58 and its separate document requirement only for adversary proceedings. Rule 7058 was added in 2009, making Civil Rule 58 applicable in adversary proceedings. At the same time, Rule 9021 was amended to provide that a “judgment or order is effective when entered under Rule 5003 [Records Kept by the Clerk].” The latter rule applies to contested matters and does not require a separate document.

The Committee concluded that the rules specifying when a separate document is required and the impact of the requirement on the date of entry of the judgment are sufficiently confusing that, as suggested by Judge Klein, Rule 8002 would likely be improved by adding a provision similar to Appellate Rule 4(a)(7). The proposed amendment adds a new subdivision (a)(5) defining entry of judgment. As proposed for amendment, it would clarify that the time for filing a notice of appeal under subdivision (a) begins to run upon docket entry in contested matters and adversary proceedings for which Rule 58 does not require a separate document. In adversary proceedings for which Rule 58 does require a separate document, the time commences when the judgment, order, or decree is entered in the civil docket and (1) it is set forth on a separate document, or (2) 150 days have run from the entry in the civil docket, whichever occurs first.

B. Rule 8006(c) (court statement on merits of certification). The Committee published another amendment suggested by Judge Klein in response to the 2012 publication of the Part VIII amendments. Under 28 U.S.C. § 158(d)(2)(A), which is implemented by revised Rule 8006(c), all appellants and all appellees, acting jointly, may certify a proceeding for direct

appeal to the court of appeals without any action being taken by the bankruptcy court, district court, or BAP. Judge Klein suggested that a provision be added to Rule 8006(c) that would be a counterpart to Rule 8006(e)(2). The latter provision authorizes a party to file a short supplemental statement regarding the merits of certification within 14 days after the court certifies a case for direct appeal on its own motion. Judge Klein suggested that the bankruptcy court should have a similar opportunity to comment when the parties certify the appeal.

At the fall 2013 meeting, the Committee concluded that the court of appeals would likely benefit from the court's statement about whether the appeal satisfies one of the grounds for certification. The Committee decided, however, that authorization should not be limited to the bankruptcy court. Because under Rule 8006(b) the matter might be deemed to be pending in the district court or BAP at the time or shortly after the parties file the certification, those courts should also be authorized to file a statement with respect to appeals pending before them. The authorization would be permissive, however, so a court would not be required to file a statement. A new subdivision (c)(2) would authorize such supplemental statements by the court.

C. New Rule 8018.1 (district court review of a judgment that the bankruptcy court lacked constitutional authority to enter). The proposed rule would authorize a district court to treat a bankruptcy court's judgment as proposed findings of fact and conclusions of law if the district court determined that the bankruptcy court lacked constitutional authority to enter a final judgment. This procedure is consistent with the Supreme Court's decision in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014).

In response to *Stern v. Marshall*, 564 U.S. 462 (2011), Professor Alan Resnick submitted Suggestion 12-BK-H, which proposed a rule amendment to address the situation in which an appeal is taken from a bankruptcy court judgment and the district court decides that the proceeding is one in which the bankruptcy court lacked constitutional authority to enter a final judgment. Adopting a procedure that some districts have authorized by local rule, the proposed rule would allow the district court to review the judgment as if the bankruptcy court had treated the proceeding as non-core under 28 U.S.C. § 157(c)(1).⁴ This procedure would eliminate the need for a remand to the bankruptcy court for the entry of proposed findings and conclusions.

In *Arkison* the Supreme Court held that *Stern* claims can be treated as non-core under § 157(c)(1). The Court explained that "because these *Stern* claims fit comfortably within the category of claims governed by § 157(c)(1), the Bankruptcy Court would have been permitted to

⁴ Section 157(c)(1) provides as follows:

A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such a proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

follow the procedures required by that provision, *i.e.*, to submit proposed findings of fact and conclusions of law to the District Court to be reviewed *de novo*.” While the case before the Court “did not proceed in precisely that fashion,” the Court nevertheless affirmed. *Id.* at 2174. It concluded that the petitioner had received the equivalent of the review it was entitled to—*de novo* review—because the district court had reviewed the bankruptcy court’s entry of summary judgment *de novo* and had “conclude[ed] in a written opinion that there were no disputed issues of material fact and that the trustee was entitled to judgment as a matter of law.” *Id.* at 2174.

The decision made clear that *Stern* claims do not fall within a statutory gap of being neither core nor non-core. Instead, once identified as *Stern* claims, they can be treated under the statutory provisions for non-core claims, as the proposed rule authorizes. Moreover, *Arkison* shows the Court’s acceptance of a pragmatic approach to dealing with errors in the handling of *Stern* claims. Rather than reversing and remanding for the bankruptcy court to handle the proceeding as a non-core matter, it accepted the district court’s review as being tantamount to review of a non-core proceeding. *See also Stern*, 564 U.S. at 471-72 (noting without criticism that “[b]ecause the District Court concluded that Vickie’s counterclaim was not core, the court determined that it was required to treat the Bankruptcy Court’s judgment as ‘proposed[,] rather than final,’ and engage in an ‘independent review’ of the record”).

The Committee discussed at the spring 2016 meeting whether to include provisions in the rule regarding the time for filing objections and responses to the bankruptcy court’s proposed findings and conclusions and addressing whether parties could choose to rely on their appellate briefs instead. In the end, the Committee was persuaded by district judge members that the rule does not need to spell out procedural details for the conduct of the proceeding once the judge determines that the bankruptcy court judgment should be treated as proposed findings of fact and conclusions of law. The complexity of cases addressed by this rule will vary, and the rule should allow flexibility for the conduct of each case. The district judge, in consultation with the parties, can decide in a given case whether the appellate briefs suffice to present the issues for which *de novo* review is sought or whether they should be supplemented with specific objections and responses.

Action Item 5. Official Form 309F (Notice of Chapter 11 Bankruptcy Case—For Corporations or Partnerships). In August 2016, an amendment to Official Form 309F was published for public comment. The proposed amendment would change the instruction on the form concerning the deadline in a chapter 11 case for seeking an exception to the discharge of a debt owed by a corporate or partnership debtor. The amendment was proposed in response to recent case law that raises questions about whether the current instruction reflects an accurate interpretation of § 1141(d)(6)(A) of the Bankruptcy Code. Specifically, it is unclear whether a creditor seeking to have its debt excepted from discharge under that provision must take action pursuant to § 523(c) in the bankruptcy case and, if § 523(c) does apply, whether it applies to the “persons” referred to in § 1141(d)(6)(A) or only to domestic governmental units.

In recognition of ambiguities in the wording of § 1141(d)(6)(A), the amendment would revise line 8 of the form as follows:

If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below if you want to have a debt excepted from discharge under 11 U.S.C. § 1141(d)(6)(A).

Two comments were submitted in response to the publication of this amendment. One was from the Pennsylvania Bar Association (BK-2016-0003-0008). It supported adoption of the amendment.

The other comment was submitted by Judge Laurel Isicoff (Bankr. S.D. Fla.) (BK-2016-0003-0003). She stated that because no amendment to line 11 of the form was being proposed, “using different language [in lines 8 and 11] creates confusion for the recipient of the notice, who might believe that the deadline in paragraph 8 does not apply to the complaint referred to in paragraph 11.” Line 11 of the form currently provides as follows:

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge under 11 U.S.C. § 1141(d)(6)(A), you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk’s office by the deadline.

Line 8 of Form 309F, which was proposed for amendment, addresses “Exception to discharge deadline,” whereas line 11 addresses “Discharge of debts.” In proposing the amendment to line 8, the Committee overlooked the overlapping language in line 11. As a result, the form continues to make a statement (“you must start a judicial proceeding . . . by the deadline”) that is an incorrect statement of the law under some interpretations of § 1141(d)(6)(A).

The Committee voted unanimously to amend the last sentence of line 11 in a manner similar to the amendment to line 8:

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the

discharge ~~under 11 U.S.C. § 1141(d)(6)(A)~~ and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.

It also voted to revise the Committee Note to reflect this additional amendment.

Action Item 6. Official Forms 25A, 25B, 25C, 26 (Small Business Debtor Forms and Periodic Report Regarding Value, Operations, and Profitability). When engaged in the Committee's Forms Modernization Project that began in 2008, the Committee deferred consideration of certain forms relating to chapter 11 cases—specifically, Forms 25A, B, and C, and Form 26. After reviewing each of these forms extensively and revising and renumbering them, the Committee obtained approval to publish the proposed forms in August 2016.

The small business debtor forms—Forms 25A, 25B, and 25C—are renumbered as Official Forms 425A, 425B, and 425C. Official Forms 425A and 425B set forth an illustrative form plan of reorganization and disclosure statement, respectively, for small business debtors under chapter 11 of the Bankruptcy Code. Official Form 425C is the monthly operating report for small business debtors, which must be filed with the court and served on the U.S. Trustee under § 1107(a) of the Bankruptcy Code (which incorporates, among other things § 704(a)(8)). The revised forms incorporate stylistic and formatting changes to conform to the general structure of the modernized forms. The Committee believes that these changes make all three forms easier to read and use.

In addition, in reviewing the forms, the Committee identified several places where Official Forms 25A and 25B were inconsistent with the Bankruptcy Code or required additional information to provide a full explanation of the debtor's disclosure obligations. The Committee made the necessary changes, along with parallel changes to the Committee Notes. The Committee Notes also explicitly state that the plan of reorganization and the disclosure statement set forth in each form are sample documents and are not required forms in small business cases.

The Committee's working group sought and received significant input from the Executive Office for U.S. Trustees on Official Form 425C, which is the monthly operating report that small business debtors must file with the court and serve on the U.S. Trustee. As explained in the Committee Note to Official Form 425C, the form is rearranged to eliminate duplicative sections and to further explain the kinds of information required by the form. It also clarifies that the person completing the form on behalf of the debtor must answer all questions, unless otherwise provided, and it provides a checkbox to indicate if the report is an amended filing.

Form 26 (renumbered as Official Form 426) requires periodic disclosures by chapter 11 debtors concerning the value, operations, and profitability of entities in which they hold a substantial or controlling interest. In reviewing Form 26, the Committee determined that certain changes would help to clarify the information requested by the form. These changes involve

better defining the nondebtor entities for which a debtor must provide information, as well as modifying the exhibits that describe the kinds of information that a debtor must disclose. The Committee Note to Official Form 426 explains the scope of each exhibit and the justifications for the kinds of information requested by each exhibit.

The modified exhibits to Official Form 426 eliminate the requirement that the debtor provide a valuation estimate for the nondebtor entity. In lieu of a valuation, the modified exhibits focus on the information required by existing Exhibit B (retitled as Exhibit A)—i.e., the nondebtor entity's most recent balance sheet, income statement, cash flow statement, and statement of changes in shareholders' or partners' equity (and a summary of the footnotes to those financial statements). The revised form does not change the information concerning the nondebtor entity's business description in current Exhibit C, except to require the debtor to put that information in retitled Exhibit B. The revised form then adds new Exhibits C, D, and E. These new exhibits focus on intercompany claims, tax allocations, and the payment of claims or administrative expenses that would otherwise have been payable by a debtor.

The Committee received three comments in response to the forms' publication in August 2016. Two of these comments—from the NCBJ and the Pennsylvania Bar Association—offered limited suggestions, with one expressly supporting the proposed revisions. The other comment was submitted by Bankruptcy Judge Neil W. Bason (C.D. Cal.) (BK-2016-003-0013), who made a number of thoughtful comments. They were generally directed at either further clarifying or explaining the forms or called for additional information to be included.

In response to Judge Bason's comments, the Committee made three changes to Official Form 425A. (i) The caption on the plan was changed to follow the form for non-individual debtor cases. An instruction was added to the Committee Note regarding the caption and signature block to be used in individual chapter 11 cases or joint cases involving individuals. (ii) A reference to a claims reserve, if any, was added to the list of potential information items to be discussed in Article 7 (Means for Implementation of Plan). (iii) Section 8.08 (Retention of Jurisdiction) was added to address the post-effective date jurisdiction of the bankruptcy court.

The Committee also made three responsive changes to Official Form 425B. (i) The caption on the disclosure statement was changed to follow the form for nonindividual debtor cases. An instruction was added to the Committee Note regarding the caption and signature block to be used in individual chapter 11 cases or joint cases involving individuals. (ii) The column in Part III.C.1 (Classes of secured claims) for disclosing the insider status of creditors holding secured claims was deleted. (iii) A cross-reference to Part IV.A.3 was added to the introductory language in Part IV.A (Who May Vote or Object).

With these changes to Official Forms 425A and 425B, the Committee gave unanimous approval to those forms, as well as to Official Forms 425C and 426.

(A2) Conforming changes proposed for approval without publication.

The Committee recommends that the Standing Committee approve and transmit to the Judicial Conference the proposed rule and form amendments that are discussed below. The reasons for seeking approval without publication are discussed for each action item. Bankruptcy Appendix A includes the rules and forms that are in this group.

Action Item 7. Rule 8011(a), (c), (d), and (e) (Filing and Service; Signature). At the January Standing Committee meeting, the Committee informed the Standing Committee that it had initially overlooked the need to amend Rule 8011 at the same time as it made changes in coordination with the other advisory committees' proposed amendments regarding electronic filing, service, and signatures. In order that conforming amendments to Rule 8011 can be approved to go into effect at the same time as the amendments to Rule 5005(a) and the parallel provisions of the civil, criminal, and appellate rules, the Committee seeks approval of these amendments without publication. The text of the proposed amendments to Rule 8011, which includes the published amendments regarding inmate filing that are discussed at Action Item 2, is set out in Appendix A.

At the spring meeting, the Committee considered the comments that were submitted in response to the publication of Rule 5005(a) and the parallel rules, and it approved responsive changes that generally conform to the proposed amendments to Rule 5005 and Civil Rule 5, Criminal Rule 49, and Appellate Rule 25. The proposed amendments, however, differ in wording from the parallel civil, criminal, and appellate rules in a few respects. First, as is the case with Rule 5005(a)(2)(C), the provision regarding electronic signatures is not limited to "authorized" filings. Second, maintaining a difference in the existing rules, Rule 8011(c)(3) provides that electronic service is "complete upon filing or sending, unless the person making service *receives notice* that the document was not received by the person served." This differs from Civil Rule 5(b)(2)(E)'s and Criminal Rule 49(a)(3)(A)'s references to "the filer or sender⁵ *learn[ing]* that the document was not received" and Appellate Rule 25(c)(4)'s reference to "the person making service [*being*] *notified* that the paper was not received." Finally, Rule 8011 generally follows the organization of Appellate Rule 25, which differs from the organization of Civil Rule 5 and proposed Criminal Rule 49.

The Committee unanimously approved the amendments to Rule 8011 as set out in Appendix A.

Action Item 8. Rules 7062 (Stay of Proceedings to Enforce a Judgment), 8007 (Stay Pending Appeal; Bonds; Suspension of Proceedings), 8010 (Completing and Transmitting the Record), 8021 (Costs), and 9025 (Security: Proceedings Against Sureties). The Committee seeks approval of amendments to these rules to conform in part to proposed and published amendments to Civil Rules 62 (Stay of Proceedings to Enforce a Judgment) and 65.1

⁵ The criminal rule says "the serving party" rather than "the filer or sender."

(Proceedings Against a Surety) that would lengthen the period of the automatic stay of a judgment and broaden and modernize the terminology “supersedeas bond” and “surety.” The Appellate Rules Committee has also published amendments to Appellate Rules 8 (Stay or Injunction Pending Appeal), 11 (Forwarding the Record), and 39 (Costs) that would adopt conforming terminology.

If the amendments are approved, Civil Rule 62 would no longer refer to a “supersedeas bond.” Instead, the rule would use the more expansive terms “bond or other security.” This amendment is proposed in order to make clear that security in a form other than a bond may be used. Consistent with that change, Civil Rule 65.1 would be amended to refer to “other security providers.”

Bankruptcy Rule 7062 does not need to be amended to adopt the changed terminology because it provides that Civil Rule 62 “applies in adversary proceedings.” Thus any amendment to Rule 62 automatically applies in bankruptcy adversary proceedings. Rule 9025 does, however, need to be amended to be consistent with amended Rules 62 and 7062. The Committee also seeks approval of amendments to Rule 8007, 8010, and 8021 to conform to the terminology changes proposed for Appellate Rules 8, 11, and 39. The texts of the proposed amendments are included in Appendix A.

In addition to changing the terminology of Civil Rule 62, the published amendments to that rule would lengthen the automatic stay of a judgment entered in the district court from 14 to 30 days. The Committee Note explains this change as follows:

New Rule 62(a) extends the period of the automatic stay to 30 days. Former Rule 62(a) set the period at 14 days, while former Rule 62(b) provided for a court-ordered stay “pending disposition of” motions under Rules 50, 52, 59, and 60. The time for making motions under Rules 50, 52, and 59, however, was later extended to 28 days, leaving an apparent gap between expiration of the automatic stay and any of those motions (or a Rule 60 motion) made more than 14 days after entry of judgment. The revised rule eliminates any need to rely on inherent power to issue a stay during this period. Setting the period at 30 days coincides with the time for filing most appeals in civil actions, providing a would-be appellant the full period of appeal time to arrange a stay by other means. A 30-day automatic stay also suffices in cases governed by a 60-day appeal period.

If no exception is made to Rule 7062’s incorporation of Civil Rule 62, this change will apply to bankruptcy adversary proceedings, thereby lengthening to 30 days the period of the automatic stay of judgment.

The Committee voted unanimously to amend Rule 7062 to retain the current 14-day duration of the automatic stay of judgment. Such a change is needed to keep Rule 7062 consistent with other Bankruptcy Rules that govern post-judgment motions and the time for appeal. When the Civil Rules were amended to provide 28 days for post-judgment motions, the Bankruptcy Rules were not similarly amended. Bankruptcy Rules 7052, 9015, and 9023 provide for a 14-day period for seeking a renewed motion for judgment as a matter of law, an amendment of findings, or a new trial. Similarly, Rule 8002 provides for a 14-day period for filing a notice of appeal. These shorter periods have been retained because expedition is frequently important in bankruptcy cases.

To accomplish this departure from Rule 62's time period, the Committee voted to add the following carve-out to Rule 7062's incorporation of Rule 62: "except that proceedings to enforce a judgment are stayed for 14 days after its entry."

Because these amendments are being proposed to (i) adopt terminology changes that will automatically apply in bankruptcy adversary proceedings and (ii) maintain the status quo with respect to automatic stays of judgments in the bankruptcy courts, the Committee seeks approval of these amendments without publication.

Action Item 9. Official Forms 309G, 309H, and 309I (Notice of Bankruptcy Case). The Committee seeks approval of minor amendments to each of these notices of the filing of a chapter 12 or chapter 13 case to conform to a pending amendment to Rule 3015 that is scheduled to take effect on December 1, 2017.

Rule 3015 governs the filing, confirmation, and modification of chapter 12 and chapter 13 plans. An amendment to Rule 3015(d) recently adopted by the Supreme Court eliminates the authorization for a debtor to serve a plan summary, rather than a copy of the plan itself, on the trustee and creditors. This change was made in conjunction with the adoption of rule amendments specifying formatting, labeling, and organizational requirements for chapter 13 plans.

After the spring meeting, it was called to the Committee's attention that this rule change required conforming changes to be made to these three Official Forms. Currently the forms suggest in several places at line 9 that that a summary of the plan may be enclosed. In light of the amendment to Rule 3015(d), the Committee voted by email to strike the language "a summary of the plan" in Forms 309G, 309H, and 309I. Because this amendment is made to conform to a rule change, the Committee seeks approval without publication and suggests an effective date for the amended forms of December 1, 2017.

B. Items for Publication

The Committee recommends that the following rule amendments be published for public comment in August 2017. The rules in this group appear in Bankruptcy Appendix B.

Action Item 10. Rule 4001(c) (Obtaining Credit). The Advisory Committee received a suggestion from Bankruptcy Judge A. Benjamin Goldgar (N.D. Ill.) (Suggestion 16-BK-D) concerning Bankruptcy Rule 4001(c) and its application to chapter 13 cases. Rule 4001(c) details the process for obtaining approval of postpetition credit in a bankruptcy case. It requires a motion, in accordance with Rule 9014 (governing contested matters), that contains specific disclosures and information. The suggestion posited that many of the required disclosures are unnecessary in and unduly burdensome for most chapter 13 cases, and they should be made inapplicable in chapter 13.

In reorganization cases, a request to obtain postpetition credit impacts the bankruptcy estate and creditors. For this reason, the Bankruptcy Code and the Bankruptcy Rules contain detailed provisions governing when such credit is permissible. Section 364 of the Bankruptcy Code sets forth the circumstances under which the trustee or debtor in possession may obtain postpetition credit in- and outside of the ordinary course of business. Rule 4001(c), in turn, governs the process for the trustee or debtor in possession to request approval of postpetition credit outside of the ordinary course of business.

Rule 4001(c) states in part:

(B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or form of order includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each one; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2).

The rule then continues to outline eleven different elements of postpetition financing that must be explained in both the motion and concise statement—e.g., the granting of a lien or adequate protection or the determination of “the validity, enforceability, priority, or amount of” a prepetition claim.

Section 364 of the Bankruptcy Code does not permit a debtor to request authority to obtain postpetition credit. As noted above, § 364 speaks only of the “trustee,” which incorporates a debtor in possession under §§ 1203 and 1107 of the Bankruptcy Code. Nevertheless, § 1304(a) of the Bankruptcy Code provides, “A debtor that is self-employed and incurs trade credit in the production of income from such employment is engaged in business.” That section also grants such a chapter 13 debtor the ability to incur postpetition credit on the terms and subject to the conditions of a trustee under § 364. Section 1304 does not, however, address a chapter 13 debtor who is not engaged in business and wants to obtain postpetition credit to, for example, purchase a car. As a result, courts are divided on whether a chapter 13 debtor not engaged in business is either required or permitted to seek authority to incur postpetition credit.

The Committee reviewed the history of Rule 4001(c), which showed that the provision was designed to address issues particular to chapter 11 cases. Most members agreed that, regardless of whether a motion was required under § 364 in all chapter 13 cases, Rule 4001(c) did not readily address issues pertinent to chapter 13 cases. They also recognized the burdens, time, and cost imposed by the rule in the chapter 13 context, which was addressed in the suggestion as well. Several members raised the point that, because of these factors, many courts have adopted local rules or issued orders to address requests for credit in chapter 13 cases. Members also discussed the potential implications of any change to limit or tailor the requirements of Rule 4001(c) to chapter 13 cases. On balance, the Committee decided to propose an amendment excluding chapter 13 cases from Rule 4001(c). Members emphasized that a decision to carve out chapter 13 cases did not speak to the underlying substantive issue of whether the Bankruptcy Code requires or permits a chapter 13 debtor not engaged in business to request approval of postpetition credit, and a sentence so stating was added to the Committee Note. If such a motion is required or permissible, Rule 9013 (Motions: Form and Service) would govern, perhaps supplemented by complementary local rules. If not, no rule is necessary.

Accordingly, the Committee voted unanimously to propose for publication an amendment creating a new Rule 4001(c)(4) that makes subdivision (c) inapplicable to chapter 13 cases.

Action Item 11. Rules 2002(g) (Addressing Notices) and 9036 (Notice by Electronic Transmission) and Official Form 410 (Proof of Claim). Over the years, the Committee has been asked to review noticing issues in bankruptcy cases—both the mode of noticing and service (other than service of process) and the parties entitled to receive such notices or service. These issues are important in the federal bankruptcy system, but they are also complex. The Bankruptcy Rules contain approximately 145 rules addressing noticing or service issues, and many of those rules include multiple subparts with different requirements. Unlike many civil or criminal matters, a single bankruptcy case may involve hundreds of parties, and the Bankruptcy Rules require the clerk (or some other party as the court may direct) to notice or serve certain

papers on all of these parties on numerous occasions. In addition, many courts have adopted local rules to address noticing and service issues in bankruptcy cases.

