April 27, 2017

Honorable Paul D. Ryan
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I have the honor to submit to the Congress the amendment to the Federal Rules of Appellate Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying this rule are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated March 16, 2017; a redline version of the rule with committee note; and an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States.

Sincerely,

/s/ John G. Roberts

April 27, 2017

Honorable Michael R. Pence
President, United States Senate
Washington, DC 20510

Dear Mr. President:

I have the honor to submit to the Congress the amendment to the Federal Rules of Appellate Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying this rule are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated March 16, 2017; a redline version of the rule with committee note; and an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States.

Sincerely,

/s/ John G. Roberts

April 27, 2017

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Appellate Procedure be, and they hereby are, amended by including therein an amendment to Appellate Rule 4.

[*See infra* pp. ___ ___ ___.]

2. That the foregoing amendment to the Federal Rules of Appellate Procedure shall take effect on December 1, 2017, and shall govern in all proceedings in appellate cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendment to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

PROPOSED AMENDMENT TO THE
FEDERAL RULES OF APPELLATE PROCEDURE

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

* * * * *

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

* * * * *

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

* * * * *

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

March 16, 2017

MEMORANDUM

To: The Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff

RE: TRANSMITTAL OF PROPOSED AMENDMENT TO THE FEDERAL RULES OF APPELLATE PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court the proposed amendment to Rule 4 of the Federal Rules of Appellate Procedure, which was approved by the Judicial Conference at its March 2017 session. The Judicial Conference recommends that the amendment be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendment, I am transmitting: (i) a "clean" copy of the affected rule incorporating the proposed amendment and accompanying Committee Note; (ii) a redline version of the same; and (iii) an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference.

Attachments

PROPOSED AMENDMENT TO THE FEDERAL RULES OF APPELLATE PROCEDURE*

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

* * * * *

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

* * * * *

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

---

* New material is underlined.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

* * * * *

Committee Note

Subdivision (a)(4)(B)(iii). This technical amendment restores the former subdivision (a)(4)(B)(iii) that was inadvertently deleted in 2009.

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

* * * * *

FEDERAL RULES OF APPELLATE PROCEDURE

Rule Recommended for Approval and Transmission

The Advisory Committee on Appellate Rules submitted a proposed technical amendment to Rule 4(a)(4)(B) to restore a subsection which had been inadvertently deleted in 2009, with a recommendation that the amendment be approved and transmitted to the Judicial Conference.

On December 14, 2016, the Office of the Law Revision Counsel (OLRC) in the U.S. House of Representatives advised that Rule 4(a)(4)(B)(iii) had been deleted by a 2009 amendment to Rule 4. Subdivision (iii), which concerns amended notices of appeal, states: "No additional fee is required to file an amended notice." The deletion of this subdivision in 2009 was inadvertent due to an omission of ellipses in the version submitted to the Supreme Court. The OLRC deleted subdivision (iii) from its official document as a result, but the document from which the rules are printed was not updated to show deletion of subdivision (iii). As a result, Rule 4(a)(4)(B) was published with subdivision (iii) in place that year and every year since.

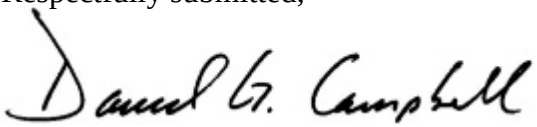
The proposed technical amendment restores subdivision (iii) to Rule 4(a)(4)(B). The advisory committee did not believe publication was necessary given the technical, non-substantive nature of this correction.

The Standing Committee voted unanimously to support the recommendation of the Advisory Committee on Appellate Rules.

Recommendation: That the Judicial Conference approve the proposed amendment to Appellate Rule 4(a)(4)(B) and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	Amy J. St. Eve
Gregory G. Garre	Larry D. Thompson
Daniel C. Girard	Richard C. Wesley
Susan P. Graber	Sally Q. Yates
Frank M. Hull	Robert P. Young, Jr.
Peter D. Keisler	Jack Zouhary
William K. Kelley	

April 27, 2017

Honorable Paul D. Ryan
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I have the honor to submit to the Congress the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code:

(1) a transmittal letter to the Court dated September 28, 2016, concerning Bankruptcy Rules 1001, 1006, and 1015, followed by redline versions of those rules and excerpts from related reports of the rules committees; and

(2) a transmittal letter to the Court dated March 16, 2017, concerning amended Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and new Rule 3015.1, followed by redline versions of those rules and excerpts from related reports of the rules committees.

Sincerely,

/s/ John G. Roberts

April 27, 2017

Honorable Michael R. Pence
President, United States Senate
Washington, DC 20510

Dear Mr. President:

I have the honor to submit to the Congress the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code:

(1) a transmittal letter to the Court dated September 28, 2016, concerning Bankruptcy Rules 1001, 1006, and 1015, followed by redline versions of those rules and excerpts from related reports of the rules committees; and

(2) a transmittal letter to the Court dated March 16, 2017, concerning amended Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and new Rule 3015.1, followed by redline versions of those rules and excerpts from related reports of the rules committees.

Sincerely,

/s/ John G. Roberts

April 27, 2017

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 1001, 1006, 1015, 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and new Rule 3015.1.

[*See infra* pp. ___ ___ ___.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2017, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Bankruptcy Procedure in accordance with the provisions of Section 2075 of Title 28, United States Code.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 1001. Scope of Rules and Forms; Short Title

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.