At its fall 2015 meeting, the Committee approved a work plan to study noticing issues generally in federal bankruptcy cases. At its spring 2016 meeting, the Committee determined that the ongoing electronic filing, notice, and service initiatives by the federal rules advisory committees could mitigate many of the general concerns regarding the extent and cost of required noticing in bankruptcy cases, and therefore the Committee decided to defer undertaking an extensive overhaul of bankruptcy noticing provisions. Nevertheless, the Committee decided to review and evaluate the specific suggestions regarding noticing issues in bankruptcy cases that had been submitted to the Committee.

Based on its preliminary review, the Committee decided to focus first on a specific suggestion regarding providing electronic noticing and service to businesses, financial institutions, and other non-individual parties that hold claims or other rights against the debtor. These parties may receive numerous notices and papers in multiple bankruptcy cases; therefore, permitting electronic noticing and service on such parties would generate significant cost savings and other efficiencies. The Committee began exploring an amendment to the Bankruptcy Rules that would allow such non-individual parties who are not registered users of CM/ECF to opt into electronic noticing and service in bankruptcy cases. The Committee noted that it must ensure that any such amendment is consistent with § 342(e) and (f) of the Bankruptcy Code, which give certain creditors the right to designate a particular service address.

As discussed under Action Item 2, the Committee, in coordination with the other advisory committees, has proposed an amendment to Rule 5005(a) that addresses electronic filing. That rule, however, does not address noticing and service. Instead, Rule 7005 addresses those issues for adversary proceedings by making Civil Rule 5 applicable,⁶ and, as discussed under Action Item 7, Rule 8011 addresses those issues for bankruptcy appeals.

The Committee has now turned its attention to Rule 9036, which allows the clerk to send notices electronically if the recipient provides written consent. The clerk often facilitates this written consent through the registered user agreement associated with the court's electronic-filing system. This consent, however, does not authorize anyone other than the clerk to notice or serve by electronic means, and it does not capture parties who are not registered users.

The Committee decided that it must proceed cautiously in considering an expansion of authority to notice or serve electronically. The Bankruptcy Code and the Bankruptcy Rules are an integrated set of principles that have served the bankruptcy system well for many years. Courts and parties generally understand the rules, as well as their rights and obligations under the rules. Moreover, many courts and practitioners have structured their noticing practices to

⁶ Rule 9014(b) makes Civil Rule 5(b) applicable to contested matters.

comply with the existing rules, and any changes to the parties to be served or the methods of service could require significant revisions to those practices.

In this context, the Committee discussed the systems used by parties to receive and track notices and other papers from the court and other parties in bankruptcy cases. Although lawyers have generally implemented systems to receive and monitor electronic notices, many creditors have established systems based on mail receipt. Such a system allows the creditor to identify a particular mailing address and person to receive notices and other papers, which may ease the burdens associated with tracking and responding to such documents. In fact, § 342 of the Bankruptcy Code enables a creditor to request notice at a specified address in a particular chapter 7 or 13 case or all such cases before that court. The Committee gave significant consideration to the fact that creditors may have relied on this section of the Bankruptcy Code in establishing their internal procedures, as well as the fact that the Bankruptcy Rules must account for the rights of parties under the Bankruptcy Code.

Based on the Committee's research and its prior deliberations, it decided at the spring 2017 meeting that some enhanced use of electronic notice and service appears warranted. It discussed mandating electronic notice and service for all parties (other than pro se individuals), but it concluded that such an approach potentially conflicts with Code § 342 and could prove very disruptive, given courts' and parties' established practices and procedures. Phasing in electronic noticing and service would allow courts and parties to adjust to the new procedures while allowing both to start utilizing certain of the anticipated time and cost savings associated with electronic notice and service. Such an approach also would allow the Committee to monitor and evaluate the advantages and disadvantages to the increased use of electronic delivery.

The Committee previously discussed using the proof of claim form—Official Form 410—to allow parties to opt into, or out of, electronic notice and service. The proof of claim form is one of the forms frequently used by non-registered users in bankruptcy cases, including the large filers discussed above. It is filed both electronically and manually, so it would capture most creditors who participate in bankruptcy cases. The proof of claim form also already requests that the creditor provide an email address. As such, adding language to apprise the creditor of its ability to opt into, or out of, electronic notice and service would flow somewhat naturally from the existing form.

The Committee considered whether to suggest an “opt-in” or “opt-out” approach. An opt-in approach is akin to the written consent required currently under the rules for a party to receive papers electronically. It would require the party to take an extra step to acknowledge that it agrees to receive notices and papers electronically. It also is a more gradual move toward electronic notice and service. An opt-out approach arguably would be more inclusive, bringing more parties into electronic notice and service. It also may be administratively easier to implement. But an opt-out approach is arguably inconsistent with the plain language of § 342 of the Bankruptcy Code. Under either approach, the language on the proof of claim form could

explain the consequences of the choice. The Committee chose to proceed with an opt-in approach by adding a checkbox to the proof of claim form for choosing receipt of all notices and papers by email.

The Committee recognized that a change to the proof of claim form alone likely is not sufficient to implement electronic notice and service on registered users and consenting parties by the clerk and other parties serving papers in bankruptcy cases. As discussed above, Rule 5005 does not address service, and Rule 9036 (as well as registered user agreements) limit the use of electronic notice and service to the clerk or such other person as directed by the court.

To address these limitations and supplement any change to the proof of claim form (as well as the pending amendment to Civil Rule 5(b)), the Committee voted to propose a targeted amendment to Rule 2002(g) to allow for email, as well as mailing addresses, and then an accompanying, more general amendment to Rule 9036. The Rule 2002(g) amendment would expand the references to mail to include other means of delivery and delete “mailing” before “address,” thereby allowing a creditor to receive notices by email. The amendment to Rule 9036 would allow the clerk or any other person to notice or serve registered users by use of the court’s electronic filing system and to other persons by electronic means that the person consented to in writing. The texts of these amendments and the amendment to Official Form 410 are included in Appendix B.

The Committee voted unanimously to seek the publication of these amendments for public comment this summer.

Action Item 12. Rule 6007(b) (Motion to Abandon Property). The Committee received a suggestion from Bankruptcy Judge A. Benjamin Goldgar (16-BK-C) concerning the process for abandoning estate property under § 554 of the Bankruptcy Code and Bankruptcy Rule 6007. The suggestion highlights the inconsistent treatment afforded notices to abandon property filed by the bankruptcy trustee and motions to compel the trustee to abandon property filed by parties in interest. Specifically, Rule 6007(a) identifies the parties that the trustee is required to serve with its notice to abandon, but Rule 6007(b) is silent regarding the service of a party in interest’s motion to compel abandonment.

Section 554(a) of the Bankruptcy Code authorizes the trustee, after notice and hearing, to “abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” Section 554(b) provides that “[o]n the request of a party in interest and after notice and hearing, the court may order the trustee to abandon any property of the estate” that could be abandoned under subsection (a). Courts interpreting these two subsections have determined, among other things, that only the trustee or debtor in possession has authority to abandon property of the estate and that a hearing is not mandatory under either subsection if the notice or motion provides sufficient information concerning the proposed abandonment, is properly served, and neither the trustee, debtor, nor any other party in interest

objects to the notice or motion. Consequently, the content and service of a notice to abandon, or a motion to compel the abandonment of, estate property is critically important to the resolution of the matter.

Bankruptcy Rule 6007 addresses the service of abandonment papers. Subdivision (a) of the rule applies only to trustee notices to abandon property, and it is detailed, providing:

(a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION; OBJECTIONS; HEARING. Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.

Subsection (b), on the other hand, applies to motions to compel abandonment, and it states only, “A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate.”

Several courts have observed the different nature of the two subdivisions of Rule 6007.⁷ In addition, at least one court and *Collier on Bankruptcy* have noted the potential confusion created by the Committee Note to the rule,⁸ which provides, “*Subdivision (b)* implements § 554(b) which specifies that a party in interest may request an order that the trustee abandon property. The rule specifies that the request be by motion and, pursuant to the Bankruptcy Code, lists the parties who should receive notice.”⁹

Given the different nature of the two subdivisions of Rule 6007, courts have developed different approaches to assessing the adequacy of service by a party in interest of its motion to compel abandonment under Rule 6007(b). These approaches generally include reading subdivision (b) as incorporating the service requirements of subdivision (a); using the service

⁷ See, e.g., *In re HIE of Effingham, LLC*, 2014 WL 1304641 at *5 (S.D. Ill. Mar. 28, 2014) (noting the different service standards set forth in Rule 6007(a) and (b) and observing that Rule 6007(b) “is silent on the issue of whom is to be given notice of such motions”). See also *Dunlap v. Independence Bank*, 2007 WL 2827649 (W.D. Ky. 2007); *In re Caron*, 50 B.R. 27 (Bankr.N.D.Ga.1984).

⁸ See *HIE of Effingham*, 2014 WL 1304641 at *5 (citing COLLIER ON BANKRUPTCY ¶ 6007.02[2][B]).

⁹ FED. R. BANKR. P. 6007(b), 1983 Committee Note.

requirements imposed by Rules 9013 (Motions: Form and Service) and 9014 (Contested Matters) for motions filed in the bankruptcy case; or specifying by order or local rule the parties required to be served under Rule 6007(b).

Courts reading subdivisions (a) and (b) of Rule 6007 as creating parallel noticing requirements reason that the purpose of service under the two subdivisions is identical and that little, if any, reason exists to treat them differently. Other courts reach a similar result by invoking Rule 9013 and directing the movant to serve all parties in interest. Courts generally require service on all creditors, indenture trustees, committees, and the United States trustee, i.e., the same parties entitled to notices of intent to abandon under Rule 6007(a). But an argument also exists that under the plain language of Rules 6007(b) and 9013, absent a court order or local rule to the contrary, service of the party in interest's motion to compel abandonment on only the trustee or debtor in possession is sufficient.

In considering whether to propose a clarifying amendment, the Committee first discussed whether parties and courts need additional guidance under Rule 6007(b), given that Rule 9013 governs as a general matter motions filed in bankruptcy cases. Although some members believed that the existing language of the rules was adequate, others found ambiguity and some confusion in the abandonment process under Rule 6007(b). Members considered the important implications for the estate when a third party seeks to compel abandonment of estate property, and they debated whether providing notice only to the trustee or debtor in possession was sufficient. Members also observed differences in how courts proceed once a motion to compel abandonment is granted—e.g., whether the trustee must file a notice to abandon property or, rather, the abandonment process is complete upon entry of the order granting the motion to compel. On balance, the Committee determined that the language of Rule 6007(b) should be clarified to identify the parties to be served with the motion and notice of the motion, as well as the fact that the entry of an order granting a motion to compel abandonment completes the abandonment process.

The Committee voted unanimously to seek publication for public comment of a proposed amendment to Rule 6007(b) that largely tracks the language of Rule 6007(a) and clarifies the procedure for third-party motions brought under § 554(b) of the Bankruptcy Code.¹⁰

Action Item 13. Rule 9037(h) (Motion to Redact a Previously Filed Document). In response to a suggestion (14-BK-B) submitted by the Committee on Court Administration and Case Management (“CACM”), the Committee is proposing an amendment to Rule 9037 (Privacy Protections for Filings Made with the Court). The proposed amendment would add a new subdivision (h) to the rule to provide a procedure for redacting personal identifiers in documents that were previously filed without complying with the rule's redaction requirements. In order to allow other advisory committees to consider whether they wanted to propose similar

¹⁰ Because of the desire to track the language of Rule 6007(a) in subdivision (b), the Committee chose not to adopt the changes suggested by the style consultants.

amendments to their parallel rules, the Committee has held the proposed amendment in abeyance since it approved it for publication at the spring 2016 meeting. Because the other advisory committees have now determined not to pursue similar amendments, the Committee seeks approval for publication of Rule 9037(h) this summer.

In its suggestion, CACM expressed the need for a uniform national procedure for belatedly redacting personal identifiers in documents that were filed in bankruptcy courts without complying with Rule 9037(a)'s protection of social security numbers, financial account numbers, birth dates, and names of minor children. The suggestion consisted of two parts. First, CACM suggested that Bankruptcy Rule 5010 (Reopening Cases) be amended to reflect the recently adopted judiciary policy that a closed bankruptcy case does not have to be reopened in order for the court to order the redaction of information described in Rule 9037. Second, CACM suggested that Rule 9037 be amended to require that notice be given to affected individuals of a request to redact a previously filed document. Such an amendment would reflect the Judicial Conference's recent addition of § 325.70 to the privacy policy, which states in part that "the court should require the . . . party [requesting redaction] to promptly serve the request on the debtor, any individual whose personal identifiers have been exposed, the case trustee (if any), and the U.S. trustee (or bankruptcy administrator where applicable)."

The Committee decided that any amendments that might be proposed should be made exclusively to Rule 9037 and not to Rule 5010. With the assistance of our clerk representative, the Committee gathered information about bankruptcy courts' current practices for the redaction of previously filed documents. The Committee was particularly interested in learning the various ways in which courts are attempting to accommodate the need to inform individuals that belated redaction of personal identifiers is being sought without drawing attention to the public availability of the unredacted documents.

In considering the proposed amendment, the Committee assumed the availability of court technology that allows the filing of a motion to redact to trigger the immediate restriction of access to the filed document that is to be redacted. An attorney member of the Committee reported that her local court's electronic filing system has that capacity, and a clerk representative confirmed the existence of that capability. The Committee thought that being able to restrict access to the motion and the unredacted document would be important in preventing the filing of the motion from highlighting the existence of the unredacted document on file. The Committee also concluded that the rule itself should not specify the precise technological methods to be used, since they will likely evolve over time.

The Committee took note of the existence of services that maintain and make available to subscribers parallel dockets for all the bankruptcy courts. The existence of these dockets outside the control of the courts means that an unredacted document can continue to be accessible despite a belated redaction and the court's restriction of access to the unredacted document in the court's files. The Subcommittee concluded that resolution of this problem is outside the scope of

rulemaking authority and that the proposed rule should address only documents within the courts' control. Knowledge of the existence of these services, however, did lead the Committee to conclude that, following a successful motion to redact, access to the motion and the unredacted document should remain restricted. The Committee also informed CACM of the potential impact that these unofficial dockets have on the effectiveness of courts' belated redaction of filed documents.

The Committee concluded that there is no need to set out in a rule the Judicial Conference policy that closed cases do not have to be reopened in order to redact a filed document. The proposed Committee Note, however, does explain that the prescribed procedures apply to both open and closed cases.

The Committee also decided that the rule should not attempt to prescribe a procedure for redacting large numbers of cases at a time. Instead, as the Committee Note explains, those procedures are left up to individual court discretion.

At the spring 2017 meeting, the Committee approved some stylistic changes to the proposed amendment and voted unanimously to seek approval of Rule 9037(h) for public comment.

III. Information Items

A. Amendments to Rule 2002(f)(7) and (h)—Noticing in Chapter 13 Cases. At the spring meeting the Committee voted to propose two amendments to Rule 2002 (Notices) that would, in one instance, expand the notice requirements for chapter 13 cases and, in another, reduce the number of parties entitled to receive certain notices in such cases. The Committee does not seek approval for publication of these amendments now, but instead is holding them in abeyance until after a pending amendment to Rule 3002—which will require a further amendment to Rule 2002(h)—takes effect on December 1, 2017.

Rule 2002(f)(7) currently requires the clerk, or someone else designated by the clerk, to give notice to the debtor and all creditors of the “entry of an order confirming a chapter 9, 11, or 12 plan.” Noticeably absent from the list is an order confirming a chapter 13 plan. The Committee received a suggestion (12-BK-B) from Matthew T. Loughney (Chair, Bankruptcy Noticing Working Group), that such notice also be given in chapter 13 cases. As he explained, “There is not a rule specifically addressing the notice of entry of an order confirming a chapter 13 plan, and no reason is identified in the Committee note for this omission.”

Additional research revealed that in 1988 the Committee's reporter proposed an amendment to Rule 2002(f) that would have made the rule applicable to confirmation of a plan under any chapter, but the Committee, without explanation in the minutes, rejected that amendment. Ascertaining no reason currently for the exclusion of chapter 13 plans and agreeing

with Mr. Loughney that “it would be helpful to have a rule that specifically addresses this notice in chapter 13 cases in order that it be made clear who should receive it,” the Committee voted unanimously to seek publication for public comment of the proposed amendment in 2018.

Rule 2002(h) provides an exception to the general noticing requirements set forth in Rule 2002(a). Rule 2002(a) generally requires the clerk (or some other party as directed by the court) to give “the debtor, the trustee, all creditors and indenture trustees” at least 21 days’ notice by mail of certain matters in bankruptcy cases. But Rule 2002(h) allows a court to limit notice in a chapter 7 case to, among others, creditors who hold claims for which proofs of claim have been filed. Bankruptcy Judge Scott W. Dales (W.D. Mich.) submitted a suggestion (12-BK-M) that this exception also be made applicable to chapter 13 cases. He noted the time and cost associated with providing extensive notice in chapter 13 cases and lawyers’ desire to mitigate these expenses to the extent possible. He stated, “For practical reasons I have been receptive to [the lawyers’] arguments, but have felt constrained by the Bankruptcy Rules as presently drafted to require notice that in many instances increases expense without increasing participation or improving decisions on the merits.”

In considering the proposed amendment, the Committee concluded that the cost and time savings generated by limiting notices under Rule 2002(h) in chapter 13, as well as chapter 7, cases supports an amendment. Members pointed out that even creditors that do not file timely proofs of claim will still be required to receive notice of the filing of the case and the date of the meeting of creditors (which notice also includes relevant deadlines); notice of the confirmation hearing; and, if the proposed amendment to Rule 2002(f)(7) is approved, notice of the confirmation order. Because an amendment to Rule 3002 that was recently adopted by the Supreme Court will change the deadline for filing a proof of claim, the time provisions of Rule 2002(f)(7) will also need to be amended. The Committee therefore decided that publication of both of these chapter 13 noticing provisions should be delayed until 2018, when they, along with the timing changes, can be proposed as a package.

B. Rule 8023 (Voluntary Dismissal). The Committee proposed an amendment to bankruptcy appellate Rule 8023 that would add a cross-reference to Rule 9019 (Compromise and Arbitration) to provide a reminder that when a dismissal of an appeal is sought as the result of a settlement by the parties, Rule 9019 may require approval of the settlement by the bankruptcy court. The Committee proposed the amendment in response to a comment submitted by the NCBJ when the revised Part VIII rules were published for comment. The proposed amendment to Rule 8023 was published for public comment in August 2016. No comments were submitted in response to that publication.

At the spring 2017 meeting, the Committee’s new Department of Justice representative raised a concern about the amendment. Although Rule 9019 is generally interpreted to require court approval of a settlement only when a trustee or debtor in possession is a party to the settlement, the Department of Justice was concerned that the rule might suggest that no voluntary

dismissals of bankruptcy appeals in the district court or BAP could be taken without bankruptcy court approval, thus prompting the frequent raising of the issue. Other Committee members expressed concern that the reference to Rule 9019 could require district and BAP clerks to make a legal determination about whether Rule 9019 applied to a particular voluntary dismissal and, if so, whether the bankruptcy court had jurisdiction to consider the settlement while the appeal remained pending. A question was also raised about whether the existing rule, which does not state that it is subject to Rule 9019, has caused any problems.

After a full discussion, the Committee decided to send the Rule 8023 amendment back to a subcommittee for further consideration. It will be taken up again at the fall 2017 meeting.

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TAB 3B

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APPENDIX A

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Appendix A

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

1 **Rule 3002.1 Notice Relating to Claims Secured by**
2 **Security Interest in the Debtor’s Principal**
3 **Residence**

4 * * * * *

5 (b) NOTICE OF PAYMENT CHANGES;
6 OBJECTION.

7 (1) Notice. The holder of the claim shall file
8 and serve on the debtor, debtor’s counsel, and the
9 trustee a notice of any change in the payment amount,
10 including any change that results from an interest_rate
11 or escrow_account adjustment, no later than 21 days
12 before a payment in the new amount is due. If the
13 claim arises from a home-equity line of credit, this
14 requirement may be modified by court order.

¹ New material is underlined; matter to be omitted is lined through.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

15 (2) Objection. A party in interest who objects
16 to the payment change may file a motion to determine
17 whether the change is required to maintain payments
18 in accordance with § 1322(b)(5) of the Code. If no
19 motion is filed by the day before the new amount is
20 due, the change goes into effect, unless the court
21 orders otherwise.

22 * * * * *

23 (e) DETERMINATION OF FEES, EXPENSES, OR
24 CHARGES. On motion of a party in interest~~the debtor or~~
25 ~~trustee~~ filed within one year after service of a notice under
26 subdivision (c) of this rule, the court shall, after notice and
27 hearing, determine whether payment of any claimed fee,
28 expense, or charge is required by the underlying agreement
29 and applicable bankruptcy law to cure a default or maintain
30 payments in accordance with § 1322(b)(5) of the Code.

31 * * * * *

Committee Note

Subdivision (b) is subdivided and amended in two respects. First, it is amended in what is now subdivision (b)(1) to authorize courts to modify its requirements for claims arising from home equity lines of credit (HELOCs). Because payments on HELOCs may adjust frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping the person who is maintaining payments on the loan apprised of the current payment amount. Courts may specify alternative requirements for providing notice of changes in HELOC payment amounts by local rules or orders in individual cases.

Second, what is now subdivision (b)(2) is amended to acknowledge the right of the trustee, debtor, or other party in interest, such as the United States trustee, to object to a change in a home-mortgage payment amount after receiving notice of the change under subdivision (b)(1). The amended rule does not set a deadline for filing a motion for a determination of the validity of the payment change, but it provides as a general matter—subject to a contrary court order—that if no motion has been filed on or before the day before the change is to take effect, the announced change goes into effect. If there is a later motion and a determination that the payment change was not required to maintain payments under § 1322(b)(5), appropriate adjustments will have to be made to reflect any overpayments. If, however, a motion is made during the time specified in subdivision (b)(2), leading to a suspension of the payment change, a determination that the payment change was valid will require the debtor to cure the

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

resulting default in order to be current on the mortgage at the end of the bankruptcy case.

Subdivision (e) is amended to allow parties in interest in addition to the debtor or trustee, such as the United States trustee, to seek a determination regarding the validity of any claimed fee, expense, or charge.

Changes Made After Publication and Comment

- Subdivision (b) was divided into two paragraphs with separate captions.
- Subdivision (b)(2) was revised to require a motion that stops the payment change from taking effect to be filed “by the day before the date the new amount is due.”
- Stylistic changes were also made.

Summary of Public Comments

Aderant CompuLaw (BK-2016-0003-0006)—Because of the impact of Rule 9006(f) on the timing provisions of the proposed amendment to subdivision (b), a motion objecting to a notice served by mail could be timely even if filed after the effective date of the payment change. The rule should be changed to require any objection that seeks to prevent implementation of the payment change to be filed by the day before the new payment amount is due.

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—The word “that” following “party in interest” in subdivision (b) should be changed to “who,” and a

paragraph break should be inserted in subdivision (b) preceding “A party in interest.”

Pennsylvania Bar Association (BK-2016-0003-0008)—
The Bar Association stated that it supports adoption of the amendments to Rule 3002.1(b) and (e).

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1 **Rule 5005. Filing and Transmittal of Papers**

2 (a) FILING.

3 * * * * *

4 (2) Electronic Filing and Signing by Electronic
5 Means.

6 (A) By a Represented Entity—Generally
7 Required; Exceptions. ~~A court may by local rule~~
8 ~~permit or require documents to be filed, signed,~~
9 ~~or verified by electronic means that are~~
10 ~~consistent with technical standards, if any, that~~
11 ~~the Judicial Conference of the United States~~
12 ~~establishes. A local rule may require filing by~~
13 ~~electronic means only if reasonable exceptions~~
14 ~~are allowed. An entity represented by an~~
15 ~~attorney shall file electronically, unless~~
16 ~~nonelectronic filing is allowed by the court for~~
17 ~~good cause or is allowed or required by local rule~~

18 (B) By an Unrepresented Individual—
19 When Allowed or Required. An individual not
20 represented by an attorney:

21 (i) may file electronically only if
22 allowed by court order or by local rule; and

23 (ii) may be required to file
24 electronically only by court order, or by a
25 local rule that includes reasonable
26 exceptions.