Rule 1006. Filing Fee

* * * * *

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) *Application to Pay Filing Fee in Installments*. A voluntary petition by an individual shall be accepted for filing, regardless of whether any portion of the filing fee is paid, if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments.

* * * * *

Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court

* * * * *

(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the

debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).

* * * * *

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

(a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), (*l*), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

* * * * *

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c);

(8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan; and

(9) the time fixed for filing objections to confirmation of a chapter 13 plan.

(b) TWENTY-EIGHT-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; (2) for filing objections and the hearing to consider confirmation of a chapter 9 or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.

* * * * *

Rule 3002. Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.

(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief

under that chapter is entered. But in all these cases, the following exceptions apply:

* * * * *

(6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that:

(A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or

(B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address.

(7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if:

(A) the proof of claim, together with the attachments required by Rule 3001(c)(2)(C), is filed not later than 70 days after the order for relief is entered; and

(B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.

Rule 3007. Objections to Claims

(a) TIME AND MANNER OF SERVICE.

(1) *Time of Service.* An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing.

(2) *Manner of Service.*

(A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and

(i) if the objection is to a claim of the United States, or any of its officers or

agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or

(ii) if the objection is to a claim of an insured depository institution, in the manner provided by Rule 7004(h).

(B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.

* * * * *

Rule 3012. Determining the Amount of Secured and Priority Claims

(a) DETERMINATION OF AMOUNT OF CLAIM. On request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine:

(1) the amount of a secured claim under § 506(a) of the Code; or

(2) the amount of a claim entitled to priority under § 507 of the Code.

(b) REQUEST FOR DETERMINATION; HOW MADE. Except as provided in subdivision (c), a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court

designates in the manner provided for service of a summons and complaint by Rule 7004. A request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.

(c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case

(a) FILING A CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.

(b) FILING A CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) FORM OF CHAPTER 13 PLAN. If there is an Official Form for a plan filed in a chapter 13 case, that

form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, "nonstandard provision" means a provision not otherwise included in the Official or Local Form or deviating from it.

(d) NOTICE. If the plan is not included with the notice of the hearing on confirmation mailed under Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.

(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any

modification thereof filed under subdivision (a) or (b) of this rule.

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan:

(1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed; and

(2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.

(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to

consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

Rule 3015.1. Requirements for a Local Form for Plans Filed in a Chapter 13 Case

Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:

(a) a single Local Form is adopted for the district after public notice and an opportunity for public comment;

(b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph;

(c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not:

(1) contain any nonstandard provision;

(2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or

(3) avoid a security interest or lien;

(d) the Local Form contains separate paragraphs for:

(1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;

(2) paying a domestic-support obligation;

(3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and

(4) surrendering property that secures a claim with a request that the stay under §§ 362(a) and 1301(a) be terminated as to the surrendered collateral; and

(e) the Local Form contains a final paragraph for:

(1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and

(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

Rule 4003. Exemptions

* * * * *

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding under § 522(f) to avoid a lien or other transfer of property exempt under the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

Rule 5009. Closing Chapter 7, Chapter 12, Chapter 13, and Chapter 15 Cases; Order Declaring Lien Satisfied

(a) CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13. If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

* * * * *

(d) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and

shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint.

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

* * * * *

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);

* * * * *

Rule 9009. Forms

(a) OFFICIAL FORMS. The Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that:

(1) expand the prescribed areas for responses in order to permit complete responses;

(2) delete space not needed for responses; or

(3) delete items requiring detail in a question or category if the filer indicates—either by checking "no" or "none" or by stating in words—that there is nothing to report on that question or category.

(b) DIRECTOR'S FORMS. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.

(c) CONSTRUCTION. The forms shall be construed to be consistent with these rules and the Code.

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

September 28, 2016

MEMORANDUM

To: The Chief Justice of the United States and
Associate Justices of the Supreme Court

From: James C. Duff James C. Duff

RE: Transmittal of Proposed Amendments to the Federal Rules of
Bankruptcy Procedure

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 1001, 1006(b), and 1015(b) of the Federal Rules of Bankruptcy Procedure, which were approved by the Judicial Conference at its September 2016 session. The Judicial Conference recommends that the amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting: (i) a "clean" copy of the affected rules incorporating the proposed amendments and accompanying Committee Notes; (ii) a redline version of the same; (iii) an excerpt from the September 2016 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) excerpts from the May 2016 and the December 2015 Reports of the Advisory Committee on Bankruptcy Rules.

Attachments

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1001. Scope of Rules and Forms; Short Title

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.

Committee Note

The last sentence of the rule is amended to incorporate the changes to Rule 1 F.R.Civ.P. made in 1993 and 2015.

The word "administered" is added to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that bankruptcy cases and the proceedings within them are resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

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

The addition of the phrase "employed by the court and the parties" emphasizes that parties share in the duty of using the rules to secure the just, speedy, and inexpensive determination of every case and proceeding. Achievement of this goal depends upon cooperative and proportional use of procedure by lawyers and parties.

This amendment does not create a new or independent source of sanctions. Nor does it abridge the scope of any other of these rules.

Rule 1006. Filing Fee

* * * * *

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) *Application to Pay Filing Fee in Installments*. A voluntary petition by an individual shall be accepted for filing, regardless of whether any portion of the filing fee is paid, if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments.