27 (C) Signing. A filing made through a
28 person’s electronic-filing account, together with
29 the person’s name on a signature block,
30 constitutes the person’s signature.

31 (D) Same as a Written Paper. A paper
32 document filed electronically by electronic means
33 in compliance with a local rule constitutes is a
34 written paper for the purposes of applying these

35 rules, the Federal Rules of Civil Procedure made
36 applicable by these rules, and § 107 of the Code.

37 * * * * *

Committee Note

Electronic filing has matured. Most districts have adopted local rules that require electronic filing, and allow reasonable exceptions as required by the former rule. The time has come to seize the advantages of electronic filing by making it mandatory in all districts, except for filings made by an individual not represented by an attorney. But exceptions continue to be available. Paper filing must be allowed for good cause. And a local rule may allow or require paper filing for other reasons.

Filings by an individual not represented by an attorney are treated separately. It is not yet possible to rely on an assumption that pro se litigants are generally able to seize the advantages of electronic filing. Encounters with the court's system may prove overwhelming to some. Attempts to work within the system may generate substantial burdens on a pro se party, on other parties, and on the court. Rather than mandate electronic filing, filing by pro se litigants is left for governing by local rules or court order. Efficiently handled electronic filing works to the advantage of all parties and the court. Many courts now allow electronic filing by pro se litigants with the court's permission. Such approaches may expand with growing experience in these and other courts, along with the growing availability of the systems required for electronic filing and the increasing familiarity of most people with

electronic communication. Room is also left for a court to require electronic filing by a pro se litigant by court order or by local rule. Care should be taken to ensure that an order to file electronically does not impede access to the court, and reasonable exceptions must be included in a local rule that requires electronic filing by a pro se litigant.

A filing made through a person's electronic-filing account, together with the person's name on a signature block, constitutes the person's signature. A person's electronic-filing account means an account established by the court for use of the court's electronic-filing system, which account the person accesses with the user name and password (or other credentials) issued to that person by the court. The filing also must comply with the rules of the court governing electronic filing.

Changes Made After Publication and Comment

- Subdivision (a)(2)(C) was revised to clarify the requirements for an electronic signature and what information must appear on the signature block.
- Language was added to the end of the second paragraph of the Committee Note concerning orders and local rules on pro se filings.

Summary of Public Comments

Comments addressing the lack of clarity of the signature provision were submitted by **Carolyn Buffington (BK-2016-0003-0005)**, **National Conference of Bankruptcy Judges (BK-2016-0003-0007)**, **the Pennsylvania Bar Association (BK-2016-0003-0008)**, **Heather Dixon (BK-2016-0003-0010)**, and **the New York City Bar Association (BK-2016-0003-0011)**.

New York City Bar Association (BK-2016-0003-0011)—The following language, which appears in the Committee Note to the proposed amendments to Civil Rule 5, should be added to the Committee Note to Rule 5005(a)(2): “Care should be taken to ensure that an order to file electronically does not impede access to the court, and reasonable exceptions must be included in a local rule that requires electronic filing by a pro se litigant.”

Sai (BK-2016-0003-0012)—The advisory committees should change the default rule for pro se parties to allow pro se parties to file either with paper or electronically, unless the court ordered otherwise. Requiring pro se parties to file manually imposes additional costs and burdens on these parties. Many pro se parties would rather file electronically.

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1 **Rule 7062. Stay of Proceedings to Enforce A Judgment**

2 Rule 62 F.R.Civ.P. applies in adversary proceedings,
3 except that proceedings to enforce a judgment are stayed
4 for 14 days after its entry.

Committee Note

The rule is amended to retain a 14-day period for the automatic stay of a judgment. Rule 62(a) F.R.Civ.P. now provides for a 30-day stay to accommodate the 28-day time periods under the Federal Rules of Civil Procedure for filing post-judgment motions and the 30-day period for filing a notice of appeal. Under the Bankruptcy Rules, however, those periods are limited to 14 days. *See* Rules 7052, 9015, 8002, and 9023.

Because this amendment is made to maintain the status quo regarding the length of an automatic stay of a judgment in an adversary proceeding, despite an amendment to that provision of Civil Rule 62(a), final approval is sought without publication.

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1 **Rule 8002. Time for Filing a Notice of Appeal**

2 (a) IN GENERAL.

3 * * * * *

4 (5) Entry Defined.

5 (A) A judgment, order, or decree is
6 entered for purposes of this Rule 8002(a):

7 (i) when it is entered in the docket
8 under Rule 5003(a), or

9 (ii) if Rule 7058 applies and
10 Rule 58(a) F.R. Civ. P. requires a separate
11 document, when the judgment, order, or
12 decree is entered in the docket under
13 Rule 5003(a) and when the earlier of these
14 events occurs:

- 15 • the judgment, order, or
16 decree is set out in a separate
17 document; or

18 • 150 days have run from
19 entry of the judgment, order, or
20 decree in the docket under Rule
21 5003(a).

22 (B) A failure to set out a judgment, order,
23 or decree in a separate document when required
24 by Rule 58(a) F.R. Civ. P. does not affect the
25 validity of an appeal from that judgment, order,
26 or decree.

27 * * * * *

28 (b) EFFECT OF A MOTION ON THE TIME TO
29 APPEAL.

30 (1) *In General.* If a party ~~timely~~ files in the
31 bankruptcy court any of the following motions and
32 does so within the time allowed by these rules, the
33 time to file an appeal runs for all parties from the

34 entry of the order disposing of the last such remaining
35 motion:

36 * * * * *

37 (c) APPEAL BY AN INMATE CONFINED IN AN
38 INSTITUTION.

39 (1) *In General.* If an institution has a system
40 designed for legal mail, an inmate confined there must
41 use that system to receive the benefit of this
42 Rule 8002(c)(1). If an inmate ~~confined in an~~
43 ~~institution~~ files a notice of appeal from a judgment,
44 order, or decree of a bankruptcy court, the notice is
45 timely if it is deposited in the institution's internal
46 mail system on or before the last day for filing. ~~If the~~
47 ~~institution has a system designed for legal mail, the~~
48 ~~inmate must use that system to receive the benefit of~~
49 ~~this rule. Timely filing may be shown by a~~
50 ~~declaration in compliance with 28 U.S.C. § 1746 or by~~

51 ~~a notarized statement, either of which must set forth~~
52 ~~the date of deposit and state that first class postage~~
53 ~~has been prepaid. and:~~

54 (A) it is accompanied by:

55 (i) a declaration in compliance
56 with 28 U.S.C. § 1746—or a
57 notarized statement—setting out the
58 date of deposit and stating that first-
59 class postage is being prepaid; or

60 (ii) evidence (such as a
61 postmark or date stamp) showing
62 that the notice was so deposited and
63 that postage was prepaid; or

64 (B) the appellate court exercises its
65 discretion to permit the later filing of a
66 declaration or notarized statement that satisfies
67 Rule 8002(c)(1)(A)(i).

Committee Note

Clarifying amendments are made to subdivisions (a), (b), and (c) of the rule. They are modeled on parallel provisions of F.R. App. P. 4.

Paragraph (5) is added to subdivision (a) to clarify the effect of the separate-document requirement of F.R. Civ. P. 58(a) on the entry of a judgment, order, or decree for the purpose of determining the time for filing a notice of appeal.

Rule 7058 adopts F.R. Civ. P. Rule 58 for adversary proceedings. If Rule 58(a) requires a judgment to be set out in a separate document, the time for filing a notice of appeal runs—subject to subdivisions (b) and (c)—from when the judgment is docketed and the judgment is set out in a separate document or, if no separate document is prepared, from 150 days from when the judgment is entered in the docket. The court’s failure to comply with the separate-document requirement of Rule 58(a), however, does not affect the validity of an appeal.

Rule 58 does not apply in contested matters. Instead, under Rule 9021, a separate document is not required, and a judgment or order is effective when it is entered in the docket. The time for filing a notice of appeal under subdivision (a) therefore begins to run upon docket entry in contested matters, as well as in adversary proceedings for which Rule 58 does not require a separate document.

A clarifying amendment is made to subdivision (b)(1) to conform to a recent amendment to F.R. App. P. 4(a)(4)—from which Rule 8002(b)(1) is derived. Former Rule 8002(b)(1) provided that “[i]f a party timely files in the bankruptcy court” certain post-judgment motions, “the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion.” Responding to a circuit split concerning the meaning of “timely” in F.R. App. P. 4(a)(4), the amendment adopts the majority approach and rejects the approach taken in *National Ecological Foundation v. Alexander*, 496 F.3d 466 (6th Cir. 2007). A motion made after the time allowed by the Bankruptcy Rules will not qualify as a motion that, under Rule 8002(b)(1), re-starts the appeal time—and that fact is not altered by, for example, a court order that sets a due date that is later than permitted by the Bankruptcy Rules, another party’s consent or failure to object to the motion’s lateness, or the court’s disposition of the motion without explicit reliance on untimeliness.

Subdivision (c)(1) is revised to conform to F.R. App. P. 4(c)(1), which was recently amended to streamline and clarify the operation of the inmate-filing rule. The rule requires the inmate to show timely deposit and prepayment of postage. It is amended to specify that a notice is timely if it is accompanied by a declaration or notarized statement stating the date the notice was deposited in the institution’s mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage “is being prepaid,” not (as directed by the former rule) that first-class postage “has been prepaid.” This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution’s mail system. A new

Director’s Form sets out a suggested form of the declaration.

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the appellate court—district court, BAP, or court of appeals in the case of a direct appeal—has discretion to accept a declaration or notarized statement at a later date. The rule uses the phrase “exercises its discretion to permit”—rather than simply “permits”—to help ensure that pro se inmates are aware that a court will not necessarily forgive a failure to provide the declaration initially.

Changes Made After Publication and Comment

None.

Summary of Public Comments

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—Supports adoption of these amendments.

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of these amendments.

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1 **Rule 8006. Certifying a Direct Appeal to the Court of**
2 **Appeals**

3 * * * * *

4 (c) JOINT CERTIFICATION BY ALL
5 APPELLANTS AND APPELLEES.

6 (1) *How Accomplished.* A joint certification by
7 all the appellants and appellees under 28 U.S.C.
8 § 158(d)(2)(A) must be made by using the appropriate
9 Official Form. The parties may supplement the
10 certification with a short statement of the basis for the
11 certification, which may include the information listed
12 in subdivision (f)(2).

13 (2) *Supplemental Statement by the Court.*
14 Within 14 days after the parties' certification, the
15 bankruptcy court or the court in which the matter is
16 then pending may file a short supplemental statement
17 about the merits of the certification.

18 * * * * *

COMMITTEE NOTE

Subdivision (c) is amended to provide authority for the court to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all of the parties to the appeal. It is a counterpart to subdivision (e)(2), which allows a party to file a similar statement when the court certifies direct review on the court's own motion.

The bankruptcy court may file a supplemental statement within 14 days after the certification, even if the appeal is no longer pending before it according to subdivision (b). If the appeal is pending in the district court or BAP during that 14-day period, the appellate court is authorized to file a statement. In all cases, the filing of a statement by the court is discretionary.

Changes Made After Publication and Comment

None.

Summary of Public Comments

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—Supports adoption of these amendments.

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of these amendments.

21 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 8007. Stay Pending Appeal; Bonds; Suspension**
2 **of Proceedings**

3 (a) INITIAL MOTION IN THE BANKRUPTCY
4 COURT.

5 (1) *In General.* Ordinarily, a party must move
6 first in the bankruptcy court for the following relief:

7 (A) a stay of judgment, order, or decree of
8 the bankruptcy court pending appeal;

9 (B) the approval of a ~~supersedeas bond or~~
10 other security provided to obtain a stay of
11 judgment;

12 * * * * *

13 (c) FILING A BOND OR OTHER SECURITY.

14 The district court, BAP, or court of appeals may condition
15 relief on filing a bond or other ~~appropriate~~ security with the
16 bankruptcy court.

17 (d) BOND OR OTHER SECURITY FOR A
18 TRUSTEE OR THE UNITED STATES. The court may

22 FEDERAL RULES OF BANKRUPTCY PROCEDURE

19 require a trustee to file a bond or other appropriate security
20 when the trustee appeals. A bond or other security is not
21 required when the appeal is taken by the United States, its
22 officer, or its agency or by direction of any department of
23 the federal government.

24 * * * * *

Committee Note

The amendments to subdivisions (a)(1)(B), (c), and (d) conform this rule with the amendment of Rule 62 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7062. Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b)(2) allows a party to obtain a stay by providing a “bond or other security.”

Because this amendment is made to conform to amendments to Civil Rule 62 and Appellate Rule 8, final approval is sought without publication.

1 **Rule 8010. Completing and Transmitting the Record**

2 * * * * *

3 (c) RECORD FOR A PRELIMINARY MOTION
4 IN THE DISTRICT COURT, BAP, OR COURT OF
5 APPEALS. This subdivision (c) applies if, before the
6 record is transmitted, a party moves in the district court,
7 BAP, or court of appeals for any of the following relief:

- 8 · leave to appeal;
9 · dismissal;
10 · a stay pending appeal;
11 · approval of a ~~supersedeas bond~~, or other security
12 provided to obtain a stay of judgment~~additional~~
13 ~~security on a bond or undertaking on appeal~~; or
14 · any other intermediate order.

15 The bankruptcy clerk must then transmit to the clerk of the
16 court where the relief is sought any parts of the record

17 designated by a party to the appeal or a notice that those
18 parts are available electronically.

Committee Note

The amendment of subdivision (c) conforms this rule with the amendment of Rule 62 F.R.Civ.P., which is made applicable in adversary proceedings by Rule 7062. Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b)(2) allows a party to obtain a stay by providing a “bond or other security.”

Because this amendment is made to conform to amendments to Civil Rule 62 and Appellate Rule 11, final approval is sought without publication.

1 **Rule 8011. Filing and Service; Signature**

2 (a) FILING.

3 * * * * *

4 (2) *Method and Timeliness.*

5 (A) Nonelectronic Filing

6 (A)(i) In General. Filing For a
7 document not filed electronically, filing may
8 be accomplished by ~~transmission~~mail
9 addressed to the clerk of the district court or
10 BAP. Except as provided in subdivision
11 ~~(a)(2)(B) and (C)~~ (a)(2)(A)(ii) and (iii),
12 filing is timely only if the clerk receives the
13 document within the time fixed for filing.

14 ~~(B)(ii)~~ Brief or Appendix. A brief
15 or appendix not filed electronically is also
16 timely filed if, on or before the last day for
17 filing, it is:

18 ~~(i)~~ mailed to the clerk by first-
19 class mail—or other class of mail that
20 is at least as expeditious—postage
21 prepaid, ~~if the district court's or BAP's~~
22 ~~procedures permit or require a brief or~~
23 ~~appendix to be filed by mailing; or~~

24 ~~(ii)~~ dispatched to a third-party
25 commercial carrier for delivery within
26 3 days to the clerk, ~~if the court's~~
27 ~~procedures so permit or require.~~

28 ~~(C)(iii)~~ *Inmate Filing.* If an
29 institution has a system designed for legal
30 mail, an inmate confined there must use that
31 system to receive the benefit of this
32 Rule 8011(a)(2)(A)(iii). A document not
33 filed electronically by an inmate confined in
34 an institution is timely if it is deposited in

35 the institution's internal mailing system on
36 or before the last day for filing. ~~If the~~
37 ~~institution has a system designed for legal~~
38 ~~mail, the inmate must use that system to~~
39 receive the benefit of this rule. Timely filing
40 may be shown by a declaration in
41 compliance with 28 U.S.C. §1746 or by a
42 notarized statement, either of which must set
43 forth the date of deposit and state that first-
44 class postage has been prepaid. and:

45 · it is accompanied by a
46 declaration in compliance with 28
47 U.S.C. § 1746—or a notarized
48 statement—setting out the date of
49 deposit and stating that first-class
50 postage is being prepaid; or evidence
51 (such as a postmark or date stamp)

52 showing that the notice was so
53 deposited and that postage was
54 prepaid; or

55 the appellate court exercises
56 its discretion to permit the later filing
57 of a declaration or notarized statement
58 that satisfies Rule 8011(a)(2)(A)(i).

59 (B) *Electronic Filing.*

60 (i) *By a Represented Person—*
61 *Generally Required; Exceptions.* An entity
62 represented by an attorney must file
63 electronically, unless nonelectronic filing is
64 allowed by the court for good cause or is
65 allowed or required by local rule.

66 (ii) *By an Unrepresented*
67 *Individual—When Allowed or Required.* An
68 individual not represented by an attorney:

85 case the filing or furnishing of a specified
86 number of paper copies.

87 * * * * *

88 (c) MANNER OF SERVICE.

89 (1) Nonelectronic Service. Methods. ~~Service~~
90 ~~must be made electronically, unless it is being made~~
91 ~~by or on an individual who is not represented by~~
92 ~~counsel or the court's governing rules permit or~~
93 ~~require service by mail or other means of delivery.~~
94 Service Nonelectronic service may be ~~made by or on~~
95 ~~an unrepresented party~~ by any of the following
96 methods:

- 97 (A) personal delivery;
- 98 (B) mail; or
- 99 (C) third-party commercial carrier for
100 delivery within 3 days.

101 (2) *Electronic Service.* Electronic service may
102 be made by sending a document to a registered user
103 by filing it with the court’s electronic-filing system or
104 by using other electronic means that the person served
105 consented to in writing.

106 ~~(2)~~(3) *When Service is Complete.* Service by
107 electronic means is complete on ~~transmission~~filing or
108 sending, unless the ~~party~~person making service
109 receives notice that the document was not ~~transmitted~~
110 successfully received by the person served. Service by
111 mail or by commercial carrier is complete on mailing
112 or delivery to the carrier.

113 (d) PROOF OF SERVICE.

114 (1) *What is Required.* A document presented
115 for filing must contain either of the following if it was
116 served other than through the court’s electronic-filing
117 system:

32 FEDERAL RULES OF BANKRUPTCY PROCEDURE

118 (A) an acknowledgment of service by the
119 person served; or

120 (B) proof of service consisting of a
121 statement by the person who made service
122 certifying:

123 (i) the date and manner of service;

124 (ii) the names of the persons served;

125 and

126 (iii) the mail or electronic address, the
127 fax number, or the address of the place of
128 delivery, as appropriate for the manner of
129 service, for each person served.

130 * * * * *

131 (e) SIGNATURE. Every document filed
132 electronically must include the electronic signature of the
133 person filing it or, if the person is represented, the
134 electronic signature of counsel. ~~The electronic signature~~

135 ~~must be provided by electronic means that are consistent~~
136 ~~with any technical standards that the Judicial Conference of~~
137 ~~the United States establishes. A filing made through a~~
138 ~~person's electronic-filing account, together with the~~
139 ~~person's name on a signature block, constitutes the~~
140 ~~person's signature. Every document filed in paper form~~
141 must be signed by the person filing the document or, if the
142 person is represented, by counsel.

Committee Note

The rule is amended to conform to the amendments to Fed. R. App. P. 25 on inmate filing, electronic filing, signature, service, and proof of service.

Consistent with Rule 8001(c), subdivision (a)(2) generally makes electronic filing mandatory. The rule recognizes exceptions for persons proceeding without an attorney, exceptions for good cause, and variations established by local rule.

Subdivision (a)(2)(A)(iii) is revised to conform to F.R.App. P. 25(a)(2)(A)(iii), which was recently amended to streamline and clarify the operation of the inmate-filing rule. The rule requires the inmate to show timely deposit and prepayment of postage. It is amended to specify that a notice is timely if it is accompanied by a declaration or

notarized statement stating the date the notice was deposited in the institution's mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage "is being prepaid," not (as directed by the former rule) that first-class postage "has been prepaid." This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution's mail system. A new Director's Form sets out a suggested form of the declaration.

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the appellate court—district court, BAP, or court of appeals in the case of a direct appeal—has discretion to accept a declaration or notarized statement at a later date. The rule uses the phrase "exercises its discretion to permit"—rather than simply "permits"—to help ensure that pro se inmates are aware that a court will not necessarily forgive a failure to provide the declaration initially.

Subdivision (c) is amended to authorize electronic service by means of the court's electronic-filing system on registered users without requiring their written consent. All other forms of electronic service require the written consent of the person served.

Service is complete when a person files the paper with the court's electronic-filing system for transmission to a registered user, or when one person sends it to another

person by other electronic means that the other person has consented to in writing. But service is not effective if the person who filed with the court or the person who sent by other agreed-upon electronic means receives notice that the paper did not reach the person to be served. The rule does not make the court responsible for notifying a person who filed the paper with the court's electronic-filing system that an attempted transmission by the court's system failed. But a filer who receives notice that the transmission failed is responsible for making effective service.

As amended, subdivision (d) eliminates the requirement of proof of service when service is made through the electronic-filing system. The notice of electronic filing generated by the system serves that purpose.

Subdivision (e) requires the signature of counsel or an unrepresented party on every document that is filed. A filing made through a person's electronic-filing account, together with the person's name on a signature block, constitutes the person's signature. A person's electronic-filing account means an account established by the court for use of the court's electronic-filing system, which account the person accesses with the user name and password (or other credentials) issued to that person by the court. The filing also must comply with the rules of the court governing electronic filing.

Changes Made After Publication and Comment

Amendments were made to subdivisions (a), (c), (d), and (e) to conform to amendments to Rule 5005(a)(2) and

parallel civil, criminal, and appellate rules regarding electronic filing, service, and signatures, all of which were published for comment.

Summary of Public Comments

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—Supports adoption of the published amendments.

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of the published amendments.

1 **Rule 8013. Motions; Intervention**

2 * * * * *

3 (f) FORM OF DOCUMENTS; PAGELLENGTH
4 LIMITS; NUMBER OF COPIES.

5 * * * * *

6 (2) *Format of an Electronically Filed*
7 *Document.* A motion, response, or reply filed
8 electronically must comply with the requirements of a
9 paper version regarding covers, line spacing, margins,
10 typeface, and type style. It must also comply with the
11 pagelength limits under paragraph (3).

12 (3) *PageLength Limits.* ~~Unless the district~~
13 ~~court or BAP orders otherwise:~~Except by the district
14 court's or BAP's permission, and excluding the
15 accompanying documents authorized by subdivision
16 (a)(2)(C):

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17 (A) a motion or a response to a motion
18 ~~must not exceed 20 pages, exclusive of the e~~
19 ~~disclosure statement and accompanying~~
20 ~~documents authorized by subdivision (a)(2)(C)~~
21 produced using a computer must include a
22 certificate under Rule 8015(h) and not exceed
23 5,200 words; and

24 (B) ~~a reply to a response must not exceed~~
25 ~~10 pages.~~ a handwritten or typewritten motion or
26 a response to a motion must not exceed 20
27 pages;

28 (C) a reply produced using a computer
29 must include a certificate under Rule 8015(h)
30 and not exceed 2,600 words; and

31 (D) a handwritten or typewritten reply
32 must not exceed 10 pages.

33 * * * * *

Committee Note

Subdivision (f)(3) is amended to conform to F.R. App. P. 27(d)(2), which was recently amended to replace page limits with word limits for motions and responses produced using a computer. The word limits were derived from the current page limits, using the assumption that one page is equivalent to 260 words. Documents produced using a computer must include the certificate of compliance required by Rule 8015(h); Official Form 417C suffices to meet that requirement. Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes the accompanying documents required by Rule 8013(a)(2)(C) and any items listed in Rule 8015(h).

Changes Made After Publication and Comment

None.

Summary of Public Comments

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—Supports adoption of the published amendments.

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of the published amendments.

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1 **Rule 8015. Form and Length of Briefs; Form of**
2 **Appendices and Other Papers**

3 (a) PAPER COPIES OF A BRIEF. If a paper copy
4 of a brief may or must be filed, the following provisions
5 apply:

6 * * * * *

7 (7) *Length.*

8 (A) *Page limitation.* A principal brief
9 must not exceed 30 pages, or a reply brief 15
10 pages, unless it complies with subparagraph (B)
11 ~~and (C)~~.

12 (B) *Type-volume limitation.*

13 (i) A principal brief is acceptable if
14 it contains a certificate under Rule 8015(h)
15 and:

16 . ~~it~~ contains no more than
17 ~~14,000~~ 13,000 words; or

18 · ~~it~~ uses a monospaced face
19 and contains no more than 1,300 lines
20 of text.