* * * * *

Committee Note

Subdivision (b)(1) is amended to clarify that an individual debtor's voluntary petition, accompanied by an application to pay the filing fee in installments, must be accepted for filing, even if the court requires the initial installment to be paid at the time the petition is filed and the debtor fails to make that payment. Because the debtor's bankruptcy case is commenced upon the filing of the petition, dismissal of the case due to the debtor's failure to

make the initial or a subsequent installment payment is governed by Rule 1017(b)(1).

Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court

* * * * *

(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) ~~a husband and wife~~spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of ~~a husband and wife~~spouses shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same

exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).

* * * * *

Committee Note

Subdivision (b) is amended to replace "a husband and wife" with "spouses" in light of the Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

Excerpt from the September 2016 Report of the Committee on Rules of Practice and Procedure

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

*****

FEDERAL RULES OF BANKRUPTCY PROCEDURE

*Rules*****Recommended for Approval and Transmission*

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1001, 1006(b), and 1015(b)*****with a recommendation that they be approved and transmitted to the Judicial Conference.

The proposed amendments to Rules 1001 and 1006(b) were circulated to the bench, bar, and public for comment in August 2015. Because of the limited and conforming nature of the proposed amendments to Rule 1015(b)*****[it is] forwarded for approval without publication. Rule 1001

Rule 1001 (Scope of Rules and Forms; Short Title) is the bankruptcy counterpart to Civil Rule 1, and it generally tracks the language of the civil rule. The last sentence of Rule 1001 currently states, "These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding." This language deviates from Civil Rule 1, which states (as of December 1, 2015): "[These rules] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." The proposed amendment to Rule 1001 changes the last sentence of the rule to conform to the language of Civil Rule 1.

The Advisory Committee received two comments to the proposed rule amendment. One comment supported the amendment and the other concerned general drafting issues. The

Advisory Committee determined that the comments did not warrant any changes and voted unanimously to approve the proposed amendment as published.

Rule 1006(b)

Rule 1006(b) (Filing Fee) governs the payment of the bankruptcy filing fee in installments, as authorized for individual debtors by 28 U.S.C. § 1930(a). In evaluating a suggested amendment to the rule, the Advisory Committee became aware that some courts refuse to accept a petition or summarily dismiss a case if an installment payment is not made at the time the case is filed. The Advisory Committee concluded that such a practice is inconsistent with Rules 1006(b)(1) and 1017(b)(1). The latter provision allows for dismissal of a case for the failure to pay any installment of the filing fee only "after a hearing on notice to the debtor and the trustee."

In order to clarify that courts may not refuse to accept petitions or summarily dismiss cases for failure to make initial installment payments at the time of filing, the proposed amendment to Rule 1006(b)(1) requires that an individual debtor's petition must be accepted for filing so long as the debtor submits a signed application to pay the filing fee in installments—even if a required initial installment payment is not made at the same time. The Committee Note explains that dismissal of the case for failure to pay any installment must proceed according to Rule 1017(b)(1).

The Advisory Committee received two comments to the proposed rule amendment. One comment supported the amendment and the other concerned general drafting issues. The Advisory Committee determined that the comments did not warrant any changes and voted unanimously to approve the proposed amendment as published.

Excerpt from the September 2016 Report of the Committee on Rules of Practice and Procedure

Rule 1015(b)

Rule 1015(b) (Cases Involving Two or More Related Debtors) provides for the joint administration of bankruptcy cases in which the debtors are closely related. Among the debtors covered by the rule are "a husband and wife." The provision also implements a statutory requirement that a husband and wife with jointly administered cases choose the same exemption scheme—either federal bankruptcy exemptions, if permitted, or state exemptions.

After the decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013), which held § 3 of the Defense of Marriage Act unconstitutional, the Advisory Committee received a suggestion that Rule 1015(b) be amended to substitute the word "spouses" for "husband and wife" in order to include joint bankruptcy cases of same-sex couples. Two years later, the Court decided *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), which held that the right to marry is a fundamental right under the Fourteenth Amendment and that same-sex couples may not be deprived of that right. *Id.* at 2599. The Court further held in *Obergefell* that the Equal Protection Clause prevents states from denying same-sex couples the benefits of civil marriage on the same terms as opposite-sex couples. *Id.* at 2604.

In light of the holdings and reasoning in *Windsor* and *Obergefell*, the Advisory Committee recommended replacing both instances of "husband and wife" with "spouses" in Rule 1015(b). Because it viewed the proposed changes as conforming amendments, the Advisory Committee voted unanimously to recommend approval without publication for public comment.

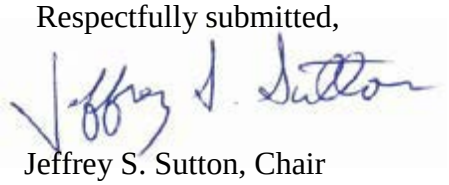
*****

Recommendation: That the Judicial Conference:

a. Approve the proposed amendments to Bankruptcy Rules 1001, 1006(b), and 1015(b), and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with law;

*****

Respectfully submitted,



Jeffrey S. Sutton, Chair

Brent E. Dickson	Patrick J. Schiltz
Roy T. Englert, Jr.	Amy J. St. Eve
Gregory G. Garre	Larry D. Thompson
Daniel C. Girard	Richard C. Wesley
Neil M. Gorsuch	Sally Quillian Yates
Susan P. Graber	Jack Zouhary
William K. Kelley	

Excerpt from the May 10, 2016 Report of the Advisory Committee on Bankruptcy Rules

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

MEMORANDUM

TO: Hon. Jeffrey S. Sutton, Chair
Committee on Rules of Practice and Procedure

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

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 10, 2016

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 31, 2016, in Denver, Colorado.

* * * * *

The Committee now seeks the Standing Committee's final approval of two rule amendments that were published in August 2015, as well as retroactive approval of technical amendments that have been made to several official forms.

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Part II of this report discusses the action items, grouped as follows:

A. Items for Final Approval

(A1) Rules published for comment in August 2015—
- Rules 1001;
- Rule 1006(b); and

* * * * *

II. Action Items

A. Items for Final Approval

(A1) *Rules published for comment in August 2015*.

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 2015 and are discussed below. Bankruptcy Appendix A includes the rules that are in this group.

Action Item 1. Rule 1001 (Scope of Rules and Forms; Short Title). Rule 1001 is the bankruptcy counterpart to Civil Rule 1. Rather than incorporating Civil Rule 1 by reference, Rule 1001 generally tracks the language of the civil rule. The last sentence of Rule 1001 currently states, "These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding." This language deviates from Civil Rule 1, which states (as of December 1, 2015), "[These rules] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." The proposed amendment to Rule 1001 changes the last sentence of the rule to conform to the language of Civil Rule 1.

The Committee received two comments to the proposed rule amendment and, after due deliberation, determined that the comments did not warrant any action. Accordingly, the Committee voted unanimously to approve the proposed amendment as published.

Action Item 2. Rule 1006(b) (Filing Fee). Rule 1006(b) governs the payment of the bankruptcy filing fee in installments, as authorized for individual debtors by 28 U.S.C. § 1930(a). The Committee received and over the course of several years considered a potential amendment to the rule with respect to courts requiring a debtor who applies to pay the filing fee in installments to make an initial installment payment with the petition and the application. The Committee requested the Federal Judicial Center ("FJC") to conduct an empirical study on court practices regarding initial installment payments at the time of filing and whether there is an association between such a requirement and the rate of fee waiver applications. Although based on the FJC study and other factors, the Committee ultimately concluded that there was no need to clarify that courts may require an initial installment payment with the petition and application, the FJC study raised a different issue. Because Rule 1006(b)(1) requires the bankruptcy clerk to accept the petition, resulting in the commencement of a bankruptcy case, the practice of some courts of refusing to accept a petition or summarily dismissing a case because of the failure to make an installment payment at the time of filing is inconsistent with Rules 1006(b)(1) and 1017(b)(1). The latter provision allows the court, only "after a hearing on notice to the debtor and the trustee," to dismiss a case for the failure to pay any installment of the filing fee.

Excerpt from the May 10, 2016 Report of the Advisory Committee on Bankruptcy Rules

In order to clarify that courts may not refuse to accept petitions or summarily dismiss cases for failure to make initial installment payments at the time of filing, the Committee proposed, and the Standing Committee approved, publication of an amendment to Rule 1006(b)(1) clarifying that an individual debtor's petition must be accepted for filing so long as the debtor submits a signed application to pay the filing fee in installments and even if a required initial installment payment is not made at the same time. The Committee Note explains that dismissal of the case for failure to pay any installment must proceed according to Rule 1017(b)(1).

The Committee received two comments to the proposed rule amendment and, after due deliberation, determined that the comments did not warrant any action. Accordingly, the Committee voted unanimously to approve the proposed amendment as published.

* * * * *

Excerpt from the December 10, 2015 Report of the Advisory Committee on Bankruptcy Rules

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

TO: Honorable Jeffrey S. Sutton, Chair
Standing Committee on Rules of Practice and Procedure

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

DATE: December 10, 2015

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Washington, D.C., on October 1, 2015.

* * * * *

At the meeting the Committee approved conforming amendments to one rule and minor amendments to three official forms. It seeks the Standing Committee's approval of these amendments without publication.

* * * * *

II. Action Items

A. <u>Items for Final Approval without Publication</u>

Excerpt from the December 10, 2015 Report of the Advisory Committee on Bankruptcy Rules

The Committee requests that the Standing Committee approve the following rule and form amendments without publishing them for public comment due to their conforming or limited nature. The Committee recommends that the amended forms take effect on December 1, 2016. The rule and forms in this group appear in Appendix A.

Action Item 1. Rule 1015(b) (Cases Involving Two or More Related Debtors). Rule 1015(b) provides for the joint administration of bankruptcy cases in which the debtors are closely related. Among the debtors covered by the rule are "a husband and wife." The provision also implements a statutory requirement that a husband and wife with jointly administered cases choose the same exemption scheme—either federal bankruptcy exemptions, if permitted, or state exemptions.