21 (ii) A reply brief is acceptable if it
22 includes a certificate under Rule 8015(h)
23 and contains no more than half of the type
24 volume specified in item (i).

25 ~~(iii) Headings, footnotes, and~~
26 ~~quotations count toward the word and line~~
27 ~~limitations. The corporate disclosure~~
28 ~~statement, table of contents, table of~~
29 ~~citations, statement with respect to oral~~
30 ~~argument, any addendum containing~~
31 ~~statutes, rules, or regulations, and any~~
32 ~~certificates of counsel do not count toward~~
33 ~~the limitation.~~

34 ~~(C) Certificate of Compliance.~~

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35 ~~(i) A brief submitted under~~
36 ~~subdivision (a)(7)(B) must include a~~
37 ~~certificate signed by the attorney, or an~~
38 ~~unrepresented party, that the brief complies~~
39 ~~with the type-volume limitation. The person~~
40 ~~preparing the certificate may rely on the~~
41 ~~word or line count of the word-processing~~
42 ~~system used to prepare the brief. The~~
43 ~~certificate must state either:~~

44 ~~the number of words in the~~
45 ~~brief; or~~

46 ~~the number of lines of~~
47 ~~monospaced type in the brief.~~

48 ~~(ii) The certificate requirement is~~
49 ~~satisfied by a certificate of compliance that~~
50 ~~conforms substantially to the appropriate~~
51 ~~Official Form.~~

52

* * * * *

53

(f) LOCAL VARIATION. A district court or BAP

54

must accept documents that comply with the ~~applicable~~

55

form requirements of this rule and the length limits set by

56

Part VIII of these rules. By local rule or order in a

57

particular case, a district court or BAP may accept

58

documents that do not meet all of the form requirements of

59

this rule or the length limits set by Part VIII of these rules.

60

(g) ITEMS EXCLUDED FROM LENGTH. In

61

computing any length limit, headings, footnotes, and

62

quotations count toward the limit, but the following items

63

do not:

64

• the cover page;

65

• a corporate disclosure statement;

66

• a table of contents;

67

• a table of citations;

68

• a statement regarding oral argument;

- 69 • an addendum containing statutes, rules, or
- 70 regulations;
- 71 • certificates of counsel;
- 72 • the signature block;
- 73 • the proof of service; and
- 74 • any item specifically excluded by these
- 75 rules or by local rule.

76 (h) CERTIFICATE OF COMPLIANCE.

77 (1) *Briefs and Documents That Require a*
78 *Certificate.* A brief submitted under Rule 8016(d)(2),
79 8017(b)(4), or 8015(a)(7)(B)—and a document
80 submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or
81 8022(b)(1)—must include a certificate by the
82 attorney, or an unrepresented party, that the document
83 complies with the type-volume limitation. The
84 individual preparing the certificate may rely on the
85 word or line count of the word-processing system

86 used to prepare the document. The certificate must
 87 state the number of words—or the number of lines of
 88 monospaced type—in the document.
 89 (2) *Acceptable Form.* The certificate
 90 requirement is satisfied by a certificate of compliance
 91 that conforms substantially to the appropriate Official
 92 Form.

Committee Note

The rule is amended to conform to recent amendments to F.R. App. P. 32, which reduced the word limits generally allowed for briefs. When Rule 32(a)(7)(B)'s type-volume limits for briefs were adopted in 1998, the word limits were based on an estimate of 280 words per page. Amended F.R. App. P. 32 applies a conversion ratio of 260 words per page and reduces the word limits accordingly. Rule 8015(a)(7) adopts the same reduced word limits for briefs prepared by computer.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

Subdivision (f) is amended to make clear a court's ability (by local rule or order in a case) to increase the length limits for briefs and other documents. Subdivision (f) already established this authority as to the length limits in Rule 8015(a)(7); the amendment makes clear that this authority extends to all length limits in Part VIII of the Bankruptcy Rules.

A new subdivision (g) is added to set out a global list of items excluded from length computations, and the list of exclusions in former subdivision (a)(7)(B)(iii) is deleted. The certificate-of-compliance provision formerly in subdivision (a)(7)(C) is relocated to a new subdivision (h) and now applies to filings under all type-volume limits (other than Rule 8014(f)'s word limit)—including the new word limits in Rules 8013, 8016, 8017, and 8022. Conforming amendments are made to Official Form 417C.

Changes Made After Publication and Comment

None.

Summary of Public Comments

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—Supports adoption of the published amendments.

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of the published amendments.

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1 **Rule 8016. Cross-Appeals**

2 * * * * *

3 (d) LENGTH.

4 (1) *Page Limitation.* Unless it complies with
5 paragraphs (2) ~~and (3)~~, the appellant's principal brief
6 must not exceed 30 pages; the appellee's principal and
7 response brief, 35 pages; the appellant's response and
8 reply brief, 30 pages; and the appellee's reply brief,
9 15 pages.

10 (2) *Type-Volume Limitation.*

11 (A) The appellant's principal brief or the
12 appellant's response and reply brief is acceptable
13 if it includes a certificate under Rule 8015(h)
14 and:

15 (i) ~~it contains no more than 14,000~~
16 13,000 words; or

17 (ii) ~~it~~ uses a monospaced face and
18 contains no more than 1,300 lines of text.

19 (B) The appellee's principal and response
20 brief is acceptable if it includes a certificate
21 under Rule 8015(h) and:

22 (i) ~~it~~ contains no more than ~~16,500~~
23 15,300 words; or

24 (ii) ~~it~~ uses a monospaced face and
25 contains no more than 1,500 lines of text.

26 (C) The appellee's reply brief is
27 acceptable if it includes a certificate under
28 Rule 8015(h) and contains no more than half of
29 the type volume specified in subparagraph (A).

30 ~~(D) Headings, footnotes, and quotations~~
31 ~~count toward the word and line limitations. The~~
32 ~~corporate disclosure statement, table of contents,~~
33 ~~table of citations, statement with respect to oral~~

34 ~~argument, any addendum containing statutes,~~
35 ~~rules, or regulations, and any certificates of~~
36 ~~counsel do not count toward the limitation.~~

37 ~~(3) Certificate of Compliance. A brief~~
38 ~~submitted either electronically or in paper form under~~
39 ~~paragraph (2) must comply with Rule 8015(a)(7)(C).~~

40 * * * * *

Committee Note

The rule is amended to conform to recent amendments to F.R. App. P. 28.1, which reduced the word limits generally allowed for briefs in cross-appeals. When Rule 28.1 was adopted in 2005, it modeled its type-volume limits on those set forth in F.R. App. P. 32(a)(7) for briefs in cases that did not involve a cross-appeal. At that time, Rule 32(a)(7)(B) set word limits based on an estimate of 280 words per page. Amended F.R. App. P. 32 and 28.1 apply a conversion ratio of 260 words per page and reduce the word limits accordingly. Rule 8016(d)(2) adopts the same reduced word limits.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those

situations by granting leave to exceed the type-volume limitations as appropriate.

Subdivision (d) is amended to refer to new Rule 8015(h) (which now contains the certificate-of-compliance provision formerly in Rule 8015(a)(7)(C)).

Changes Made After Publication and Comment

None.

Summary of Public Comments

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—Supports adoption of the published amendments.

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of the published amendments.

1 **Rule 8017. Brief of an Amicus Curiae**

2 (a) DURING INITIAL CONSIDERATION OF A
3 CASE ON THE MERITS.

4 (1) Applicability. This Rule 8017(a) governs
5 amicus filings during a court's initial consideration of
6 a case on the merits.

7 (2) When Permitted. The United States or its
8 officer or agency or a state may file an amicus-~~curiae~~
9 brief without the consent of the parties or leave of
10 court. Any other amicus curiae may file a brief only
11 by leave of court or if the brief states that all parties
12 have consented to its filing, except that a district court
13 or BAP may prohibit the filing of or strike an amicus
14 brief that would result in a judge's disqualification.

15 On its own motion, and with notice to all parties to an
16 appeal, the district court or BAP may request a brief
17 by an amicus curiae.

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18 ~~(b)~~(3) *Motion for Leave to File.* The motion
19 must be accompanied by the proposed brief and state:

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

21 ~~(2)~~(B) the reason why an amicus brief is
22 desirable and why the matters asserted are
23 relevant to the disposition of the appeal.

24 ~~(e)~~(4) *Contents and Form.* An amicus brief
25 must comply with Rule 8015. In addition to the
26 requirements of Rule 8015, the cover must identify
27 the party or parties supported and indicate whether the
28 brief supports affirmance or reversal. If an amicus
29 curiae is a corporation, the brief must include a
30 disclosure statement like that required of parties by
31 Rule 8012. An amicus brief need not comply with
32 Rule 8014, but must include the following:

33 ~~(1)~~(A) a table of contents, with page
34 references;

35 ~~(2)~~(B) a table of authorities—cases
36 (alphabetically arranged), statutes, and other
37 authorities—with references to the pages of the
38 brief where they are cited;

39 ~~(3)~~(C) a concise statement of the
40 identity of the amicus curiae, its interest in the
41 case, and the source of its authority to file;

42 ~~(4)~~(D) unless the amicus curiae is one
43 listed in the first sentence of subdivision (a)(2), a
44 statement that indicates whether:

45 ~~(A)~~(i) a party’s counsel authored
46 the brief in whole or in part;

47 ~~(B)~~(ii) a party or a party’s counsel
48 contributed money that was intended to fund
49 preparing or submitting the brief; and

50 ~~(C)~~(iii) a person—other than the
51 amicus curiae, its members, or its counsel—

52 contributed money that was intended to fund
53 preparing or submitting the brief and, if so,
54 identifies each such person.

55 ~~(5)~~(E) an argument, which may be
56 preceded by a summary and need not include a
57 statement of the applicable standard of review;

58 ~~(6)~~(F) a certificate of compliance, if
59 required by Rule 8015(a)(7)(C) or 8015(b).

60 ~~(d)~~(5) *Length.* Except by the district court's
61 or BAP's permission, an amicus brief must be no
62 more than one-half the maximum length authorized by
63 these rules for a party's principal brief. If a court
64 grants a party permission to file a longer brief, that
65 extension does not affect the length of an amicus
66 brief.

67 ~~(e)~~(6) *Time for Filing.* An amicus curiae
68 must file its brief, accompanied by a motion for filing

69 when necessary, no later than 7 days after the
70 principal brief of the party being supported is filed.
71 An amicus curiae that does not support either party
72 must file its brief no later than 7 days after the
73 appellant's principal brief is filed. The district court
74 or BAP may grant leave for later filing, specifying the
75 time within which an opposing party may answer.

76 ~~(f)(7)~~ *Reply Brief.* Except by the district
77 court's or BAP's permission, an amicus curiae may
78 not file a reply brief.

79 ~~(g)(8)~~ *Oral Argument.* An amicus curiae
80 may participate in oral argument only with the district
81 court's or BAP's permission.

82 (b) DURING CONSIDERATION OF WHETHER
83 TO GRANT REHEARING.

84 (1) Applicability. This Rule 8017(b) governs
85 amicus filings during a district court's or BAP's

86 consideration of whether to grant rehearing, unless a
87 local rule or order in a case provides otherwise.

88 (2) *When Permitted.* The United States or its
89 officer or agency or a state may file an amicus brief
90 without the consent of the parties or leave of court.
91 Any other amicus curiae may file a brief only by leave
92 of court. A district court or BAP may prohibit the
93 filing of or strike an amicus brief that would result in
94 a judge's disqualification.

95 (3) *Motion for Leave to File.* Rule 8017(a)(3)
96 applies to a motion for leave.

97 (4) *Contents, Form, and Length.*
98 Rule 8017(a)(4) applies to the amicus brief. The brief
99 must include a certificate under Rule 8015(h) and not
100 exceed 2,600 words.

101 (5) *Time for Filing.* An amicus curiae
102 supporting the motion for rehearing or supporting

103 neither party must file its brief, accompanied by a
 104 motion for filing when necessary, no later than 7 days
 105 after the motion is filed. An amicus curiae opposing
 106 the motion for rehearing must file its brief,
 107 accompanied by a motion for filing when necessary,
 108 no later than the date set by the court for the response.

Committee Note

Rule 8017 is amended to conform to the recent amendment to F.R. App. P. 29, which now addresses amicus filings in connection with petitions for rehearing. Former Rule 8017 is renumbered Rule 8017(a), and language is added to that subdivision (a) to state that its provisions apply to amicus filings during the district court’s or BAP’s initial consideration of a case on the merits. New subdivision (b) is added to address amicus filings in connection with a motion for rehearing. Subdivision (b) sets default rules that apply when a district court or BAP does not provide otherwise by local rule or by order in a case. A court remains free to adopt different rules governing whether amicus filings are permitted in connection with motions for rehearing, and governing the procedures when such filings are permitted.

The amendment to subdivision (a)(2) authorizes orders or local rules that prohibit the filing of an amicus brief by party consent if the brief would result in a judge’s disqualification. The amendment does not alter or address

the standards for when an amicus brief requires a judge's disqualification. It is modeled on an amendment to F.R. App. 29(a). A similar provision is included in subdivision (b)(2).

Changes Made After Publication and Comment

Authorization for the court to prohibit the filing of or strike an amicus brief that would result in a judge's disqualification was added to subdivision (b)(2). Stylistic changes were also made.

Summary of Public Comments

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—Supports adoption of the published amendments.

Pennsylvania Bar Association (BK-2016-0003-0008)—Opposes this amendment because amicus briefs are usually filed before an appeal is assigned to a panel of judges and thus the amicus and its counsel would have no way of knowing whether recusal would later be required. Under those circumstances the better course would be for the judge to recuse. Striking of the amicus brief might be appropriate if it appeared that the brief was filed for the purpose of obtaining a recusal, but the proposed provision is not so limited. When an amicus retains counsel for the purpose of prompting a recusal of a judge, the lawyer could be disqualified instead.

Heather Dixon (BK-2016-0003-0009)—Opposes the wording of the amendments as published. Rule 29(a) and (b) should be revised to eliminate the filing of amicus briefs with the consent of all parties, not require the amicus brief to accompany a motion for leave to file, and specify the circumstances under which the filing of an amicus brief that would cause a judge’s recusal would be permitted.

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1 **Rule 8018.1. District-Court Review of a Judgment that**
2 **the Bankruptcy Court Lacked the**
3 **Constitutional Authority to Enter**

4 If, on appeal, a district court determines that the
5 bankruptcy court did not have the power under Article III
6 of the Constitution to enter the judgment, order, or decree
7 appealed from, the district court may treat it as proposed
8 findings of fact and conclusions of law.

Committee Note

This rule is new. It is added to prevent a district court from having to remand an appeal whenever it determines that the bankruptcy court lacked constitutional authority to enter the judgment, order, or decree appealed from. Consistent with the Supreme Court’s decision in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014), the district court in that situation may treat the bankruptcy court’s judgment as proposed findings of fact and conclusions of law. Upon making the determination to proceed in that manner, the district court may choose to allow the parties to file written objections to specific proposed findings and conclusions and to respond to another party’s objections, *see* Rule 9033; treat the parties’ briefs as objections and responses; or prescribe other procedures for the review of the proposed findings of fact and conclusions of law.

Changes Made After Publication and Comment

None.

Summary of Public Comments

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—Supports adoption of the published amendments.

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of the published amendments.

1 **Rule 8021. Costs**

2 * * * * *

3 (c) COSTS ON APPEAL TAXABLE IN THE
4 BANKRUPTCY COURT. The following costs on appeal
5 are taxable in the bankruptcy court for the benefit of the
6 party entitled to costs under this rule:

7 (1) the production of any required copies of a
8 brief, appendix, exhibit, or the record;

9 (2) the preparation and transmission of the
10 record;

11 (3) the reporter's transcript, if needed to
12 determine the appeal;

13 (4) premiums paid for a ~~supersedeas~~ bond or
14 other security bonds—to preserve rights pending
15 appeal;

16 (5) the fee for filing the notice of appeal.

17 * * * * *

Committee Note

The amendment of subdivision (c) conforms this rule with the amendment of Rule 62 F.R.Civ.P., which is made applicable in adversary proceedings by Rule 7062. Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b)(2) allows a party to obtain a stay by providing a “bond or other security.”

Because this amendment is made to conform to amendments to Civil Rule 62 and Appellate Rule 39, final approval is sought without publication.

1 **Rule 8022. Motion for Rehearing**

2 * * * * *

3 (b) FORM OF MOTION; LENGTH. The motion
4 must comply in form with Rule 8013(f)(1) and (2). Copies
5 must be served and filed as provided by Rule 8011. ~~Unless~~
6 ~~the district court or BAP orders otherwise, a motion for~~
7 ~~rehearing must not exceed 15 pages.~~Except by the district
8 court's or BAP's permission:

9 (1) a motion for rehearing produced using a
10 computer must include a certificate under
11 Rule 8015(h) and not exceed 3,900 words; and

12 (2) a handwritten or typewritten motion must
13 not exceed 15 pages.

Committee Note

Subdivision (b) is amended to conform to the recent amendment to F.R. App. P. 40(b), which was one of several appellate rules in which word limits were substituted for page limits for documents prepared by computer. The word limits were derived from the previous page limits using the assumption that one page is equivalent to 260

words. Documents produced using a computer must include the certificate of compliance required by Rule 8015(h); completion of Official Form 417C suffices to meet that requirement.

Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes any items listed in Rule 8015(g).

Changes Made After Publication and Comment

None.

Summary of Public Comments

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—Supports adoption of the published amendments.

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of the published amendments.

1 **Rule 9025. Security: Proceedings Against Sureties**
2 **Security Providers**

3 Whenever the Code or these rules require or permit a
4 party to give security, and security is given ~~in the form of a~~
5 ~~bond or stipulation or other undertaking,~~ with one or more
6 security providers, each providersurety submits to the
7 jurisdiction of the court, and liability may be determined in
8 an adversary proceeding governed by the rules in Part VII.

Committee Note

This rule is amended to reflect the amendment of Rule 62 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7062. Rule 62 allows a party to obtain a stay of a judgment “by providing a bond or other security.” Limiting this rule’s enforcement procedures to sureties might exclude use of those procedures against a security provider that is not a surety. All security providers are brought into the rule by these amendments.

Because this amendment is made to conform to amendments to Civil Rule 62, final approval is sought without publication.

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**Appendix:
Length Limits Stated in Part VIII of the
Federal Rules of Bankruptcy Procedure**

This chart shows the length limits stated in Part VIII of the Federal Rules of Bankruptcy Procedure. Please bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 8015(g).
- If you are using a word limit or line limit (other than the word limit in Rule 8014(f)), you must include the certificate required by Rule 8015(h).
- If you are using a line limit, your document must be in monospaced typeface. A typeface is monofaced when each character occupies the same amount of horizontal space.
- For the limits in Rules 8013 and 8022:
 - You must use the word limit if you produce your document on a computer; and
 - You must use the page limit if you handwrite your document or type it on a typewriter.

	Rule	Document Type	Word Limit	Page Limit	Line Limit
Motions	8013(f)(3)	• Motion • Response to a motion	5,200	20	Not applicable
	8013(f)(3)	• Reply to a response to a motion	2,600	10	Not applicable
Parties' briefs (where no cross-appeal)	8015(a)(7)	• Principal brief	13,000	30	1,300
	8015(a)(7)	• Reply brief	6,500	15	650
Parties' briefs (where cross-appeal)	8016(d)	• Appellant's principal brief • Appellant's response and reply brief	13,000	30	1,300
	8016(d)	• Appellee's	15,300	35	1,500

	Rule	Document Type	Word Limit	Page Limit	Line Limit
		principal and response brief			
	8016(d)	• Appellee's reply brief	6,500	15	650
Party's supplemental letter	8014(f)	• Letter citing supplemental authorities	350	Not applicable	Not applicable
Amicus briefs	8017(a)(5)	• Amicus brief during initial consideration of case on merits	One-half the length set by the Part VIII Rules for a party's principal brief	One-half the length set by the Part VIII Rules for a party's principal brief	One-half the length set by the Part VIII Rules for a party's principal brief
	8017(b)(4)	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
Motion for rehearing	8022(b)	• Motion for rehearing	3,900	15	Not applicable

Changes Made After Publication and Comment

None.

Summary of Public Comments

Pennsylvania Bar Association (BK-2016-0003-0008)— Supports adoption of the appendix.

Information to identify the case:

Debtor _____ Name	EIN _____
United States Bankruptcy Court for the: _____ District of _____ (State)	[Date case filed for chapter 11 _____ MM / DD / YYYY OR [Date case filed in chapter _____ MM / DD / YYYY Date case converted to chapter 11 _____ MM / DD / YYYY]
Case number: _____	

Official Form 309F (For Corporations or Partnerships)**Notice of Chapter 11 Bankruptcy Case**

12/17

For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor's full name

2. All other names used in the last 8 years

3. Address

4. Debtor's attorney

Contact phone _____

Name and address

Email _____

5. Bankruptcy clerk's office

Documents in this case may be filed at this address.

Hours open _____

You may inspect all records filed in this case at this office or online at www.pacer.gov.

Contact phone _____

6. Meeting of creditors

The debtor's representative must attend the meeting to be questioned under oath.

_____ at _____
Date Time

Location:

Creditors may attend, but are not required to do so.

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

For more information, see page 2 ►

7. Proof of claim deadline**Deadline for filing proof of claim:**

[Not yet set. If a deadline is set, the court will send you another notice.] or

[date, if set by the court]]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed*, *contingent*, or *unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed*, *contingent*, or *unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at www.pacer.gov.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

8. Exception to discharge deadline

The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.

If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below.

Deadline for filing the complaint: _____**9. Creditors with a foreign address**

If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Filing a Chapter 11 bankruptcy case

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate its business.

11. Discharge of debts

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.

Information to identify the case:

Debtor 1	_____	_____	_____	Last 4 digits of Social Security number or ITIN _____
	First Name	Middle Name	Last Name	EIN _____
Debtor 2 (Spouse, if filing)	_____	_____	_____	Last 4 digits of Social Security number or ITIN _____
	First Name	Middle Name	Last Name	EIN _____
United States Bankruptcy Court for the: _____	District of _____			[Date case filed for chapter 12 _____]
	(State)			MM / DD / YYYY OR
Case number: _____				[Date case filed in chapter _____]
				MM / DD / YYYY
				Date case converted to chapter 12 _____]
				MM / DD / YYYY

Official Form 309G (For Individuals or Joint Debtors)

Notice of Chapter 12 Bankruptcy Case

12/17

For the debtors listed above, a case has been filed under chapter 12 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors, from the debtors' property, or from certain codebtors. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 12 plan may result in a discharge of debt. Creditors who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 13 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

	About Debtor 1:	About Debtor 2:
1. Debtor's full name		
2. All other names used in the last 8 years		
3. Address		If Debtor 2 lives at a different address:
4. Debtor's attorney Name and address		Contact phone _____ Email _____
5. Bankruptcy trustee Name and address		Contact phone _____ Email _____
6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov .		Hours open _____ Contact phone _____

For more information, see page 2 ►

7. Meeting of creditors

Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so.

_____ at _____
 Date Time

Location: _____

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

8. Deadlines

The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.

Deadline to file a complaint to challenge dischargeability of certain debts:

Filing deadline: _____

You must start a judicial proceeding by filing a complaint if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6).

Deadline for all creditors to file a proof of claim (except governmental units):

Filing deadline: _____

Deadline for governmental units to file a proof of claim:

Filing deadline: _____

Deadlines for filing proof of claim:

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

If you do not file a proof of claim by the deadline, you might not be paid on your claim. To be paid, you must file a proof of claim even if your claim is listed in the schedules that the debtor filed.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

Deadline to object to exemptions:

Filing deadline: 30 days after the conclusion of the meeting of creditors

The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.

9. Filing of plan

[The debtor has filed a plan, which is attached. The hearing on confirmation will be held on: _____ at _____
 Date Time]

Or [The debtor has filed a plan. The plan and notice of confirmation hearing will be sent separately.]

Or [The debtor has not filed a plan as of this date. A copy of the plan and a notice of the hearing on confirmation will be sent separately.]