After the decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013), which held § 3 of the Defense of Marriage Act ("DOMA") unconstitutional, the Committee received a suggestion that Rule 1015(b) be amended to substitute the word "spouses" for "husband and wife" in order to include joint bankruptcy cases of same-sex couples. The Committee considered the suggestion at its spring 2014 meeting. It concluded that the first reference to "husband and wife" in Rule 1015(b) falls squarely within the holding of *Windsor*. Section 302 of the Bankruptcy Code, unlike the language of Rule 1015(b), authorizes the filing of a joint petition under a chapter by "an individual that may be a debtor under such chapter and such individual's spouse." The rule's use of the more restrictive term "husband and wife" could be justified only by reliance on § 3 of DOMA, which amended the Dictionary Act to provide that "the word 'spouse' refers only to a person of the opposite sex who is a husband or wife." 1 U.S.C. § 7. *Windsor*'s invalidation of the DOMA provision removed support for the rule's deviation from the statutory language.

The other reference to "husband and wife" in Rule 1015(b), however, is consistent with the statutory language. The rule implements § 522(b)(1) of the Code, which imposes a restriction on the choice of exemptions in cases in which the debtors are a "husband and wife." While some of the Court's reasoning in *Windsor* could be read to suggest that same-sex married couples in bankruptcy should not have a greater choice of exemptions than husbands and wives have, the decision is not directly on point. The Committee voted at the spring 2014 meeting to propose the substitution of "spouses" for both references to "husband and wife" in Rule 1015(b), but to await further clarification of the law on same-sex marriages before presenting the amendment to the Standing Committee.

At this fall's meeting, the Committee revisited the issue in light of the decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), which held that the right to marry is a fundamental right under the Fourteenth Amendment and that same-sex couples may not be deprived of that right. *Id.* at 2599. The Court further held that the Equal Protection Clause prevents states from denying same-sex couples the benefits of civil marriage on the same terms as opposite-sex couples. *Id.* at 2604. The Committee concluded that the decision supported the proposed amendments to Rule 1015(b) to eliminate language suggesting that only opposite-sex married couples may file a joint bankruptcy petition under § 303 and that same-sex married couples are subject to different rules regarding their choice of exemptions. Because the Committee viewed

the proposed changes as conforming amendments, it voted unanimously to seek approval of them without publication for public comment.

* * * * *

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

March 16, 2017

MEMORANDUM

To: The Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and new Rule 3015.1 of the Federal Rules of Bankruptcy Procedure, which were approved by the Judicial Conference at its March 2017 session. The Judicial Conference recommends that the amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting: (i) a "clean" copy of the affected rules incorporating the proposed amendments and accompanying Committee Notes; (ii) a redline version of the same; (iii) an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the December 2016 Report of the Advisory Committee on Bankruptcy Rules.

Attachments

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

(a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), (*l*), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

* * * * *

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); ~~and~~

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

(8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan; and

(9) the time fixed for filing objections to confirmation of a chapter 13 plan.

(b) TWENTY-EIGHT-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; ~~and~~ (2) for filing objections and the hearing to consider confirmation of a

chapter 9~~,~~ or chapter 11~~, or chapter 13~~ plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.

* * * * *

Committee Note

Subdivisions (a) and (b) are amended and reorganized to alter the provisions governing notice under this rule in chapter 13 cases. Subdivision (a)(9) is added to require at least 21 days' notice of the time for filing objections to confirmation of a chapter 13 plan. Subdivision (b)(3) is added to provide separately for 28 days' notice of the date of the confirmation hearing in a chapter 13 case. These amendments conform to amended Rule 3015, which governs the time for presenting objections to confirmation of a chapter 13 plan. Other changes are stylistic.

Rule 3002. Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. ~~An~~ A secured creditor, unsecured creditor, or ~~an~~ equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.

(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) TIME FOR FILING. In a voluntary chapter 7 ~~liquidation~~case, chapter 12 ~~family farmer's debt adjustment~~case, or chapter 13 ~~individual's debt adjustment~~case, a proof of claim is timely filed if it is filed not later than ~~90~~70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7

case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered.~~the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:~~ But in all these cases, the following exceptions apply:

* * * * *

(6) ~~If notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, o~~On motion filed by ~~the~~a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that ~~the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.~~:

(A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or

(B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address.

(7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if:

(A) the proof of claim, together with the attachments required by Rule 3001(c)(2)(C), is filed not later than 70 days after the order for relief is entered; and

(B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.

Committee Note

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. The inclusion of language from § 506(d) is not intended to effect any change of law with respect to claims subject to setoff under § 553. The amendment preserves the existing exceptions to this rule under Rules 1019(3), 3003, 3004, and 3005. Under Rule 1019(3), a creditor does not need to file another proof of claim after conversion of a case to chapter 7. Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. Rules 3004 and 3005 govern the filing of a proof of claim by the debtor, trustee, or another entity if a creditor does not do so in a timely manner.

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the § 341 meeting of creditors to 70 days after the petition date.

If a case is converted to chapter 12 or chapter 13, the 70-day time for filing runs from the order of conversion. If a case is converted to chapter 7, Rule 1019(2) provides that a new time period for filing a claim commences under Rule 3002. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Subdivision (c)(6) is amended to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by Rule 1007(a). The amendment also clarifies that if a court grants a creditor's motion under this rule to extend the time to file a proof of claim, the extension runs from the date of the court's decision on the motion.

Subdivision (c)(7) is added to provide a two-stage deadline for filing mortgage proofs of claim secured by an interest in the debtor's principal residence. Those proofs of claim must be filed with the appropriate Official Form mortgage attachment within 70 days of the order for relief. The claim will be timely if any additional documents evidencing the claim, as required by Rule 3001(c)(1) and (d), are filed within 120 days of the order for relief. The order for relief is the commencement of the case upon filing a petition, except in an involuntary case. See § 301 and § 303(h). The confirmation of a plan within the 120-day period set forth in subdivision (c)(7)(B) does not prohibit an objection to any proof of claim.

Rule 3007. Objections to Claims

(a) ~~OBJECTIONS TO CLAIMS~~TIME AND MANNER OF SERVICE.

(1) *Time of Service.* An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be ~~in writing and~~ filed~~.~~ and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing. ~~A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.~~

(2) *Manner of Service.*

(A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the

claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and

(i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or

(ii) if the objection is to a claim of an insured depository institution, in the manner provided by Rule 7004(h).

(B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.

* * * * *

Committee Note

Subdivision (a) is amended to specify the manner in which an objection to a claim and notice of the objection must be served. It clarifies that Rule 7004 does not apply to the service of most claim objections. Instead, a claimant must be served by first-class mail addressed to the person whom the claimant most recently designated on its proof of claim to receive notices, at the address so indicated. If, however, the claimant is the United States, an officer or agency of the United States, or an insured depository institution, service must also be made according to the method prescribed by the appropriate provision of Rule 7004. The service methods for the depository institutions are statutorily mandated, and the size and dispersal of the decision-making and litigation authority of the federal government necessitate service on the appropriate United States attorney's office and the Attorney General, as well as the person designated on the proof of claim.

As amended, subdivision (a) no longer requires that a hearing be scheduled or held on every objection. The rule requires the objecting party to provide notice and an opportunity for a hearing on the objection, but, by deleting from the subdivision references to "the hearing," it permits local practices that require a claimant to timely request a hearing or file a response in order to obtain a hearing. The official notice form served with a copy of the objection will inform the claimant of any actions it must take. However, while a local rule may require the claimant to respond to the objection to a proof of claim, the court will still need to

determine if the claim is valid, even if the claimant does not file a response to a claim objection or request a hearing.

Rule 3012. ~~Valuation of Security~~Determining the Amount of Secured and Priority Claims

~~The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.~~

(a) DETERMINATION OF AMOUNT OF CLAIM. On request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine:

(1) the amount of a secured claim under § 506(a) of the Code; or

(2) the amount of a claim entitled to priority under § 507 of the Code.

(b) REQUEST FOR DETERMINATION; HOW MADE. Except as provided in subdivision (c), a request to

determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004. A request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.

(c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.

Committee Note

This rule is amended and reorganized.

Subdivision (a) provides, in keeping with the former version of this rule, that a party in interest may seek a determination of the amount of a secured claim. The amended rule provides that the amount of a claim entitled to priority may also be determined by the court.

Subdivision (b) is added to provide that a request to determine the amount of a secured claim may be made in a chapter 12 or chapter 13 plan, as well as by a motion or a claim objection. When the request is made in a plan, the plan must be served on the holder of the claim and any other entities the court designates according to Rule 7004. Secured claims of governmental units are not included in this subdivision and are governed by subdivision (c). The amount of a claim entitled to priority may be determined through a motion or a claim objection.

Subdivision (c) clarifies that a determination under this rule with respect to a secured claim of a governmental unit may be made only by motion or in a claim objection, but not until the governmental unit has filed a proof of claim or its time for filing a proof of claim has expired.

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 ~~Family Farmer's Debt Adjustment~~ or a Chapter 13 ~~Individual's Debt Adjustment~~ Case

(a) FILING A CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.

(b) FILING A CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) ~~DATING. Every proposed plan and any modification thereof shall be dated.~~ FORM OF CHAPTER 13 PLAN. If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, "nonstandard provision" means a provision not otherwise included in the Official or Local Form or deviating from it.

(d) NOTICE ~~AND COPIES~~. If the plan ~~The plan or a summary of the plan shall be~~ is not included with the ~~each~~ notice of the hearing on confirmation mailed under ~~pursuant to~~ Rule 2002, the debtor shall serve

the plan on the trustee and all creditors when it is filed with the court. ~~If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.~~

(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed under ~~pursuant to~~ subdivision (a) or (b) of this rule.

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, ~~before confirmation of the plan~~ at least seven days before the date set for the hearing on confirmation, unless

the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan:

(1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed; and

(2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.

~~(g)~~(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan ~~pursuant to~~ under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. ~~If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice.~~ Any objection

to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination, unlike the amount of any current installment payments or arrearages, controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Subdivision (g)(2) provides for termination of the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

Rule 3015.1. Requirements for a Local Form for Plans Filed in a Chapter 13 Case

Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:

(a) a single Local Form is adopted for the district after public notice and an opportunity for public comment;

(b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph;

(c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not:

(1) contain any nonstandard provision;

(2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or

(3) avoid a security interest or lien;

(d) the Local Form contains separate paragraphs for:

(1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;

(2) paying a domestic-support obligation;

(3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and

(4) surrendering property that secures a claim with a request that the stay under §§ 362(a) and 1301(a) be terminated as to the surrendered collateral; and

(e) the Local Form contains a final paragraph for:

(1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and

(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

Committee Note

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter 13 Plan Form. See Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the "hanging paragraph" of § 1325(a), and surrender of property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor's individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact that the

plan contains a nonstandard provision; limits the amount of a secured claim based on a valuation of the collateral, as authorized by Rule 3012(b); or avoids a lien, as authorized by Rule 4003(d).