10. Creditors with a foreign address

If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

11. Filing a Chapter 12 bankruptcy case

Chapter 12 allows family farmers and family fishermen to reorganize according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan. You may object to confirmation of the plan and attend the confirmation hearing. The debtor will remain in possession of the property and may continue to operate the business unless the court orders otherwise.

12. Discharge of debts

Confirmation of a chapter 12 plan may result in a discharge of debts, which may include all or part of your debt. Unless the court orders otherwise, the discharge will not be effective until all payments under the plan are made. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt excepted under 11 U.S.C. § 523(a)(2), (4), or (6), you must start a judicial proceeding by filing a complaint and paying the filing fee in the clerk's office by the deadline.

13. Exempt property

The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors, even if the case is converted to chapter 7. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 8.

Information to identify the case:

Debtor _____ Name	EIN _____ - _____ - _____
United States Bankruptcy Court for the: _____ District of _____ (State)	[Date case filed for chapter 12 _____ MM / DD / YYYY OR
Case number: _____	[Date case filed in chapter _____ MM / DD / YYYY
	Date case converted to chapter 12 _____ MM / DD / YYYY]

Official Form 309H (For Corporations or Partnerships)**Notice of Chapter 12 Bankruptcy Case****12/15**

For the debtor listed above, a case has been filed under chapter 12 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor, the debtor's property, or certain codebtors. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 12 plan may result in the discharge of debt. Creditors who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 13 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor's full name	
2. All other names used in the last 8 years	
3. Address	
4. Debtor's attorney Name and address	Contact phone _____ Email _____
5. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov .	Hours open _____ Contact phone _____
6. Bankruptcy trustee Name and address	Contact phone _____ Email _____

For more information, see page 2 ►

7. Meeting of creditors

The debtor's representative must attend the meeting to be questioned under oath.

Creditors may attend, but are not required to do so.

_____ at _____
Date Time

Location: _____

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

8. Exception to discharge deadline

The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.

You must start a judicial proceeding by filing a complaint if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6).

Deadline for filing the complaint: _____

9. Filing of plan

[The debtor has filed a plan, which is attached. The hearing on confirmation will be held on: _____ at _____
Date Time]

Or [The debtor has filed a plan. The plan and notice of confirmation hearing will be sent separately.]

Or [The debtor has not filed a plan as of this date. A copy of the plan and a notice of the hearing on confirmation will be sent separately.]

10. Deadlines

Deadline for all creditors to file a proof of claim (except governmental units):

Filing deadline: _____

Deadline for governmental units to file a proof of claim:

Filing deadline: _____

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

If you do not file a proof of claim by the deadline, you might not be paid on your claim. To be paid, you must file a proof of claim even if your claim is listed in the schedules that the debtor filed.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

11. Creditors with a foreign address

If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

12. Filing a chapter 12 bankruptcy case

Chapter 12 allows family farmers and family fishermen to reorganize according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan. You may object to confirmation of the plan and attend the confirmation hearing. The debtor will remain in possession of the property and may continue to operate the business.

13. Discharge of debts

Confirmation of a chapter 12 plan may result in a discharge of debts, which may include all or part of your debt. Unless the court orders otherwise, the discharge will not be effective until all payments under the plan are made. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan.

If you want to have a particular debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6), you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.

Information to identify the case:

Debtor 1 _____
First Name Middle Name Last Name

Last 4 digits of Social Security number or ITIN _____
 EIN _____

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

Last 4 digits of Social Security number or ITIN _____
 EIN _____

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

[Date case filed for chapter 13 _____
MM / DD / YYYY OR

Case number: _____

[Date case filed in chapter _____
MM / DD / YYYY

Date case converted to chapter 13 _____]
MM / DD / YYYY

Official Form 309I

Notice of Chapter 13 Bankruptcy Case

12/17

For the debtors listed above, a case has been filed under chapter 13 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors, the debtors' property, and certain codebtors. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

Confirmation of a chapter 13 plan may result in a discharge. Creditors who assert that the debtors are not entitled to a discharge under 11 U.S.C. § 1328(f) must file a motion objecting to discharge in the bankruptcy clerk's office within the deadline specified in this notice. Creditors who want to have their debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office by the same deadline. (See line 13 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

About Debtor 1:	About Debtor 2:
1. Debtor's full name	
2. All other names used in the last 8 years	
3. Address	If Debtor 2 lives at a different address:
4. Debtor's attorney Name and address	Contact phone _____ Email _____
5. Bankruptcy trustee Name and address	Contact phone _____ Email _____
6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov .	Hours open _____ Contact phone _____

For more information, see page 2 ►

7. Meeting of creditors

Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so.

_____ at _____
 Date Time

Location: _____

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

8. Deadlines

The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.

Deadline to file a complaint to challenge dischargeability of certain debts:

Filing deadline: _____

You must file:

- a motion if you assert that the debtors are not entitled to receive a discharge under U.S.C. § 1328(f), or
- a complaint if you want to have a particular debt excepted from discharge under 11 U.S.C. § 523(a)(2) or (4).

Deadline for all creditors to file a proof of claim (except governmental units):

Filing deadline: _____

Deadline for governmental units to file a proof of claim:

Filing deadline: _____

Deadlines for filing proof of claim:

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office. If you do not file a proof of claim by the deadline, you might not be paid on your claim. To be paid, you must file a proof of claim even if your claim is listed in the schedules that the debtor filed.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim.

Filing a proof of claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

Deadline to object to exemptions:

Filing deadline: 30 days after the conclusion of the meeting of creditors

The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.

9. Filing of plan

[The debtor has filed a plan, which is attached. The hearing on confirmation will be held on: _____ at _____
 Date Time]

Or [The debtor has filed a plan. The plan and notice of confirmation hearing will be sent separately.]

Or [The debtor has not filed a plan as of this date. A copy of the plan and a notice of the hearing on confirmation will be sent separately.]

10. Creditors with a foreign address

If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadline in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

11. Filing a chapter 13 bankruptcy case

Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts according to a plan. A plan is not effective unless the court confirms it. You may object to confirmation of the plan and appear at the confirmation hearing. A copy of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date shown in line 9 of this notice] or [the court will send you a notice of the confirmation hearing]. The debtor will remain in possession of the property and may continue to operate the business, if any, unless the court orders otherwise.

12. Exempt property

The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors, even if the case is converted to chapter 7. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at www.pacer.gov. If you believe that the law does not authorize an exemption that debtors claimed, you may file an objection by the deadline.

13. Discharge of debts

Confirmation of a chapter 13 plan may result in a discharge of debts, which may include all or part of a debt. However, unless the court orders otherwise, the debts will not be discharged until all payments under the plan are made. A discharge means that creditors may never try to collect the debt from the debtors personally except as provided in the plan. If you want to have a particular debt excepted from discharge under 11 U.S.C. § 523(a)(2) or (4), you must file a complaint and pay the filing fee in the bankruptcy clerk's office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1328(f), you must file a motion. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 8.

COMMITTEE NOTE

Official Form 309F (For Corporations or Partnerships), *Notice of Chapter 11 Bankruptcy Case*, is amended at Lines 8 and 11. Both lines previously stated that a creditor seeking to have a debt excepted from discharge under § 1141(d)(6)(A) must file a complaint by the stated deadline. That statement has been revised in light of ambiguities in § 1141(d)(6)(A) regarding its relationship with § 523. Specifically, the provision is unclear about whether not only a debt “owed to a domestic governmental unit” but also a debt “owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute” must be of the type described by § 523(a)(2)(A) and (B). The provision is also unclear about whether the procedural requirements of § 523(c)(1) apply, given that § 1141(d)(6)(A) specifically refers to § 523(a) but not to § 523(c). Rather than take a position on the proper interpretation of § 1141(d)(6)(A), the form leaves to creditors the determination of whether § 523(c) applies to their claims, in which case they must commence a dischargeability proceeding by the Rule 4007(c) deadline that is stated on the form.

Official Forms 309G, (For Individual Debtors), *Notice of Chapter 12 Bankruptcy Case*, 309H, (For Corporations and Partnerships), *Notice of Chapter 12 Bankruptcy Case*, and 309I, *Notice of Chapter 13 Bankruptcy Case*, are each amended at Line 9 to remove references to “plan summaries” in conformance with amendments to Rule 3015(d) made in 2017.

Changes Made After Publication and Comment

Because the amendments to Official Forms 309G, 309H, and 309I are made to conform to an amendment to Rule 3015(d), final approval is sought without publication.

With respect to Official Form 309F, an amendment similar to the one proposed for line 8 of the form was made at line 11.

Summary of Public Comment to Official Form 309F

Judge Laurel Isicoff (Bankr. S.D. Fla.) (BK-2016-0003-0003)—Because no amendment to line 11 of the form is being proposed, using different language in lines 8 and 11 creates confusion for the recipient of the notice, who might believe that the deadline in paragraph 8 does not apply to the complaint referred to in paragraph 11.

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of the amended form.

[Caption as in Form 416A, 416B, or 416D, as appropriate]

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s): _____

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

- Plaintiff
- Defendant
- Other (describe) _____

For appeals in a bankruptcy case and not in an adversary proceeding.

- Debtor
- Creditor
- Trustee
- Other (describe) _____

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from: _____

2. State the date on which the judgment, order, or decree was entered: _____

Part 3: Identify the other parties to the appeal

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

1. Party: _____ Attorney: _____

2. Party: _____ Attorney: _____

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

Signature of attorney for appellant(s) (or appellant(s)
if not represented by an attorney)

Date: _____

Name, address, and telephone number of attorney
(or appellant(s) if not represented by an attorney):

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

[Note to inmate filers: If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director’s Form 4710 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

Committee Note

The form is amended to include a notice to inmate filers that Director's Form 4710 may be used to provide a declaration under Rule 8002(c)(1) regarding the mailing of a notice of appeal using an institution's legal mail system.

Changes Made After Publication and Comment

None.

Summary of Public Comment

Pennsylvania Bar Association (BK-2016-0003-0008)—
Supports adoption of the amended form.

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[This certification must be appended to your document if its length is calculated by maximum number of words or lines of text rather than number of pages.]

Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with [the type-volume limit of Fed. R. Bankr. P. *[insert Rule citation; e.g., 8015(a)(7)(B)]*] [the word limit of Fed. R. Bankr. P. *[insert Rule citation; e.g., 8013(f)(3)(A)]*] because, excluding the parts of the document exempted by Fed. R. Bankr. P. 8015(g) [and *[insert applicable Rule citation, if any]*]:

- this document contains *[state the number of]* words, **or**
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2. This document complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type-style requirements of Fed. R. Bankr. P. 8015(a)(6) because:

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Signature

Date: _____

Print name of person signing certificate of compliance:

COMMITTEE NOTE

The form is amended to reflect changes in the length limits specified by Part VIII of the Bankruptcy Rules for appellate documents and the broadened requirement for a certificate of compliance under Rule 8015(h). The rule now requires certification of compliance with the type-volume or word limits for briefs filed under Rule 8015(a)(7)(b) 8016(d)(2), or 8017(b)(4), and documents filed under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1).

Changes Made After Publication and Comment

None.

Summary of Public Comment

Pennsylvania Bar Association (BK-2016-0003-0008)—
Supports adoption of the amended form.

Fill in this information to identify the case:

Debtor Name _____
United States Bankruptcy Court for the: _____ District of _____
(State)
Case number: _____

Check if this is an amended filing

Official Form 425A

Plan of Reorganization for Small Business Under Chapter 11

12/17

[Name of Proponent]’s Plan of Reorganization, Dated [Insert Date]

Article 1: Summary

This Plan of Reorganization (the *Plan*) under chapter 11 of the Bankruptcy Code (the *Code*) proposes to pay creditors of [insert the name of the Debtor] (the *Debtor*) from [Specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income].

This Plan provides for: classes of priority claims;
 classes of secured claims;
 classes of non-priority unsecured claims; and
 classes of equity security holders.

Non-priority unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately cents on the dollar. This Plan also provides for the payment of administrative and priority claims.

All creditors and equity security holders should refer to Articles 3 through 6 of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

Article 2: Classification of Claims and Interests

2.01 **Class 1**..... All allowed claims entitled to priority under § 507(a) of the Code (except administrative expense claims under § 507(a)(2), [“gap” period claims in an involuntary case under § 507(a)(3),] and priority tax claims under § 507(a)(8)).

[Add classes of priority claims, if applicable]

2.02 **Class 2**..... The claim of _____, to the extent allowed as a secured claim under § 506 of the Code.

[Add other classes of secured creditors, if any. *Note:* Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).]

2.03 **Class 3**..... All non-priority unsecured claims allowed under § 502 of the Code.

[Add other classes of unsecured claims, if any.]

2.04 **Class 4** Equity interests of the Debtor. [If the Debtor is an individual, change this heading to *The interests of the individual Debtor in property of the estate.*]

Article 3: Treatment of Administrative Expense Claims, Priority Tax Claims, and Quarterly and Court Fees

3.01 **Unclassified claims** Under section § 1123(a)(1), administrative expense claims, ["gap" period claims in an involuntary case allowed under § 502(f) of the Code,] and priority tax claims are not in classes.

3.02 **Administrative expense claims** Each holder of an administrative expense claim allowed under § 503 of the Code, [and a "gap" claim in an involuntary case allowed under § 502(f) of the Code,] will be paid in full on the effective date of this Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

3.03 **Priority tax claims** Each holder of a priority tax claim will be paid [Specify terms of treatment consistent with § 1129(a)(9)(C) of the Code].

3.04 **Statutory fees** All fees required to be paid under 28 U.S.C. § 1930 that are owed on or before the effective date of this Plan have been paid or will be paid on the effective date.

3.05 **Prospective quarterly fees** All quarterly fees required to be paid under 28 U.S.C. § 1930(a)(6) or (a)(7) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code.

Article 4: Treatment of Claims and Interests Under the Plan

4.01 **Claims and interests shall be treated as follows under this Plan:**

Class	Impairment	Treatment
Class 1 - Priority claims excluding those in Article 3	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of priority claims in this Class, including the form, amount and timing of distribution, if any. For example: "Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan, or the date on which such claim is allowed by a final non-appealable order. Except: _____."] [Add classes of priority claims if applicable]
Class 2 - Secured claim of [Insert name of secured creditor.]	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of secured claim in this Class, including the form, amount and timing of distribution, if any.] [Add classes of secured claims if applicable]
Class 3 - Non-priority unsecured creditors	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of unsecured creditors in this Class, including the form, amount and timing of distribution, if any.] [Add administrative convenience class if applicable]
Class 4 - Equity security holders of the Debtor	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of equity security holders in this Class, including the form, amount and timing of distribution, if any.]

Article 5: Allowance and Disallowance of Claims

5.01 **Disputed claim** A *disputed claim* is a claim that has not been allowed or disallowed [by a final non-appealable order], and as to which either:

- (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or
- (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

5.02 **Delay of distribution on a disputed claim** No distribution will be made on account of a disputed claim unless such claim is allowed [by a final non-appealable order].

5.03 **Settlement of disputed claims** The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

Article 6: Provisions for Executory Contracts and Unexpired Leases

6.01 **Assumed executory contracts and unexpired leases**

(a) The Debtor assumes, and if applicable assigns, the following executory contracts and unexpired leases as of the effective date:
 [List assumed, or if applicable assigned, executory contracts and unexpired leases.]

(b) Except for executory contracts and unexpired leases that have been assumed, and if applicable assigned, before the effective date or under section 6.01(a) of this Plan, or that are the subject of a pending motion to assume, and if applicable assign, the Debtor will be conclusively deemed to have rejected all executory contracts and unexpired leases as of the effective date.

A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than days after the date of the order confirming this Plan.

Article 7: Means for Implementation of the Plan

[Insert here provisions regarding how the plan will be implemented as required under § 1123(a)(5) of the Code. For example, provisions may include those that set out how the plan will be funded, including any claims reserve to be established in connection with the plan, as well as who will be serving as directors, officers or voting trustees of the reorganized Debtor.]

Article 8: General Provisions

8.01 **Definitions and rules of construction** The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions:

[Insert additional definitions if necessary].

8.02 **Effective date** The effective date of this Plan is the first business day following the date that is 14 days after the entry of the confirmation order. If, however, a stay of the confirmation order is in effect on that date, the effective date will be the first business day after the date on which the stay expires or is otherwise terminated.

8.03 **Severability** If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.04 **Binding effect** The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

8.05 **Captions** The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

[8.06 Controlling effect

Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of _____ govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.]

[8.07 Corporate governance

[If the Debtor is a corporation include provisions required by § 1123(a)(6) of the Code.]

[8.08 Retention of Jurisdiction

Language addressing the extent and the scope of the bankruptcy court's jurisdiction after the effective date of the plan.]

Article 9: Discharge

Check one box.

9.01

Discharge if the Debtor is an individual and § 1141(d)(3) is not applicable.

Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

Discharge if the Debtor is a partnership and § 1141(d)(3) is not applicable. On the effective date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in § 1141(d)(1)(A) of the Code. The Debtor will not be discharged from any debt imposed by this Plan.

Discharge if the Debtor is a corporation and § 1141(d)(3) is not applicable. On the effective date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt:

- (i) imposed by this Plan; or
- (ii) to the extent provided in § 1141(d)(6).

No discharge if § 1141(d)(3) is applicable. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

Debtor Name _____

Case number _____

Article 10: Other Provisions

[Insert other provisions, as applicable.]

Respectfully submitted,

x

[Signature of the Plan Proponent]

[Printed Name]

x

[Signature of the Attorney for the Plan Proponent]

[Printed Name]

COMMITTEE NOTE

Official Form 425A, *Plan of Reorganization for Small Business Under Chapter 11*, replaces Official Form 25A, *Plan of Reorganization in Small Business Case Under Chapter 11*. It is revised as part of the Forms Modernization Project, making it easier to read, and includes formatting and stylistic changes throughout the form. It is intended to provide an illustrative format, rather than a specific prescription for the form's language or content of a plan in any particular case.

In Article 1, *Summary*, a category is added for priority claims that are required to be classified and provided for under the plan, and the category for "unsecured claims" is revised to provide for only "non-priority unsecured claims." Also, the value that the proponent estimates to be distributed to unsecured claims is revised to clarify that the estimate is limited to non-priority claims. The instruction to identify and briefly summarize priority and administrative claims that will not be paid on the effective date of the plan, to the extent permitted by the Bankruptcy Code, is eliminated because it is duplicative of the information requested in Articles 3 and 4.

In Article 2, *Classification of Claims and Interests*, section 2.01 is revised to clarify that the priority of claims is determined under section 507(a) of the Bankruptcy Code and to provide for the classification of priority claims where necessary and appropriate. *See* 11 U.S.C. § 1129(a)(9)(B). Section 2.03 is revised to clarify that Class 3 "unsecured claims" are limited to "non-priority unsecured claims."

In Article 3, *Treatment of Administrative Expense Claims, Priority Tax Claims, and Quarterly and Court Fees*, the title and categories of claims have been revised to include all unclassified administrative and priority claims and all fees payable under 28 U.S.C. § 1930 for which the Bankruptcy Code specifies the treatment under the plan. *See* 11 U.S.C. § 1129(a)(9), (12). In the title, the reference to "United States Trustee fees" is changed to "Quarterly and Court Fees" to include all of the fees payable under

28 U.S.C. § 1930. Also, section 3.04 is revised to include all statutory fees under 28 U.S.C. § 1930(a), and quarterly fees payable under 28 U.S.C. § 1930(a)(6) and (7) after the effective date of the plan are moved to a new section 3.05.

Article 4, *Treatment of Claims and Interests Under the Plan*, is revised to conform to the changes made in sections 2.01 and 2.03 of the plan to classify priority claims, if applicable, and to distinguish the non-priority unsecured claims.

In Article 6, *Provisions for Executory Contracts and Unexpired Leases*, references to the assumption of executory contracts and unexpired leases are expanded to include assignment, if applicable. Section 6.01 is revised to clarify that executory contracts and unexpired leases are assumed, and if applicable assigned, under section 6.01(a) and rejected under section 6.01(b) as of the effective date of the plan. Section 6.01(b) is revised to clarify that all executory contracts and unexpired leases that have been previously assumed, and if applicable assigned, or are the subject of a pending motion to assume, and if applicable assign, as of plan confirmation are also excluded from presumed rejection under the plan.

In Article 9, *Discharge*, the third option is revised to delete the reference to Rule 4007(c) and to clarify that corporations will not be discharged of debts to the extent specified in section 1141(d)(6) of the Bankruptcy Code.

The caption block for the plan is formatted for a non-individual debtor. An individual chapter 11 debtor should use the caption block formatted for individual debtors, including a joint case involving more than one individual debtor, such as the caption found in Official Form B309I.

Changes Made After Publication and Comment

- The caption on the plan was changed to follow the form for non-individual debtor cases. An instruction was added to the Committee Note regarding the caption and signature block to be

used in non-individual chapter 11 cases and joint cases involving individual debtors.

- A reference to a claims reserve, if any, was added to the list of potential information items to be discussed in Article 7 (Means for Implementation of Plan).
- Section 8.08 (Retention of Jurisdiction) was added to address the post-effective date jurisdiction of the bankruptcy court.

Summary of Public Comment

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of the amended form.

Judge Neil W. Bason (C.D. Cal.) (BK-2016-003-0013)—Made a number of detailed comments, including the following:

- Forms 425A and 425B are redundant and should be streamlined to eliminate unnecessary repetition of plan provisions in the disclosure statement.
- The explanation of who may or may not vote on a plan is inconsistent and incomplete. This explanation in the disclosure statement and the relevant plan provisions should be replaced with language that offers a different definition of “disputed claim” and a more extensive explanation of who may or may not vote.
- The plan does not contain provisions dealing with claims reserves or unclaimed funds.
- The meaning of the term “final non-appealable order” as used in the plan is ambiguous.
- The terminology in the executory contracts section (i.e., “executory contract,” “assume,” “reject”) is not well defined and may be confusing to non-lawyers. The plan should include a sample chart in Part III.F that shows how the debtor proposes to cure any defaults under executory contracts and unexpired leases.
- Add a separate signature line for a debtor’s spouse.
- Add provisions (i) allowing the debtor under Section 5.03 of the plan to enter into settlements under a certain dollar amount on notice and without court approval; and (ii) providing that the court will retain jurisdiction over certain matters after the effective date of the plan.
- Delete sections 8.03 and 8.05 of the plan, which address severability and captions, respectively.

Official Form 425A (Committee Note) (12/17)

- Section 9.01 of the plan is wrong in referencing § 1141(d)(3) of the Bankruptcy Code, and it is unclear regarding the timing of any discharge.

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Fill in this information to identify the case:

Debtor Name _____
United States Bankruptcy Court for the: _____ District of _____
(State)
Case number: _____

Check if this is an amended filing

Official Form 425B

Disclosure Statement for Small Business Under Chapter 11

12/17

[Name of Proponent]'s Disclosure Statement, Dated [Insert Date]

Table of Contents. See instructions about how to modify the table of contents if you do not have all of the sections below.

[Insert when text is finalized]

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I. Introduction

This is the disclosure statement (the *Disclosure Statement*) in the small business chapter 11 case of [] (the *Debtor*). This Disclosure Statement provides information about the Debtor and the Plan filed on [insert date] (the *Plan*) to help you decide how to vote.

A copy of the Plan is attached as *Exhibit A*. **Your rights may be affected.** You should read the Plan and this Disclosure Statement carefully. You may wish to consult an attorney about your rights and your treatment under the Plan.

The proposed distributions under the Plan are discussed at pages []- [] of this Disclosure Statement. [General unsecured creditors are classified in Class [] and will receive a distribution of []% of their allowed claims, to be distributed as follows [].]

A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the *Court*) will consider when deciding whether to confirm the Plan,
- Why [the proponent] believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. A separate order has been entered setting the following information:

- Time and place of the hearing to [finally approve this disclosure statement and] confirm the plan,
- Deadline for voting to accept or reject the plan, and
- Deadline for objecting to the [adequacy of disclosure and] confirmation of the plan.

If you want additional information about the Plan or the voting procedure, you should contact [insert name and address of representative of plan proponent].

C. Disclaimer

The Court has [conditionally] approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.