The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard provisions placed elsewhere in the plan are void. This part gives the debtor the opportunity to propose provisions that are not otherwise in, or that deviate from, the Local Form. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

Rule 4003. Exemptions

* * * * *

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding under § 522(f) ~~by the debtor~~ to avoid a lien or other transfer of property exempt under ~~§ 522(f) of~~ the Code shall be commenced by motion in the manner provided by ~~in accordance with~~ Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a ~~motion filed~~request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

Committee Note

Subdivision (d) is amended to provide that a request under § 522(f) to avoid a lien or other transfer of exempt property may be made by motion or by a chapter 12 or chapter 13 plan. A plan that proposes lien avoidance in accordance with this rule must be served as provided under Rule 7004 for service of a summons and complaint. Lien avoidance not governed by this rule requires an adversary proceeding.

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

(a) CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13. If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

* * * * *

(d) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been

satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint.

Committee Note

Subdivision (d) is added to provide a procedure by which a debtor in a chapter 12 or chapter 13 case may request an order declaring a secured claim satisfied and a lien released under the terms of a confirmed plan. A debtor may need documentation for title purposes of the elimination of a second mortgage or other lien that was secured by property of the estate. Although requests for such orders are likely to be made at the time the case is being closed, the rule does not prohibit a request at another time if the lien has been released and any other requirements for entry of the order have been met.

Other changes to this rule are stylistic.

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

* * * * *

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, ~~other than~~ but not a proceeding under Rule 3012 or Rule 4003(d);

* * * * *

Committee Note

Subdivision (2) is amended to provide that the determination of the amount of a secured claim under Rule 3012, like a proceeding by the debtor to avoid a lien on or other transfer of exempt property under Rule 4003(d), does not require an adversary proceeding. The determination of the amount of a secured claim may be sought by motion or through a chapter 12 or chapter 13 plan in accordance with Rule 3012. An adversary proceeding continues to be required for lien avoidance not governed by Rule 4003(d).

Rule 9009. Forms

(a) OFFICIAL FORMS. ~~Except as otherwise provided in Rule 3016(d), the~~ The Official Forms prescribed by the Judicial Conference of the United States shall be ~~observed and~~ used ~~with alterations as may be appropriate~~ without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. ~~Forms may be combined and their contents rearranged to permit economies in their use.~~ Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that:

(1) expand the prescribed areas for responses in order to permit complete responses;

(2) delete space not needed for responses; or

(3) delete items requiring detail in a question or category if the filer indicates—either by checking "no" or "none" or by stating in words—that there is nothing to report on that question or category.

(b) DIRECTOR'S FORMS. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.

(c) CONSTRUCTION. The forms shall be construed to be consistent with these rules and the Code.

Committee Note

This rule is amended and reorganized into separate subdivisions.

Subdivision (a) addresses permissible modifications to Official Forms. It requires that an Official Form be used without alteration, except when another rule, the Official Form itself, or the national instructions applicable to an Official Form permit alteration. The former language generally permitting alterations has been deleted, but the rule preserves the ability to make minor modifications to an Official Form that do not affect the wording or the order in which information is presented on a form. Permissible changes include those that merely expand or delete the

space for responses as appropriate or delete inapplicable items so long as the filer indicates that no response is intended. For example, when more space will be necessary to completely answer a question on an Official Form without an attachment, the answer space may be expanded. Similarly, varying the width or orientation of columnar data on a form for clarity of presentation would be a permissible minor change. On the other hand, many Official Forms indicate on their face that certain changes are not appropriate. Any changes that contravene the directions on an Official Form would be prohibited by this rule.

The creation of subdivision (b) and subdivision (c) is stylistic.

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

*** * * * ***

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules * * * * * Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, new Rule 3015.1, and new Official Form 113, with a recommendation that they be approved and transmitted to the Judicial Conference.

Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and a proposed official form for chapter 13 plans, Official Form 113, were circulated to the bench, bar, and public for comment in August 2013, and again in August 2014. Rule 3015 was published for comment for a third time, along with new Rule 3015.1, for a shortened three-month period in July 2016.

* * * * *

Consideration of a National Chapter 13 Plan Form

The advisory committee began to consider the possibility of an official form for chapter 13 plans at its spring 2011 meeting. At that meeting, the advisory committee discussed two suggestions for the promulgation of a national plan form. Judge Margaret Mahoney (Bankr. S.D. Ala.), who submitted one of the suggestions, noted that "[c]urrently, every district's plan is very different and it makes it difficult for creditors to know where to look for their treatment from district to district." The States' Association of Bankruptcy Attorneys (SABA), which submitted the other suggestion, stressed the impact of the Supreme Court's then-recent decision in *United*

Student Aid Funds, Inc. v. Espinosa, 130 S. Ct. 1367 (2010). Because the Court held that an order confirming a plan is binding on all parties who receive notice, even if some of the plan provisions are inconsistent with the Bankruptcy Code or rules, SABA explained that creditors must carefully scrutinize plans prior to confirmation. Moreover, SABA noted that the Court imposed the obligation on bankruptcy judges to ensure that plan provisions comply with the Code, and thus uniformity of plan structure would aid not only creditors, but also bankruptcy judges in carrying out their responsibilities. Following discussion of the suggestions, the advisory committee approved the creation of a working group to draft an official form for chapter 13 plans and any related rule amendments.