II. Background

A. Description and History of the Debtor’s Business

The Debtor is a [corporation, partnership, etc.]. Since [insert year operations commenced], the Debtor has been in the business of [_____]. [Describe the Debtor’s business].

B. Insiders of the Debtor

[Insert a detailed list of the names of Debtor’s insiders as defined in § 101(31) of the United States Bankruptcy Code (the Code) and their relationship to the Debtor.

For each insider, list all compensation paid by the Debtor or its affiliates to that person or entity during the 2 years prior to the commencement of the Debtor’s bankruptcy case, as well as compensation paid during the pendency of this chapter 11 case.]

C. Management of the Debtor During the Bankruptcy

List the name and position of all current officers, directors, managing members, or other persons in control (collectively the *Management*) who will not have a position post-confirmation that you list in III D 2.

Name	Position

D. Events Leading to Chapter 11 Filing

[Describe the events that led to the commencement of the Debtor’s bankruptcy case.]

E. Significant Events During the Bankruptcy Case

[Describe significant events during the Debtor's bankruptcy case:

- Describe any asset sales outside the ordinary course of business, Debtor in Possession financing, or cash collateral orders.
- Identify the professionals approved by the court.
- Describe any adversary proceedings that have been filed or other significant litigation that has occurred (including contested claim disallowance proceedings), and any other significant legal or administrative proceedings that are pending or have been pending during the case in a forum other than the Court.
- Describe any steps taken to improve operations and profitability of the Debtor.
- Describe other events as appropriate.]

F. Projected Recovery of Avoidable Transfers

Check one box.

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

The Debtor estimates that up to \$ may be realized from the recovery of fraudulent, preferential or other avoidable transfers. While the results of litigation cannot be predicted with certainty and it is possible that other causes of action may be identified, the following is a summary of the preference, fraudulent conveyance and other avoidance actions filed or expected to be filed in this case:

Transaction	Defendant	Amount Claimed
-------------	-----------	----------------

The Debtor has not yet completed its investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

G. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. Disputed claims are treated in Article 5 of the Plan.

H. Current and Historical Financial Conditions

The identity and fair market value of the estate's assets are listed in *Exhibit B*. [Identify source and basis of valuation.]

The Debtor's most recent financial statements [if any] issued before bankruptcy, each of which was filed with the Court, are set forth in *Exhibit C*.

[The most recent post-petition operating report filed since the commencement of the Debtor's bankruptcy case is set forth in *Exhibit D*.]

[A summary of the Debtor's periodic operating reports filed since the commencement of the Debtor's bankruptcy case is set forth in *Exhibit D*.]

III. Summary of the Plan of Reorganization and Treatment of Claims and Equity Interests**A. What Is the Purpose of the Plan of Reorganization?**

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. Therefore, the Plan Proponent has *not* placed the following claims in any class:

1. Administrative expenses, involuntary gap claims, and quarterly and Court fees

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 503(b) of the Code. Administrative expenses include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition, and compensation for services and reimbursement of expenses awarded by the court under § 330(a) of the Code. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment. Involuntary gap claims allowed under § 502(f) of the Code are entitled to the same treatment as administrative expense claims. The Code also requires that fees owed under section 1930 of title 28, including quarterly and court fees, have been paid or will be paid on the effective date of the Plan.

The following chart lists the Debtor's estimated administrative expenses, and quarterly and court fees, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Administrative expenses		Paid in full on the effective date of the Plan, unless the holder of a particular claim has agreed to different treatment
Involuntary gap claims		Paid in full on the effective date of the Plan, unless the holder of a particular claim has agreed to different treatment
Statutory Court fees		Paid in full on the effective date of the Plan

Statutory quarterly fees

Paid in full on the effective date of the Plan

Total	
--------------	--

2. Priority tax claims

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim pursuant to 11 U.S.C. § 511, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor’s estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (Name and type of tax)	Estimated Amount Owed	Date of Assessment	Treatment
	\$		Payment interval <hr/> [Monthly] payment \$ <hr/> Begin date <hr/> End date <hr/> Interest rate % <hr/> Total payout amount \$
	\$		Payment interval <hr/> [Monthly] payment \$ <hr/> Begin date <hr/> End date <hr/> Interest rate % <hr/> Total payout amount \$

C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. Classes of secured claims

Allowed Secured Claims are claims secured by property of the Debtor’s bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor’s claim is less than the amount of the creditor’s allowed claim, the deficiency will [be classified as a general unsecured claim].

The following chart lists all classes containing Debtor’s secured prepetition claims and their proposed treatment under the Plan:

Class #	Description	Impairment?	Treatment
	Secured claim of: Name	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Monthly] payment \$
	Collateral description		Payments begin
	Allowed secured amount \$		Payments end
	Priority of lien		[Balloon payment]
	Principal owed		Interest rate %
	Pre-pet. arrearage		Treatment of lien
	Total claim \$		[Additional payment required to cure defaults] \$
	Secured claim of: Name	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Monthly] payment \$
	Collateral description		Payment begin
	Allowed secured amount \$		Payments end
	Priority of lien		[Balloon payment]
	Principal owed		Interest rate %
	Pre-pet. arrearage		Treatment of lien
	Total claim \$		[Additional payment required to cure defaults] \$

2. Classes of priority unsecured claims

The Code requires that, with respect to a class of claims of a kind referred to in §§ 507(a)(1), (4), (5), (6), and (7), each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim, unless a particular claimant agrees to a different treatment or the class agrees to deferred cash payments.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (7) of the Code and their proposed treatment under the Plan:

Class #	Description	Impairment?	Treatment
	Priority unsecured claim pursuant to section [insert]	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	
	Total amount of claims \$		
	Priority unsecured claim pursuant to section [insert]	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	
	Total amount of claims \$		

3. Classes of general unsecured claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. [Insert description of § 1122(b) convenience class if applicable.]

The following chart identifies the Plan’s proposed treatment of classes through , which contain general unsecured claims against the Debtor:

Class #	Description	Impairment?	Treatment												
	[1122(b) Convenience Class]	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert proposed treatment, such as “Paid in full in cash on effective date of the Plan or when due under contract or applicable nonbankruptcy law”]												
	General unsecured class	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	<table border="0"> <tr> <td>[Monthly] payment</td> <td>\$</td> </tr> <tr> <td>Payments begin</td> <td></td> </tr> <tr> <td>Payments end</td> <td></td> </tr> <tr> <td>[Balloon payment]</td> <td>\$</td> </tr> <tr> <td>Interest rate from [date]</td> <td>%</td> </tr> <tr> <td>Estimated percent of claim paid</td> <td>%</td> </tr> </table>	[Monthly] payment	\$	Payments begin		Payments end		[Balloon payment]	\$	Interest rate from [date]	%	Estimated percent of claim paid	%
[Monthly] payment	\$														
Payments begin															
Payments end															
[Balloon payment]	\$														
Interest rate from [date]	%														
Estimated percent of claim paid	%														

4. Classes of equity interest holders

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company (*LLC*), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan’s proposed treatment of the classes of equity interest holders: [There may be more than one class of equity interests in, for example, a partnership case, or a case where the prepetition Debtor had issued multiple classes of stock.]

Class #	Description	Impairment?	Treatment
	Equity interest holders	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	

D. Means of Implementing the Plan

1. Source of payments

Payments and distributions under the Plan will be funded by the following:

[Describe the source of funds for payments under the Plan.]

2. Post-confirmation Management

The Post-Confirmation Management of the Debtor (including officers, directors, managing members, and other persons in control), and their compensation, shall be as follows:

Name	Position	Compensation

E. Risk Factors

The proposed Plan has the following risks:

[List all risk factors that might affect the Debtor’s ability to make payments and other distributions required under the Plan.]

F. Executory Contracts and Unexpired Leases

The Plan in Article 6 lists all executory contracts and unexpired leases that the Debtor will assume, and if applicable assign, under the Plan. *Assumption* means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. Article 6 also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption, and if applicable the assignment, of your unexpired lease or executory contract under the Plan, the proposed cure of any defaults, the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Article 6 or have not previously been assumed, and if applicable assigned, or are not the subject of a pending motion to assume, and if applicable assign, will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

[The deadline for filing a Proof of Claim based on a claim arising from the rejection of a lease or contract is

Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.]

G. Tax Consequences of Plan

Creditors and equity interest holders concerned with how the plan may affect their tax liability should consult with their own accountants, attorneys, and/or advisors.

The following are the anticipated tax consequences of the Plan: [List the following general consequences as a minimum:

- (1) Tax consequences to the Debtor of the Plan;
- (2) General tax consequences on creditors of any discharge, and the general tax consequences of receipt of plan consideration after confirmation.]

IV. Confirmation Requirements and Procedures

To be confirmable, the Plan must meet the requirements listed in §1129 of the Code. These include the requirements that:

- the Plan must be proposed in good faith;
- if a class of claims is impaired under the Plan, at least one impaired class of claims must accept the Plan, without counting votes of insiders;
- the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and
- the Plan must be feasible.

These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. Except as stated in Part IV.A.3 below, a creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both

- (1) allowed or allowed for voting purposes and
- (2) impaired.

In this case, the Plan Proponent believes that classes are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

1. What is an allowed claim or an allowed equity interest?

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either

- (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or
- (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest.

When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was .

[If applicable – The deadline for filing objections to claims is .

2. What is an impaired claim or impaired equity interest?

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it

is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered *impaired* if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. Who is not entitled to vote

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes;
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code;
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan; and
- administrative expenses.

Even if you are not entitled to vote on the plan, you have a right to object to the confirmation of the Plan [and to the adequacy of the Disclosure Statement].

4. Who can vote in more than one class

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless:

- (1) all impaired classes have voted to accept the Plan; or
- (2) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and the Plan is eligible to be confirmed by “cram down” of the non-accepting classes, as discussed later in Section B.2.

1. Votes necessary for a class to accept the plan

A class of claims accepts the Plan if both of the following occur:

- (1) the holders of more than $\frac{1}{2}$ of the allowed claims in the class, who vote, cast their votes to accept the Plan, and
- (2) the holders of at least $\frac{2}{3}$ in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least $\frac{2}{3}$ in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. Treatment of non-accepting classes of secured claims, general unsecured claims, and interests

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan upon the request of the Plan proponent if the non-accepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds non-accepting classes is commonly referred to as a *cram down* plan. The Code allows the Plan to bind non-accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not *discriminate unfairly*, and

is *fair and equitable* toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a *cram down* confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as *Exhibit E*.

D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. Ability to initially fund plan

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as *Exhibit F*.

2. Ability to make future plan payments and operate without further reorganization

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments and operate the debtor's business.

The Plan Proponent has provided projected financial information. Those projections are listed in *Exhibit G*.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$

.

The final Plan payment is expected to be paid on .

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience.

Explain why such assumptions should now be made.]

You should consult with your accountant or other financial advisor if you have any questions pertaining to these projections.

V. Effect of Confirmation of Plan

A. Discharge of Debtor

Check one box.

- Discharge if the Debtor is an individual and 11 U.S.C. § 1141(d)(3) is not applicable.** Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the Plan, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.
-
- Discharge if the Debtor is a partnership and § 1141(d)(3) of the Code is not applicable.** On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. However, the Debtor shall not be discharged from any debt imposed by the Plan. After the effective date of the Plan your claims against the Debtor will be limited to the debts imposed by the Plan.
-
- Discharge if the Debtor is a corporation and § 1141(d)(3) is not applicable.** On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt:
- (i) imposed by the Plan, or
 - (ii) to the extent provided in 11 U.S.C. § 1141(d)(6).
-
- No Discharge if § 1141(d)(3) is applicable.** In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.
-

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

[If the Debtor is not an individual, add the following:

The Plan Proponent may also seek to modify the Plan at any time after confirmation only if

- (1) the Plan has not been substantially consummated and
- (2) the Court authorizes the proposed modifications after notice and a hearing.]

[If the Debtor is an individual, add the following:

Upon request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to

- (1) increase or reduce the amount of payments under the Plan on claims of a particular class,
- (2) extend or reduce the time period for such payments, or
- (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.]

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.



VI. Other Plan Provisions

[Insert other provisions here, as necessary and appropriate.]

x

[Signature of the Plan Proponent]

[Printed Name]

x

[Signature of the Attorney for the Plan Proponent]

[Printed Name]

Debtor Name _____

Case number _____

Exhibits

Exhibit A: Copy of Proposed Plan of Reorganization

Debtor Name _____

Case number _____

Exhibit B: Identity and Value of Material Assets of Debtor

Debtor Name _____

Case number _____

Exhibit C: Prepetition Financial Statements
(to be taken from those filed with the court)

Debtor Name _____

Case number _____

**Exhibit D: [Most Recently Filed Postpetition Operating Report]
[Summary of Postpetition Operating Reports]**

Exhibit E: Liquidation Analysis

Plan Proponent’s Estimated Liquidation Value of Assets

Assets		
a. Cash on hand		\$
b. Accounts receivable		\$
c. Inventory		\$
d. Office furniture and equipment		\$
e. Machinery and equipment		\$
f. Automobiles		\$
g. Building and land		\$
h. Customer list		\$
i. Investment property (such as stocks, bonds or other financial assets)		\$
j. Lawsuits or other claims against third-parties		\$
K Other intangibles (such as avoiding powers actions)		\$
Total Assets at Liquidation Value		\$
Less: Secured creditors’ recoveries	—	\$
Less: Chapter 7 trustee fees and expenses	—	\$
Less: Chapter 11 administrative expenses	—	\$
Less: Priority claims, excluding administrative expense claims	—	\$
[Less: Debtor’s claimed exemptions]	—	\$
(1) Balance for unsecured claims		\$
(2) Total dollar amount of unsecured claims		\$
Percentage of claims which unsecured creditors would receive or retain in a chapter 7 liquidation:		%
Percentage of claims which unsecured creditors will receive or retain under the Plan:		% [Divide (1) by (2)]

Exhibit F: Cash on hand on the effective date of the Plan

Cash on hand on effective date of plan	\$
Less: Amount of administrative expenses payable on effective date of the Plan	- \$
Less: Amount of statutory costs and charges	- \$
Less: Amount of cure payments for executory contracts	- \$
Less: Other Plan payments due on effective date of the Plan	- \$
Balance after paying these amounts	\$

The sources of the cash Debtor will have on hand by the effective date of the Plan are estimated as follows:

Cash in Debtor's bank account now	\$
Net earnings between now and effective date of the Plan [State the basis for such projections]	\$
Borrowing [Separately state terms of repayment]	\$
Capital contributions	\$
Other	\$
Total (This number should match "cash on hand" figure noted above)	\$

Debtor Name _____

Case number _____

Exhibit G: Projections of Cash Flow for Post-Confirmation Period

COMMITTEE NOTE

Official Form 425B, *Disclosure Statement for Small Business Under Chapter 11*, replaces Official Form 25B, *Disclosure Statement in Small Business Case Under Chapter 11*. It is revised as part of the Forms Modernization Project, making it easier to read, and includes formatting and stylistic changes throughout the form. Where possible, the form parallels how businesses commonly keep their financial records. It is intended to provide an illustrative format for disclosure, rather than a specific prescription for the form's language or content.

Part I, *Introduction*, is revised to clarify that the disclosure statement is being provided for purposes of voting on the plan. The instructions that the recipient discuss the plan and disclosure statement with an attorney are revised to clarify that, if the recipient has an attorney, the recipient is not required to consult with the attorney, but may wish to consult with an attorney regardless of whether it has one.

Part I.B., *Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing*, is revised to provide for the court's entry of a separate order setting time frames for hearings and deadlines, *see* Official Form 313, and to delete those dates from the form as redundant. Also, this part is revised to clarify that requests for additional information about the voting procedure, in addition to the plan, should be directed to the plan proponent's representative.

In Part I.C., *Disclaimer*, the instruction to provide the date by which an objection to final approval of the disclosure statement must be filed is eliminated as duplicative of the court's order required under Part I.B. Repetitive language indicating that the court's approval of the disclosure statement is not final is eliminated.

In Part II.C., *Management of the Debtor During the Bankruptcy*, the title is revised to eliminate the reference to the debtor's management before the bankruptcy, and the instruction is revised to limit the required disclosure to those current officers,

directors, managing members, and other persons in control who will not retain a position after confirmation. The instruction to provide information regarding the debtor's pre-petition management is deleted because similar information is required in the *Statement of Financial Affairs of Non-Individuals Filing for Bankruptcy*, Official Form 207. The instruction to provide information regarding the debtor's post-confirmation management is incorporated in Part III.D.2, *Post-confirmation Management*, of the form.

In Part III.B.1, *Administrative expenses, involuntary gap claims, and quarterly and Court fees*, the title and form are revised to clarify that the debtor must provide for the treatment of all fees and expenses owed under 28 U.S.C. § 1930, including quarterly fees and court fees. *See* 11 U.S.C. § 1129(a)(12). Also, the title and form are revised to include involuntary "gap" period claims in an involuntary case under section 502(f) of the Bankruptcy Code. *See* 11 U.S.C. §§ 507(a)(3), 1129(a)(9)(A). The reference to the provision governing the allowance of administrative expenses is corrected and changed from section 507(a) to 503(b) of the Bankruptcy Code. The example is revised to include compensation for services and reimbursement of expenses awarded by the court under section 330(a) of the Bankruptcy Code. The requirement that any agreement to pay professional fees and expenses and other unclassified administrative expenses on a date other than the effective date be in writing is deleted. *See* 11 U.S.C. § 1129(a)(9). The list is revised to include a single category of administrative expenses allowed under section 503(b) of the Bankruptcy Code, deleting as redundant the specific categories for reclamation claims under section 503(b)(9) and approved professional fees and expenses under section 503(b)(2), and to clarify that any holder of an allowed administrative expense claim may agree to payment other than in full on the effective date. *Id.*

Part III.B.2, *Priority tax claims*, is revised to include a reference to section 511 of the Bankruptcy Code governing the rate of interest on tax claims.

Part III.C.2, *Classes of priority unsecured claims*, is revised to comply with section 1129(a)(9)(B), including the addition that any particular claimant may agree to treatment other than cash

payment in full on the effective date and to clarify that any class may agree to deferred cash payments. *See* 11 U.S.C. § 1129(a)(9)(B).

Part III.D.2, *Post-confirmation Management*, is revised to comply with section 1129(a)(5) of the Bankruptcy Code.

Part III.F., *Executory Contracts and Unexpired Leases*, is revised to incorporate changes to Official Form 425A, *Plan of Reorganization for Small Business Under Chapter 11*. “Exhibit 5.1” is changed to “Article 6” of the plan. References to the assumption of executory contracts and unexpired leases are expanded to include assignment, if applicable, including the requirement that a party objecting to the assignment of an executory contract or unexpired lease under the plan must timely file and serve an objection to the plan. The form is revised to clarify that executory contracts and unexpired leases that have been previously assumed, and if applicable assigned, or are the subject of a pending motion to assume, and if applicable assign, as of plan confirmation are also excluded from presumed rejection under the plan.

In Part IV, *Confirmation Requirements and Procedures*, the introduction is revised to delete references to subsections (a) and (b) to clarify that a plan must satisfy all of the requirements of section 1129 of the Bankruptcy Code. Also, the form is revised to clarify that the requirement to obtain the acceptance of at least one impaired accepting class of claims, excluding any acceptance by an insider, applies only if the plan proposes to impair at least one class of claims. *See* 11 U.S.C. § 1129(a)(10).

In Part IV.B.1, *Votes necessary for a class to accept the plan*, the standards for confirmation in the event the plan has impaired classes have been corrected. *See* 11 U.S.C. § 1129(a)(8)(A), (10) and (b).

The title to Part IV.B.2, *Treatment of non-accepting classes of secured claims, general unsecured claims, and interests*, is revised for clarity to exclude priority claimants. *See* 11 U.S.C. § 1129(b). Also, the requirement that the proponent must request

confirmation pursuant to section 1129(b) of the Bankruptcy Code is added.

In Part IV.D.2, *Ability to make future plan payments and operate without further reorganization*, the requirement that the plan proponent show that the business will have sufficient cash flow to operate the business, in addition to making the required plan payments, is new. *See* 11 U.S.C. § 1129(a)(11).

In Part V.A., *Discharge of Debtor*, the third option is revised to delete the reference to Rule 4007(c) and to clarify that corporations will not be discharged of debts to the extent specified in section 1141(d)(6) of the Bankruptcy Code.

In the title to Exhibit G, *Projections of Cash Flow for Post-Confirmation Period*, the reference to “and Earnings” is deleted to ensure consistency given the disparate ways in which “earnings” can be interpreted.

The caption block for the disclosure statement is formatted for a non-individual debtor. An individual chapter 11 debtor should use the caption block formatted for individual debtors, including a joint case involving more than one individual debtor, such as the caption found in Official Form B309I.

Changes Made After Publication and Comment

- The caption on the disclosure statement was changed to follow the form for non-individual debtor cases. An instruction was added to the Committee Note regarding the caption and signature block to be used in individual chapter 11 cases or joint cases involving individuals.
- The column in Part III.C.1 (Classes of secured claims) for disclosing the insider status of creditors holding secured claims was deleted.
- A cross-reference to Part IV.A.3 was added to the introductory language in Part IV.A (Who May Vote or Object).

Summary of Public Comment

National Conference of Bankruptcy Judges (BK-2016-0003-0007)—Questions the decision to remove from Form 425B the hearing date on the disclosure statement and the deadlines for voting and filing objections.

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of the amended form.

Judge Neil W. Bason (C.D. Cal.) (BK-2016-003-0013)—Made a number of detailed comments, including the following:

- Forms 425A and 425B are redundant and should be streamlined to eliminate unnecessary repetition of plan provisions in the disclosure statement.
- The explanation of who may or may not vote on a plan is inconsistent and incomplete. This explanation in the disclosure statement and the relevant plan provisions should be replaced with language that offers a different definition of “disputed claim” and a more extensive explanation of who may or may not vote.
- The charts at Part III.C of Official Form 425B only require disclosure of insider status for secured claims, but not for priority or unsecured claims. Insider disclosures should be added to the latter two classes to facilitate the § 1129(a)(10) analysis.
- Official Form 425B does not address whether a creditor has made a § 1111(b) election, or a process for creditors to exercise their rights under section 1111(b). Add a provision explaining the § 1111(b) election and setting a deadline for creditors to make such an election.
- The two charts in Part II.C and III.D.2 should be combined to allow a better comparison of individuals who will and will not have a postpetition control position in the debtor.
- Add a separate signature line for a debtor’s spouse.

Fill in this information to identify the case:

Debtor Name _____

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

Case number: _____

Check if this is an amended filing

Official Form 425C

Monthly Operating Report for Small Business Under Chapter 11

12/17

Month: _____

Date report filed: _____
MM / DD / YYYY

Line of business: _____

NAISC code: _____

In accordance with title 28, section 1746, of the United States Code, I declare under penalty of perjury that I have examined the following small business monthly operating report and the accompanying attachments and, to the best of my knowledge, these documents are true, correct, and complete.

Responsible party: _____

Original signature of responsible party _____

Printed name of responsible party _____

1. Questionnaire

Answer all questions on behalf of the debtor for the period covered by this report, unless otherwise indicated.

	Yes	No	N/A
If you answer <i>No</i> to any of the questions in lines 1-9, attach an explanation and label it <i>Exhibit A</i>.			
1. Did the business operate during the entire reporting period?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you plan to continue to operate the business next month?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Have you paid all of your bills on time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did you pay your employees on time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Have you deposited all the receipts for your business into debtor in possession (DIP) accounts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Have you timely filed your tax returns and paid all of your taxes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Have you timely filed all other required government filings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Are you current on your quarterly fee payments to the U.S. Trustee or Bankruptcy Administrator?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Have you timely paid all of your insurance premiums?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If you answer <i>Yes</i> to any of the questions in lines 10-18, attach an explanation and label it <i>Exhibit B</i>.			
10. Do you have any bank accounts open other than the DIP accounts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Have you sold any assets other than inventory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Have you sold or transferred any assets or provided services to anyone related to the DIP in any way?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Did any insurance company cancel your policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Did you have any unusual or significant unanticipated expenses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Have you borrowed money from anyone or has anyone made any payments on your behalf?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Has anyone made an investment in your business?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- 17. Have you paid any bills you owed before you filed bankruptcy?
- 18. Have you allowed any checks to clear the bank that were issued before you filed bankruptcy?

2. Summary of Cash Activity for All Accounts

19. **Total opening balance of all accounts** \$ _____
 This amount must equal what you reported as the cash on hand at the end of the month in the previous month. If this is your first report, report the total cash on hand as of the date of the filing of this case.

20. **Total cash receipts**
 Attach a listing of all cash received for the month and label it *Exhibit C*. Include all cash received even if you have not deposited it at the bank, collections on receivables, credit card deposits, cash received from other parties, or loans, gifts, or payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit C*.
 Report the total from *Exhibit C* here. \$ _____

21. **Total cash disbursements**
 Attach a listing of all payments you made in the month and label it *Exhibit D*. List the date paid, payee, purpose, and amount. Include all cash payments, debit card transactions, checks issued even if they have not cleared the bank, outstanding checks issued before the bankruptcy was filed that were allowed to clear this month, and payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit D*.
 Report the total from *Exhibit D* here. - \$ _____

22. **Net cash flow** + \$ _____
 Subtract line 21 from line 20 and report the result here.
 This amount may be different from what you may have calculated as *net profit*.

23. **Cash on hand at the end of the month** = \$ _____
 Add line 22 + line 19. Report the result here.
 Report this figure as the *cash on hand at the beginning of the month* on your next operating report.
 This amount may not match your bank account balance because you may have outstanding checks that have not cleared the bank or deposits in transit.

3. Unpaid Bills

Attach a list of all debts (including taxes) which you have incurred since the date you filed bankruptcy but have not paid. Label it *Exhibit E*. Include the date the debt was incurred, who is owed the money, the purpose of the debt, and when the debt is due. Report the total from *Exhibit E* here.

24. **Total payables** \$ _____
(Exhibit E)

4. Money Owed to You

Attach a list of all amounts owed to you by your customers for work you have done or merchandise you have sold. Include amounts owed to you both before, and after you filed bankruptcy. Label it *Exhibit F*. Identify who owes you money, how much is owed, and when payment is due. Report the total from *Exhibit F* here.

25. **Total receivables** \$ _____
 (Exhibit F)

5. Employees

26. What was the number of employees when the case was filed? _____
 27. What is the number of employees as of the date of this monthly report? _____

6. Professional Fees

28. How much have you paid this month in professional fees related to this bankruptcy case? \$ _____
 29. How much have you paid in professional fees related to this bankruptcy case since the case was filed? \$ _____
 30. How much have you paid this month in other professional fees? \$ _____
 31. How much have you paid in total other professional fees since filing the case? \$ _____

7. Projections

Compare your actual cash receipts and disbursements to what you projected in the previous month. Projected figures in the first month should match those provided at the initial debtor interview, if any.

	<u>Column A</u>	-	<u>Column B</u>	=	<u>Column C</u>
	Projected		Actual		Difference
	Copy lines 35-37 from the previous month's report.		Copy lines 20-22 of this report.		Subtract Column B from Column A.
32. Cash receipts	\$ _____	-	\$ _____	=	\$ _____
33. Cash disbursements	\$ _____	-	\$ _____	=	\$ _____
34. Net cash flow	\$ _____	-	\$ _____	=	\$ _____
35. Total projected cash receipts for the next month:					\$ _____
36. Total projected cash disbursements for the next month:					- \$ _____
37. Total projected net cash flow for the next month:					= \$ _____

8. Additional Information

If available, check the box to the left and attach copies of the following documents.

- 38. Bank statements for each open account (redact all but the last 4 digits of account numbers).
- 39. Bank reconciliation reports for each account.
- 40. Financial reports such as an income statement (profit & loss) and/or balance sheet.
- 41. Budget, projection, or forecast reports.
- 42. Project, job costing, or work-in-progress reports.

COMMITTEE NOTE

Official Form 425C, *Monthly Operating Report for Small Business Under Chapter 11*, replaces Official Form 25C, *Small Business Monthly Operating Report*. It is revised as part of the Forms Modernization Project, which was designed so that persons completing the forms would do so accurately and completely. To facilitate this, Official Form 425C is renumbered and includes formatting and stylistic changes throughout the form. The form requires basic financial information that the Internal Revenue Service recommends that businesses maintain.

The form is revised to add a checkbox to indicate if the report is an amended filing. It also clarifies that persons completing the form on behalf of the debtor should answer all questions for the period covered by the report, unless otherwise indicated. All instructions indicating that the U.S. Trustee may waive the attachments to the form are eliminated.

The form is reorganized. The previous sections for *Tax* and *Banking Information* are eliminated as redundant of information requested elsewhere within the form. The previous sections for *Income*, *Summary of Cash on Hand*, *Expenses*, and *Cash Profit* are revised and incorporated into Section 2, *Summary of Cash Activity for All Accounts*.

In Part 1, *Questionnaire*, a third checkbox column option, “N/A,” has been added to indicate if the question is not applicable. New exhibits to be attached provide explanations for any negative responses to questions 1 through 9 (Exhibit A) and any affirmative answers to questions 10 through 18 (Exhibit B). The questions are reorganized and renumbered, and several are revised. Question 1 is revised to ask whether the business operated during the period. Question 8, regarding the payment of quarterly fees under 28 U.S.C. § 1930(a)(6), is revised to include payments to the bankruptcy administrator. Question 15 is expanded to include payments made on the debtor’s behalf. The question whether the debtor has paid anything to an attorney or other professionals is eliminated, as redundant of information disclosed in Part 6. A new

question 17 is added inquiring whether the debtor has allowed any checks to clear the bank that were issued before the bankruptcy case.

Part 2, *Summary of Cash Activity for All Accounts*, clarifies and simplifies the reporting of the debtor's cash on hand during the period, and the letters of the attached exhibits are revised. References to "income," "expenses," and "cash profit" are eliminated. Line 19 clarifies that the cash on hand at the beginning of the month is the same as the cash on hand reported at the end of the previous month (or the commencement of the case if no prior report has been submitted). Net cash flow during the month, calculated in line 22, is equal to total cash receipts in line 20 (as itemized in Exhibit C) less total cash disbursements in line 21 (as itemized in Exhibit D). Net cash flow is added to the beginning balance to calculate the cash on hand at the end of the month in line 23. The form is revised to add explanations of the receipts and disbursements to be included in Exhibits C and D, as well as an instruction to clarify that bank statements should not be submitted in lieu of the exhibits.

In Part 3, *Unpaid Bills*, the exhibit letter is revised to *Exhibit E*.

In Part 4, *Money Owed to You*, the exhibit letter is revised to *Exhibit F*.

In Part 6, *Professional Fees*, the subheadings "*Bankruptcy Related*" and "*Non-Bankruptcy Related*" are eliminated.

Part 7, *Projections*, is revised to compare the debtor's actual cash receipts, cash disbursements, and net cash flow for the month to the projections in the previous month's report (or if the case is new, that the debtor reported at the initial debtor interview). See 11 U.S.C. § 308(b)(2) and (3). References to "income," "expenses," "cash profit," and the 180 day look-back period are eliminated.

Part 8, *Additional Information*, is revised to clarify which documents should be attached, if available and regardless of whether the debtor prepares them internally. These documents are:

(1) redacted bank statements for each open account; (2) bank reconciliation reports for each account; (3) financial reports such as an income statement (profit & loss) or balance sheet; (4) budget, projection, or forecast reports; and (5) project, job casting, or work-in-progress reports.

The caption block for this form is formatted for a non-individual debtor. An individual chapter 11 debtor should use the caption block formatted for individual debtors, including a joint case involving more than one individual debtor, such as the caption found in Official Form B309I.

Changes Made After Publication and Comment

The caption on this form was changed to follow the form for non-individual debtor cases. An instruction was added to the Committee Note regarding the caption and signature block to be used in non-individual chapter 11 cases and joint cases involving individual debtors.

Summary of Public Comment

Pennsylvania Bar Association (BK-2016-0003-0008)—Supports adoption of the amended form.

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Fill in this information to identify the case:

Debtor Name _____

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

Case number: _____

Official Form 426

**Periodic Report Regarding Value, Operations, and Profitability of Entities
in Which the Debtor's Estate Holds a Substantial or Controlling Interest**

12/17

This is the *Periodic Report* as of on the value, operations, and profitability of those entities in which a Debtor holds, or two or more Debtors collectively hold, a substantial or controlling interest (a "Controlled Non-Debtor Entity"), as required by Bankruptcy Rule 2015.3. For purposes of this form, "Debtor" shall include the estate of such Debtor.

[Name of Debtor] holds a substantial or controlling interest in the following entities:

Name of Controlled Non-Debtor Entity	Interest of the Debtor	Tab #

This *Periodic Report* contains separate reports (*Entity Reports*) on the value, operations, and profitability of each Controlled Non-Debtor Entity.

Each *Entity Report* consists of five exhibits.

- *Exhibit A* contains the most recently available: balance sheet, statement of income (*loss*), statement of cash flows, and a statement of changes in shareholders' or partners' equity (*deficit*) for the period covered by the *Entity Report*, along with summarized footnotes.
- *Exhibit B* describes the Controlled Non-Debtor Entity's business operations.
- *Exhibit C* describes claims between the Controlled Non-Debtor Entity and any other Controlled Non-Debtor Entity.
- *Exhibit D* describes how federal, state or local taxes, and any tax attributes, refunds, or other benefits, have been allocated between or among the Controlled Non-Debtor Entity and any Debtor or any other Controlled Non-Debtor Entity and includes a copy of each tax sharing or tax allocation agreement to which the Controlled Non-Debtor Entity is a party with any other Controlled Non-Debtor Entity.
- *Exhibit E* describes any payment, by the Controlled Non-Debtor Entity, of any claims, administrative expenses or professional fees that have been or could be asserted against any Debtor, or the incurrence of any obligation to make such payments, together with the reason for the entity's payment thereof or incurrence of any obligation with respect thereto.

This *Periodic Report* must be signed by a representative of the trustee or debtor in possession.

Debtor Name _____

Case number _____

The undersigned, having reviewed the *Entity Reports* for each Controlled Non-Debtor Entity, and being familiar with the Debtor's financial affairs, verifies under the penalty of perjury that to the best of his or her knowledge, (i) this *Periodic Report* and the attached *Entity Reports* are complete, accurate, and truthful to the best of his or her knowledge, and (ii) the Debtor did not cause the creation of any entity with actual deliberate intent to evade the requirements of Bankruptcy Rule 2015.3

For non-individual Debtors:

X _____

Signature of Authorized Individual

Printed name of Authorized Individual

Date _____
MM / DD / YYYY

For individual Debtors:

X _____

Signature of Debtor 1

Printed name of Debtor 1

Date _____
MM / DD / YYYY

X _____

Signature of Debtor 2

Printed name of Debtor 2

Date _____
MM / DD / YYYY

Debtor Name _____

Case number _____

 Exhibit A: Financial Statements for [Name of Controlled Non-Debtor Entity]

Debtor Name _____

Case number _____

Exhibit A-1: Balance Sheet for **[Name of Controlled Non-Debtor Entity]** as of **[date]**

[Provide a balance sheet dated as of the end of the most recent 3-month period of the current fiscal year and as of the end of the preceding fiscal year.

Describe the source of this information.]

Exhibit A-2: Statement of Income (*Loss*) for **[Name of Controlled Non-Debtor Entity]** for period ending [date]

[Provide a statement of income (*loss*) for the following periods:

(i) For the initial report:

- a. the period between the end of the preceding fiscal year and the end of the most recent 3-month period of the current fiscal year; and
- b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Describe the source of this information.]

Exhibit A-3: Statement of Cash Flows for [Name of Controlled Non-Debtor Entity] for period ending [date]

[Provide a statement of changes in cash position for the following periods:

(i) For the initial report:

a. the period between the end of the preceding fiscal year and the end of the most recent 3-month period of the current fiscal year; and

b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Describe the source of this information.]

Exhibit A-4: Statement of Changes in Shareholders'/Partners' Equity (*Deficit*) for [**Name of Controlled Non-Debtor Entity**]
for period ending [date]

[Provide a statement of changes in shareholders'/partners equity (*deficit*) for the following periods:

(i) For the initial report:

- a. the period between the end of the preceding fiscal year and the end of the most recent 3-month period of the current fiscal year; and
- b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Describe the source of this information.]

Debtor Name _____

Case number _____

Exhibit B: Description of Operations for [Name of Controlled Non-Debtor Entity]

[Describe the nature and extent of the Debtor's interest in the Controlled Non-Debtor Entity.

Describe the business conducted and intended to be conducted by the Controlled Non-Debtor Entity, focusing on the entity's dominant business segments.

Describe the source of this information.]

Debtor Name _____

Case number _____

Exhibit C: Description of Intercompany Claims

[List and describe the Controlled Non-Debtor Entity's claims against any other Controlled Non-Debtor Entity, together with the basis for such claims and whether each claim is contingent, unliquidated or disputed.

Describe the source of this information.]

Debtor Name _____

Case number _____

Exhibit D: Allocation of Tax Liabilities and Assets


[Describe how income, losses, tax payments, tax refunds, or other tax attributes relating to federal, state, or local taxes have been allocated between or among the Controlled Non-Debtor Entity and one or more other Controlled Non-Debtor Entities.

Include a copy of each tax sharing or tax allocation agreement to which the entity is a party with any other Controlled Non-Debtor Entity.

Describe the source of this information.]

Debtor Name _____

Case number _____

 Exhibit E: Description of Controlled Non-Debtor Entity's payments of Administrative Expenses, or Professional Fees otherwise payable by a Debtor

[Describe any payment made, or obligations incurred (or claims purchased), by the Controlled Non-Debtor Entity in connection with any claims, administrative expenses, or professional fees that have been or could be asserted against any Debtor.

Describe the source of this information.]

COMMITTEE NOTE

Official Form 426, *Periodic Report Regarding Value, Operations, and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest*, is revised and renumbered as part of the Forms Modernization Project. It implements section 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), which requires a chapter 11 debtor to file periodic reports on the profitability of any entities in which the estate holds a substantial or controlling interest. The form is to be used when required by Rule 2015.3, with such variations as may be approved by the court pursuant to subdivisions (d) and (e) of that rule.

In addition to formatting revisions, certain aspects of Official Form 426 are changed to make the form easier for the debtor to complete and to better identify the kinds of information that a debtor must disclose in accordance with section 419 of BAPCPA and Rule 2015.3.

Official Form 426 limits its application to entities in which the debtor has a substantial or controlling interest, which the rule defines as a “Controlled Non-Debtor Entity.” The scope of this defined term is guided by subdivisions (a) and (c) of Rule 2015.3.

Official Form 426 eliminates the requirement to file a valuation of the Controlled Non-Debtor Entity. Exhibit A to Official Form 426 requires only periodic filings of the Controlled Non-Debtor Entity’s most recently available balance sheet, statement of income (*loss*), statement of cash flows, and statement of changes in shareholders’ or partners’ equity (*deficit*), together with summarized footnotes for such financial statements. If any of these financial statements are not available, the debtor can seek relief under Rule 2015.3(d).

Exhibit B to Official Form 426 requires a description of the Controlled Non-Debtor Entity's business, which was required by Exhibit C of former Rule 26.

Exhibits C, D, and E to Official Form 426 are new. Exhibit C requires a description of claims between a Controlled Non-Debtor Entity and any other Controlled Non-Debtor Entity. Exhibit D requires disclosure of information relating to the allocation of taxable income, losses, and other attributes among Controlled Non-Debtor Entities. Exhibit E requires disclosure about a Controlled Non-Debtor Entity's payment of claims or administrative expenses that would otherwise have been payable by a debtor.

The caption block for this form is formatted for a non-individual debtor. An individual chapter 11 debtor should use the caption block formatted for individual debtors, including a joint case involving more than one individual debtor, such as the caption found in Official Form B309I.

Changes Made After Publication and Comment

The caption on this form was changed to follow the form for non-individual debtor cases. An instruction was added to the Committee Note regarding the caption and signature block to be used in non-individual chapter 11 cases and joint cases involving individual debtors.

Summary of Public Comment

Pennsylvania Bar Association (BK-2016-0003-0008)—
Supports adoption of the amended form.

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APPENDIX B

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Appendix B

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

For Publication for Public Comment

1 **Rule 2002. Notices to Creditors, Equity Security**
2 **Holders, Administrators in Foreign**
3 **Proceedings, Persons Against Whom**
4 **Provisional Relief Is Sought in Ancillary**
5 **and Other Cross-Border Cases, United**
6 **States, and United States Trustee**

7 * * * * *

8 (g) ADDRESSING NOTICES.

9 (1) Notices required to be mailed or otherwise
10 delivered under Rule 2002 to a creditor, indenture
11 trustee, or equity security holder shall be addressed as
12 such entity or an authorized agent has directed in its
13 last request filed in the particular case. For purposes
14 of this subdivision—

15 (A) a proof of claim filed by a creditor or
16 indenture trustee that designates a ~~mailing~~an

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

17 address constitutes a filed request to ~~mail~~receive
18 notices ~~to~~at that address, unless a notice of no
19 dividend has been given under Rule 2002(e) and
20 a later notice of possible dividend under
21 Rule 3002(c)(5) has not been given; and

22 (B) a proof of interest filed by an equity
23 security holder that designates a ~~mailing~~an
24 address constitutes a filed request to ~~mail~~receive
25 notices ~~to~~at that address.

26 * * * * *

Committee Note

Subdivision (g) of the rule is amended to allow a creditor to elect to receive notices by email. A creditor's election on the proof of claim, or an equity security holder's election on the proof of interest, to receive notices in a particular case by electronic means supersedes a previous request to receive notices at a specified address in that particular case.

1 **Rule 4001. Relief from Automatic Stay; Prohibiting**
2 **or Conditioning the Use, Sale, or Lease of**
3 **Property; Use of Cash Collateral;**
4 **Obtaining Credit; Agreement**

5 * * * * *

6 (c) OBTAINING CREDIT.

7 * * * * *

8 (4) This subdivision (c) does not apply in
9 chapter 13 cases.

10 * * * * *

Committee Note

Subdivision (c) of the rule is amended to exclude chapter 13 cases from that subdivision. This amendment does not speak to the underlying substantive issue of whether the Bankruptcy Code requires or permits a chapter 13 debtor not engaged in business to request approval of postpetition credit.

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1 **Rule 6007. Abandonment or Disposition of Property**

2 * * * * *

3 (b) MOTION BY PARTY IN INTEREST. A party
4 in interest may file and serve a motion requiring the trustee
5 or debtor in possession to abandon property of the estate.
6 Unless otherwise directed by the court, the party filing the
7 motion shall serve the motion and any notice of the motion
8 on the trustee or debtor in possession, the United States
9 trustee, all creditors, indenture trustees, and committees
10 elected pursuant to § 705 or appointed pursuant to § 1102
11 of the Code. A party in interest may file and serve an
12 objection within 14 days of service, or within the time fixed
13 by the court. If a timely objection is made, the court shall
14 set a hearing on notice to the United States trustee and to
15 other entities as the court may direct. If the court grants the
16 motion, the order effects the abandonment without further
17 notice, unless otherwise directed by the court.

Committee Note

Subdivision (b) of the rule is amended to specify the parties to be served with the motion and any notice of the motion. The rule also establishes an objection deadline. Both of these changes align subdivision (b) more closely with the procedures set forth in subdivision (a). In addition, the rule clarifies that no further action is necessary to notice or effect the abandonment of property ordered by the court in connection with a motion filed under subdivision (b), unless the court directs otherwise.

1 **Rule 9036. Notice or Service Generally by Electronic**
2 **Transmission**

3 Whenever these rules require or permit sending a
4 notice or serving a paper by mail, the clerk or other party
5 may send the notice to—or serve the paper on—a
6 registered user by filing it with the court’s electronic-filing
7 system. Or it may be sent to any person by other electronic
8 means that the person consented to in writing. In either of
9 these events, service is complete upon filing or sending but
10 is not effective if the filer or sender receives notice that it
11 did not reach the person to be served. This rule does not
12 apply to any complaint or motion required to be served in
13 accordance with Rule 7004.~~the clerk or some other person~~
14 ~~as directed by the court is required to send notice by mail~~
15 ~~and the entity entitled to receive the notice requests in~~
16 ~~writing that, instead of notice by mail, all or part of the~~
17 ~~information required to be contained in the notice be sent~~
18 ~~by a specified type of electronic transmission, the court~~
19 ~~may direct the clerk or other person to send the information~~

20 ~~by such electronic transmission. Notice by electronic means~~
21 ~~is complete on transmission.~~

Committee Note

The rule is amended to permit both notice and service by electronic means. The use and reliability of electronic delivery has increased since the rule was first adopted. The amendments recognize the increased utility of electronic delivery, with appropriate safeguards for parties not filing an appearance in the case through the court's electronic-filing system.

The amended rule permits electronic notice or service on a registered user who has appeared in the case by filing with the court's electronic-filing system. A court may choose to allow registration only with the court's permission. But a party who registers will be subject to service by filing with the court's system unless the court provides otherwise. With the consent of the person served, electronic service also may be made by means that do not use the court's system. Consent can be limited to service at a prescribed address or in a specified form, and may be limited by other conditions.

1 **Rule 9037. Privacy Protection for Filings Made with**
2 **the Court**

3 * * * * *

4 (h) MOTION TO REDACT A PREVIOUSLY
5 FILED DOCUMENT.

6 (1) Content of the Motion; Service. Unless the
7 court orders otherwise, if an entity seeks to redact
8 from a previously filed document information that is
9 protected under subdivision (a), the entity must file a
10 motion to redact. The movant must:

11 (A) attach a copy of the previously filed,
12 unredacted document, showing the proposed
13 redactions;

14 (B) include the docket or proof-of-claim
15 number of the previously filed document; and

16 (C) unless the court orders otherwise,
17 serve the debtor, debtor's attorney, trustee if any,
18 United States trustee, filer of the unredacted

19 document, and any individual whose personal
20 identifying information is to be redacted.
21 (2) Restricting Public Access to the Unredacted
22 Document. The court must promptly restrict public
23 access to the motion and the unredacted document
24 pending its ruling on the motion. If the court grants it,
25 these restrictions on public access remain in effect
26 until a further court order. If the court denies it, the
27 restrictions must be lifted, unless the court orders
28 otherwise.

Committee Note

Subdivision (h) is new. It prescribes a procedure for the belated redaction of documents that were filed without complying with subdivision (a).

Generally, whenever someone discovers that information entitled to privacy protection under subdivision (a) appears in a document on file with the court—regardless of whether the case in question remains open or has been closed—that entity may file a motion to redact the document. A single motion may relate to more than one unredacted document. The moving party may be, but is not limited to, the original filer of the document. The motion must identify by location on the case docket or claims

register each document to be redacted. It should not, however, include the unredacted information itself.

Subsection (h)(1) authorizes the court to alter the prescribed procedure. This might be appropriate, for example, when the movant seeks to redact a large number of documents. In that situation the court by order or local rule might require the movant to file an omnibus motion, initiate a miscellaneous proceeding, or proceed in another manner directed by the court.

The moving party must attach to the motion a copy of the original document showing the proposed redactions. The attached document must otherwise be identical to the one previously filed. Service of the motion and the attachment must be made on all of the following individuals who are not the moving party: debtor, debtor's attorney, trustee, United States trustee, the filer of the unredacted document, and any individual whose personal identifying information is to be redacted.

Because the filing of the motion to redact may call attention to the existence of the unredacted document as maintained in the court's files or downloaded by third parties, courts should take immediate steps to protect the motion and the document from public access. This restriction may be accomplished electronically, simultaneous with the electronic filing of the motion to redact. For motions filed on paper, restriction should occur at the same time that the motion is docketed so that no one receiving electronic notice of the filing of the motion will be able to access the unredacted document in the court's files.

If the court grants the motion to redact, the redacted document should be placed on the docket, and public

access to the motion and the unredacted document should remain restricted. If the court denies the motion, generally the restriction on public access to the motion and the document should be lifted.

This procedure does not affect the availability of any remedies that an individual whose personal identifiers are exposed may have against the entity that filed the unredacted document.

Fill in this information to identify the case:

Debtor 1 _____
Debtor 2 _____
(Spouse, if filing)
United States Bankruptcy Court for the: _____ District of _____

Official Form 410

Proof of Claim

12/18

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** _____
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	_____	_____
Name	Name	Name
Number Street	Number Street	Number Street
City State ZIP Code	City State ZIP Code	City State ZIP Code
Contact phone _____	Contact phone _____	Contact phone _____
Contact email _____	Contact email _____	Contact email _____
<input type="checkbox"/> Check this box if you would like to receive all notices and papers by email instead of by regular mail.		
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim? No Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$_____ Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property.

Nature of property:

Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

Motor vehicle

Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$_____

Amount of the claim that is secured: \$_____

Amount of the claim that is unsecured: \$_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$_____

Annual Interest Rate (when case was filed) _____%

Fixed

Variable

10. Is this claim based on a lease? No Yes. Amount necessary to cure any default as of the date of the petition. \$_____

11. Is this claim subject to a right of setoff?

No

Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

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

\$ _____

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

\$ _____

Other. Specify subsection of 11 U.S.C. § 507(a)(_) that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date _____
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title _____

Company _____

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

City State ZIP Code

Contact phone _____ Email _____

Committee Note

The form is amended to allow the creditor to elect to receive all notices and other papers in the bankruptcy case by email. A creditor who makes this election consents to receiving notices and papers by electronic means in the particular case.

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TAB 3C

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of April 6, 2017

Nashville, Tennessee

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
Circuit Judge Thomas L. Ambro
District Judge Pamela Pepper
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge Dennis Dow
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Melvin S. Hoffman
David Hubbert, Esquire
Jeffrey Hartley, Esquire
Richardo I. Kilpatrick, Esquire
Thomas Moers Mayer, Esquire
Jill Michaux, Esquire
Professor David Skeel

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Michelle Harner, associate reporter
District Judge David G. Campbell, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Professor Daniel R. Coquillette, reporter to the Standing Committee
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustee
Kenneth Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Molly Johnson, Senior Research Associate, Federal Judicial Center
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office

Discussion Agenda

1. Greetings and introductions

Judge Ikuta welcomed the members and guests to the meeting and introduced the U.S. Marshals. Members and guests introduced themselves to the group.

2. Approval of minutes of Washington D.C. meeting on November 14, 2016

The draft minutes were approved by motion and vote.

3. Oral reports on meetings of other committees

(A) June 3, 2017 meeting of the Committee on Rules of Practice and Procedure

Professor Harner reported on the January 2017 meeting of the Standing Committee. The bankruptcy rules action items were approved. The Standing Committee discussed the five-year report regarding the work of the rules committees and determined to submit one report on behalf of all of the rules committees. The Standing Committee voiced its support for the need to continue coordinating the work of the rules committees.

(B) Meeting of the Advisory Committee on Civil Rules

No report. Next meeting scheduled for April 25-26, 2017.

(C) Meeting of the Advisory Committee on Appellate Rules

No report. Next meeting scheduled for May 2, 2017.

(D) January 2017 meeting of the Committee on the Administration of the Bankruptcy System.

Judge Bernstein reported on the January 2017 meeting. Several proposals were of interest to the Committee, including a potential venue provision change. The proposal is under study, and a further report will be provided at the next meeting of the Bankruptcy Committee. Another proposal related to acceptance of findings of facts of a bankruptcy judge, but this proposal was rescinded given recent Supreme Court decisions. Finally, Judge Bernstein reported on the suggestion from this Committee regarding the change of address form, and it is still under consideration.

Another issue discussed by the Bankruptcy Committee was judgeships, and a recommendation was made regarding the number of judgeships and changing duty stations for bankruptcy judges.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues

(A) Recommendation concerning Proposed Amendments to Rule 5005(a)(2)

Professor Harner provided the report. Several comments were received on the published rule, including one regarding electronic filing by *pro se* parties. The commenter suggested that *pro se* parties be given the option to file electronically or in paper form unless the court for good cause requires electronic filing. Information was received from other rules committees regarding comparable rule proposals. The subcommittee's working group focused on proposing language regarding electronic signatures to allow for potential changes to electronic filing based on future technological developments. The working group considered how to strike a balance for *pro se* parties and electronic filing, recognizing that while some *pro se* parties are sophisticated users with the resources to file electronically, others do not have access to those capabilities. For this and other reasons discussed during its conference call, the subcommittee did not recommend any changes to the proposed language in the rule regarding electronic filing by *pro se* parties.

The group discussed the use of the term "authorized" and the determination to approach the rule more generally. The subcommittee wanted to ensure the rule was flexible enough to permit various approaches by courts to electronic filing. Professor Harner explained that some of the changes to the proposed rule were made to conform to the proposed language of the other rules committees. The proposed rule amendment was approved by motion and vote.

(B) Recommendation concerning Proposed Amendments to Rule 3002.1(b) and (e)

Professor Gibson reported that amendments were proposed to Rule 3002.1 to address home equity lines of credit and objections to notices of payment changes. Several comments were received, including one from the National Conference of Bankruptcy Judges (NCBJ). A number of the NCBJ's suggestions were accepted, and a revised version of the proposed rule was included in the materials. Conforming changes were made to the Committee Note to reflect the proposed changes, and the revised Committee Note was included with the materials.

The group discussed a few stylistic issues, and a minor edit was made to add "if no motion was filed by the day before" in place of the proposed language in the version of the rule

in the materials. Language will be added to the Committee Note to clarify the new language. The revised proposed rule amendment and Committee Note were approved by motion and vote.

- (C) Recommendation regarding Suggestion 16-BK-D for possible amendment to Rule 4001(c) that would simplify notice requirements for obtaining credit in Chapter 13 cases

Judge Goldgar reported on this issue, explaining the origin of the suggestion, mainly that there are many procedural hoops for debtors in chapter 13 cases to obtain post-petition credit. The original suggestion was to amend the rule to make it less stringent for chapter 13 debtors, as the current rule contains many requirements. Professor Harner completed some research on the issue and determined that courts handle post-petition chapter 13 credit in a variety of ways. The different approaches adopted by courts may relate to the structure of the Bankruptcy Code (sections 364 and 1304), rather than the rules, and whether chapter 13 debtors not engaged in business can obtain credit under section 364. Some courts have concluded that section 364 (and Rule 4001(c)) apply only to chapter 13 debtors engaged in business. The subcommittee determined that the best resolution was to add a new subdivision (4) to Rule 4001(c) to exclude chapter 13 cases from the application that subdivision.

The Committee discussed the proposed amendment, noting its practicality. One member asked about the potential risks for post-petition lenders if chapter 13 cases are excluded from the subdivision. Others suggested leaving such matters to local practice. In response, a suggestion was made to amend the Committee Note to explain the effect of the rule change. The proposed amendment was approved for publication by motion and vote, along with the amendment to the Committee Note.

- (D) Recommendations regarding Suggestion 12-BK-B proposing amendment to Rule 2002(f)(7) to require notice of an order confirming a chapter 13 plan, and Suggestion 12-BK-M proposing amendments to Bankruptcy Rule 2002(h) to include Chapter 13

Professor Harner addressed this issue. She reviewed the suggestions, explaining that the first suggestion related to Rule 2002(f)(7) and the absence of the order confirming a chapter 13 plan from the subdivision. The second proposed amendment concerned Rule 2002(h) and the absence of chapter 13 creditors from the rule, which limits notice in certain circumstances. She explained that after completing some research into past deliberations of the Committee, she

discovered that there was no clear reason for excluding chapter 13 from these two subdivisions of Rule 2002.

After discussion, the subcommittee determined to add language referencing chapter 13 to Rules 2002(f)(7). With regard to Rule 2002(h), the subcommittee agreed that given the amount of notice received in chapter 13 cases, adding chapter 13 cases to the subdivision (h) limitation made sense. In completing its review, the subcommittee noted that there are pending amendments to Rule 2002. For this reason, the subcommittee recommended that the amendments to Rule 2002(f) and (h) be approved, but held until after the 2017 amendments to Rule 2002 become effective to avoid confusion.

A Committee member asked why chapter 12 was excluded from subdivision (h), noting that the lack of a clear reason for its exclusion could lead to the same confusion that exists regarding chapter 13 if a similar suggestion is made in the future. Professor Harner advised that the subcommittee could consider this suggestion. Another member suggested that current practices lead to wasted noticing in bankruptcy cases, suggesting that the creditor matrix maintained by the court should be updated to remove non-claimants once the amendments to Rule 2002 go into effect. Judge Ikuta advised that this suggestion could be relayed to the appropriate group at the Administrative Office, and Ken Gardner supported the suggestion.

Professor Harner reviewed the recommendation: the subcommittee recommended that the proposed amendments to Rule 2002(f)(7) and (h) be approved, but held (and not provided to the Standing Committee for publication) until the current proposed amendments to Rule 2002 take effect to avoid any potential confusion. She noted that this would permit the subcommittee to consider the suggestion to include chapter 12 cases in subdivision (h). Judge Ikuta supported the suggestion to hold the proposed amendments until after the effective date of the current Rule 2002 amendments, noting that these proposed amendments to Rule 2002 are subject to possible further amendment.

The proposed amendments were approved for publication by motion and vote, with the provision that any proposed amendments be held until after the effective date of the current pending amendments to Rule 2002.

5. Report by the Subcommittee on Business Issues.

(A) Recommendations concerning Electronic Notice and Service

Professor Harner reported on the issues to be considered by the Committee at the meeting. She advised that the subcommittee will consider several additional issues related to noticing in bankruptcy cases at a later date.

Professor Harner explained the subcommittee's proposed approach for implementing a move towards enhanced electronic notice and service in bankruptcy cases. First, a proposed amendment to the proof of claim form (Official Form 410) would add a checkbox regarding consent to electronic noticing and service via email for non-registered users. A draft of the amended form was included in the agenda materials. Second, a corresponding amendment to Rule 2002(g) would permit creditors to expand their choices for receiving notice by email. Third, a proposed amendment to Rule 9036 would broaden the rule to include any party serving a paper under the rule to permit the party to serve electronically on registered users and parties who consent to service electronically, including those who consent via the proof of claim form. Some analysis was done on the term "in writing" and whether a check box on the proof of claim form would constitute "in writing," and the consensus was that it would meet the requirements.

In response to a question regarding why the subcommittee focused on amending the proof of claim form, Professor Harner explained that the proof of claim form appeared to be the best method for addressing the concerns of commenters regarding large filers and broader use of electronic notice and service. A member raised an issue regarding notice to security holders rather than claim holders. Judge Ikuta advised that the concern regarding security holders should be submitted as a suggestion for consideration.

Ken Gardner explained the mechanics of the proposed change to the proof of claim form, and how the information would be included in the court's database as part of the creditor matrix. An issue was raised regarding debtors' access to the court's database for noticing purposes to avoid sending paper notices to parties who have consented to electronic notices and service. The group discussed whether the proposed change lessens the burdens of noticing. One member noted that any email address submitted in connection with a proof of claim should supplement rather than replace any contact information submitted under Bankruptcy Code section 342 (and maintained by the Bankruptcy Noticing Center). In response, one member referenced the 2001 Committee Note to Rule 2002(g), which indicates that information on a later-filed proof of claim

replaces an earlier designation of a mailing address in a particular case. Further discussion was had regarding the implications of section 342 and the requirements for notice and those receiving notice. Members stated that the amendment to the proof of claim form is intended as an “opt-in” and not a requirement, and that language could be added to the Committee Note to address any issues with section 342. Judge Ikuta suggested follow up with the Bankruptcy Noticing Center regarding some of these issues, including whether debtors could get access to email addresses of creditors who opt in to electronic noticing and service for noticing purposes. Another member suggested that a solution may be to review the make-up of the creditor matrix if this proposed amendment were to go forward to attempt to eliminate duplicative noticing addresses.

Professor Harner suggested that the Committee Note could be amended to address the issues raised at the meeting. Judge Ikuta added that the Committee could complete additional research on the practical application of the proposed amendment, but that the proposed amendment could go forward. Professors Gibson and Coquillette noted their concern with publishing something that may not receive final approval in the published form. Professor Harner added that publication may signal that the Committee is behind a broader use of electronic notice and service, and that one method of obtaining feedback regarding that approach is to publish proposed amendments. The proposed amendment was approved for publication by motion and vote.

- (B) Report on Suggestion 16-BK-C regarding Rule 6007 and notice of abandonment of estate property

Professor Harner explained that the suggestion is to amend Rule 6007 to eliminate the ambiguity between sections (a) and (b) of the rule regarding service of notice. The subcommittee considered the various approaches used by courts to implement Rule 6007(b). The proposed amendment to Rule 6007(b) clarifies the parties to be served with the motion and notice of the motion, eliminates the distinction between notice and service in the rule, and provides that if the court grants the motion, no further notice is required unless otherwise ordered.

A member asked whether the proposed amendment would mean that nothing additional would be required to effectuate abandonment. The group discussed possible language. Additional language was added to the proposed amendment to clarify that “the order effects the abandonment” without further notice or action by the court. Another question was raised regarding notice versus service, and a member explained that the point was to recognize that there are a variety of court practices with regard to motions to compel abandonment and to

eliminate the distinction between the terms “notice” and “service.” The group agreed to new language including the term “required notice.” The revised proposed amendment was approved for publication by motion and vote.

Following approval, Judge Campbell raised the issue of whether the term “required” should be explained more fully in the Committee Note. The group agreed to revise the language of the rule to remove the term “required,” changing it to “the motion and any notice of the motion” to permit for the possibility that notice may not be required in some jurisdictions. The group voted to approve the new language for the proposed amendment for publication.

(C) Report and Recommendation Concerning Proposed Amendments to Official Forms 309F, 425A, 425B, 425C, and 426

Professor Harner advised that the revised forms (Official Forms 425A, B, and C, and 426) all relate to business cases and were carved out the Forms Modernization Project for consideration by the subcommittee. The revisions adopted the format of the newly styled forms of the Forms Modernization Project and made the forms easier to understand. The forms were published for comment, and several comments were submitted on Forms 425A and B. One comment questioned the removal of the notice of hearing and certain deadlines from the disclosure statement form. The subcommittee discussed this issue, but determined to not make the change to avoid any conflicts between the form and official court orders. Another comment supported the forms, and suggested that the disclosure statement and plan be combined into one form.

Professor Harner referred to her memo in the agenda materials for detailed analysis of all of the comments, explaining that five changes were recommended by the subcommittee in response to the comments. She reminded the group that these forms are suggested forms and are not required. The five changes are as follows: (1) removal of the insider column from the claims chart in the disclosure statement; (2) a better explanation of the exceptions to voting rules in the disclosure statement; (3) a change to Article VII of the plan regarding any claims reserve; (4) a placeholder for the court’s retention of jurisdiction following confirmation in the plan; and (5) a change to the signature block to match the caption for the form to permit multiple debtors. The forms were approved by motion and vote.

Professor Gibson presented the amendment to Official Form 309F explaining that the proposed amendment was to the language regarding an exception to discharge instructions on the form. There was some ambiguity regarding the availability of an exception to discharge in

certain circumstances, and the Committee wanted to avoid taking a position on whether an exception to discharge was required. Two comments were received, and one pointed out that a similar amendment may be required to Part 11 of the form. The subcommittee recommended a similar amendment to Part 11 of the form to conform with the proposed changes to Part 8. The revised form was included in the agenda materials. The form was approved by motion and vote.

6. Report by the Subcommittee on Privacy, Public Access, and Appeals

(A) Review comments in Rules 8002, 8006, 8011, 8013, 8015, 8016, 8017, 8022, 8023 and new Rule 8018.1

Professor Gibson explained that there a number of Part VIII rule amendments were published in August 2016, the majority of which were to conform to amendments to the Federal Rules of Appellate Procedure. New Rule 8018.1 and amended Rules 8011 and 8023 were also published in August. Several comments were filed, and were generally supportive, although two comments were filed in opposition to the amendments to Rule 8017. The proposed amendment to Rule 8017 conforms to a proposed amendment to corresponding Appellate Rule 29, and would permit district courts and bankruptcy appellate panels to strike or prohibit the filing of an amicus brief that the parties had consented to if it would result in a judge's disqualification. Professor Gibson stated that it may make sense to wait to see any action taken by the Appellate Rules Committee with regard to its proposed amendment to Appellate Rule 29 as the proposed amendment to Rule 8017 was merely to confirm to the Appellate Rule 29 amendment. The Appellate Rules Committee is meeting in early May, and it received similar comments regarding its proposed amendments to Appellate Rule 29. The subcommittee recommended approving the amended Part VIII rules, with the exception of the proposed amendments to Rule 8017, which will be subject to the actions of the Appellate Rules Committee regarding Appellate Rule 29, and Rule 8011, which was considered separately at the meeting.

An issue was raised regarding proposed Rule 8023 that adds a cross reference to Rule 9019, and a suggestion that language be added to the Committee Note to clarify the impact of adding the reference to Rule 9019. The group discussed the issue and whether or not it adds ambiguity into the rule. One member suggested removing the reference to Rule 9019 from Rule 8023. Professor Gibson explained that the amendment was made to alert parties to the potential need for approval of a dismissal resulting from a settlement and has no impact on the law, but it may impact procedure. Judge Campbell asked whether there have been problems with Rule 8023 since its enactment several years ago. Professor Gibson stated that the language was added to avoid the erroneous interpretation that Rule 8023 overrides the requirements of Rule 9019.

Possible language could be added to filings to clarify that Rule 9019 does not apply. Others stated that it may put a burden on clerks to seek a judicial determination for each of these filings. A suggestion was made to add language to the Committee Note. Given the varying views expressed in the discussion, Judge Ikuta recommended that the proposed amendment to Rule 8023 be reconsidered by the subcommittee, and the Committee agreed.

The Committee voted on a motion for final approval of the Part VIII Rules, with the exception of Rules 8011 and 8023, and in consideration of any further action by the Appellate Rules Committee with regard to Rule 8017, and the motion was approved.

(B) Consider possible amendments to rules 7062, 8007, 8010, 8021, and 9025 to address published amendments to Civil Rule 62 and 65.1, and FRAP 8(a)(1)(B), (b); 11(g); and 39(e) regarding the term “supersedeas bonds” and the period during which a judgment is automatically stayed after entry

Professor Gibson detailed the proposed amendments which are all conforming amendments to other proposed rule amendments regarding the use of the term “supersedeas” in the federal rules. Generally, the term was replaced with “bond or other security” throughout the federal rules. The one exception to conforming is Rule 7062, which incorporates Civil Rule 62. The subcommittee recommended retaining the current 14-day time period for the automatic stay of a judgment in Rule 7062, rather than adopting the amended time period in the Civil Rules.

Since the subcommittee meeting, the Civil Rules Committee advised that it will consider a change to the “other undertaking” language in Civil Rule 62, as well as other similar language changes. If this occurs, the proposed amendment to Bankruptcy Rule 9025 would be changed to match the Civil Rules Committee’s amended language, if the proposed language is approved by the Civil Rules Committee. In addition, Professor Gibson advised that it is possible that the Appellate Rules Committee will make changes to its proposed rule amendments to conform to the Civil Rules changes, and that committee meets in early May. If the Appellate Rules Committee makes changes to the language in its proposed rules, the proposed language in the Bankruptcy Rules will need to be changed.

The subcommittee recommended that the amendments be adopted without publication as they are merely conforming changes. Any approval by the Committee would be subject to potential changes to the proposed language based on the actions by the Civil and Appellate Rules Committees. One member asked about the provision of security by stipulation, and the Committee agreed that it is appropriate for the language to be removed from Rule 9025. A

motion to approve the proposed amendments without publication was approved, subject to any language changes from the other rules committees.

- (C) Recommendation to revise Rule 8011 to incorporate pending changes regarding electronic filing and notice across the rules committees

Professor Gibson explained that there are two sets of amendments to Rule 8011. The first relate to filings by inmates, and the second relate to electronic filing. The rules committees are working together to develop similar language regarding electronic filing. Professor Gibson explained that this Committee has the earliest meeting, so it does not have the benefit of feedback from the other rules committees. The subcommittee recommended approval of the proposed electronic-filing amendments to Rule 8011 without publication, given that they are merely conforming amendments. Professor Gibson advised that there was a suggestion to add language to the Committee Note indicating that the clerk is not responsible for monitoring if electronic service was received. The subcommittee generally approved adding language to this effect to the Committee Note, adding language that if a sender receives notice that the paper did not reach the person to be served, that person is then responsible for making effective service. This language is consistent with the rule itself. Members raised concerns with the use of the term “receives notice” and also whether there needs to be a distinction made between service by commercial carrier and service electronically. After discussion, the Committee determined to retain the term “receives notice” and include further explanation in the Committee Note.

The Committee discussed the proposed rule and Committee Note and raised some practical concerns with regard to the impact of the changes. Specifically, the group discussed the term “user name and password” and revised language was proposed. Professor Gibson advised that since the rules committees are attempting to maintain similar wording, the other committees will be notified of the proposed language changes.

A motion to approve the amendments to Rule 8011, with revised language regarding user name and passwords and an additional paragraph to the Committee Note regarding effective service, was passed unanimously.

(C) Oral Report on feedback to the Appellate Rules Committee in response to a request for comment on a proposed amendment to Appellate Rule 26.1 (*Corporate Disclosure Statement*) that address recusal matters in bankruptcy appeals

Professor Gibson explained that the subcommittee participated in a conference call with the chair and reporter for the Appellate Rules Committee. The Appellate Rules Committee is considering an amendment to Appellate Rule 26.1 based, in part, on an advisory ethics opinion issued several years ago regarding additional required disclosures in contested matters and adversary proceedings in connection with bankruptcy appeals. The subcommittee provided feedback regarding the proposed changes to Appellate Rule 26.1, and the Appellate Rules Committee reporter revised the proposed amended rule in response to the subcommittee's suggestions. Professor Gibson suggested that the Committee retain the suggestions for amendments related to the advisory ethics opinion for future consideration. Judge Ikuta asked whether others have encountered issues with regard to disclosure and bankruptcy appeals. Several members reported on local rules in place in their districts regarding disclosure, but no specific problems were noted. The subcommittee recommended waiting to make any proposed amendments to the bankruptcy rules pending a decision from the Appellate Rules Committee regarding Appellate Rule 26.1.

Information Items

Tom Mayer updated the Committee on the suggestion for a proposed rule for the filing of proceedings pursuant to Chapter VI of the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA). He advised that the rule at issue is not for national use, but instead is a local rule applicable only in the District of Puerto Rico. It provides a procedural method for starting a Title VI proceeding. Mr. Mayer hopes the rule will be in place on or before May 1, 2017. Judge Ikuta thanked those involved for their efforts in working with the court to provide it with a potential local rule.

Judge Ikuta advised that the Judicial Conference's five-year review was discussed at the Standing Committee meeting, and that the Committee's suggestions were well accepted. She noted the rules committees' work on the electronic filing rules is an example of a successful coordination effort.

Scott Myers updated the group about the coordination effort among the rules committees, advising that a full report was provided at the Standing Committee meeting. He stated that there

is a lot of support for the effort from the other rules committees and members of the Standing Committee.

Proposed Consent Agenda

The Chair and Reporters proposed the following items for study and consideration prior to the Committee's meeting. There were no objections, and all recommendations were approved by motion at the meeting.

1. Subcommittee on Consumer Issues.

Revisions to Spring 2016 Recommendation for amendment to Rule 9037(h) (*Privacy Protection for Filings Made with the Court*), in response to Suggestion 14-BK-B.

2. Subcommittee on Business Issues.

Recommendation of no action on possible amendments to bankruptcy corporate ownership rules to parallel pending amendments to Criminal Rule 12.4.

3. Subcommittee on Privacy, Public Access, and Appeals.

Recommendation of no action regarding possible rule amendments to address situation of remand of a bankruptcy appeal from a court of appeals to the district court, and time frame for district court to determine whether the district or bankruptcy court is responsible for the case.

Judge Ikuta advised that the fall 2017 meeting will be in Washington D.C., on September 26-27. The meeting was adjourned at 3:20 p.m.