A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in August 2013. Because the advisory committee made significant changes to the form in response to comments, the revised form and rules were published again in August 2014.

At its spring 2015 meeting, the advisory committee considered the approximately 120 comments that were submitted in response to the August 2014 publication, many of which—including the joint comments of 144 bankruptcy judges—strongly opposed a mandatory national form for chapter 13 plans. Although there was widespread agreement regarding the benefit of having a national plan form, advisory committee members generally did not want to proceed with a mandatory official form in the face of substantial opposition by bankruptcy judges and other bankruptcy constituencies. Accordingly, the advisory committee decided to explore the possibility of a proposal that would involve promulgating a national plan form and related rules, but that would allow districts to opt out of the use of the official form if certain conditions were met.

Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

At its fall 2015 meeting, the advisory committee approved the proposed chapter 13 plan form (Official Form 113) and related amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009—with some technical changes made in response to comments. The advisory committee deferred submitting those items to the Standing Committee, however, in order to allow further development of the opt-out proposal. The advisory committee directed its forms subcommittee to continue to obtain feedback on the opt-out proposal from a broad range of bankruptcy constituencies and to make a recommendation at the spring 2016 meeting regarding the need for additional publication.

At its spring 2016 meeting, the advisory committee unanimously recommended publication of the two rules that would implement the opt-out proposal, an amendment to Rule 3015 and proposed new Rule 3015.1. The advisory committee also unanimously recommended a shortened publication period of three rather than the usual six months, consistent with Judicial Conference policy, which provides that "[t]he Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained." *Guide to Judiciary Policy*, Vol. 1, § 440.20.40(d). Because of the two prior publications and the narrow focus of the revised rules, the advisory committee concluded that a shortened public comment period would provide appropriate public notice and time to comment, and could possibly eliminate an entire year from the period leading up to the effective date of the proposed chapter 13 plan package.

The Standing Committee accepted the advisory committee's recommendation and Rules 3015 and 3015.1 were published for public comment on July 1, 2016. The comment

period ended on October 3. Eighteen written comments were submitted. In addition, five witnesses testified at an advisory committee hearing conducted telephonically on September 27.

A majority of the comments were supportive of the proposal for an official form for chapter 13 plans with the option for districts to use a single local form instead. Some of those comments suggested specific changes to particular rule provisions, which the advisory committee considered. The strongest opposition to the opt-out procedure came from the National Association of Consumer Bankruptcy Attorneys (NACBA), and from three consumer debtor attorneys who testified at the September 27 hearing. They favored a mandatory national plan because of their concern that in some districts only certain plan provisions are allowed, and plans with nonstandard provisions are not confirmed. In addition, the bankruptcy judges of the Southern District of Indiana stated that they unanimously opposed Rule 3015(c) and (e) and Rule 3015.1 because they said that mandating the use of a "form chapter 13 plan," whether national or local, exceeds rulemaking authority.

At its fall 2016 meeting, the advisory committee unanimously approved Rules 3015 and 3015.1 with some minor changes in response to comments. In addition, it made minor formatting revisions to Official Form 113 (the official plan form previously approved by the advisory committee) and reapproved it.

Finally, the advisory committee recommended that the entire package of rules and the form be submitted to the Judicial Conference at its March 2017 session and, if approved, that the rules be sent to the Supreme Court immediately thereafter so that, if promulgated by the Supreme Court by May 1, they can take effect on December 1, 2017. The advisory committee concluded that promulgating a form for chapter 13 plans and related rules that require debtors to format their plans in a certain manner, but do not mandate the content of such plans, was consistent with

the Rules Enabling Act. Further, given the significant opposition expressed to the original proposal of a mandatory national plan form, the advisory committee concluded that it was prudent to give districts the ability to opt out of using it, subject to certain conditions that would still achieve many of the goals sought in the original proposal. Finally, the advisory committee concluded it did not have the ability to address concerns that bankruptcy judges in some districts consistently refuse to confirm plans that are permissible under the Bankruptcy Code. Rather, litigants affected by such improper rulings should seek redress through an appeal.

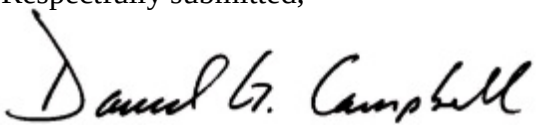
The Standing Committee voted unanimously to support the recommendations of the Advisory Committee on Bankruptcy Rules.

Recommendation: That the Judicial Conference:

a. Approve the proposed amendments to Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and new Rule 3015.1 and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law;

* * * * *

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	Amy J. St. Eve
Gregory G. Garre	Larry D. Thompson
Daniel C. Girard	Richard C. Wesley
Susan P. Graber	Sally Q. Yates
Frank M. Hull	Robert P. Young, Jr.
Peter D. Keisler	Jack Zouhary
William K. Kelley	

Excerpt from the December 5, 2016 Report of the Advisory Committee on Bankruptcy Rules

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

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: December 5, 2016

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Washington, D.C., on November 14, 2016. * * * * *

At the meeting the Committee concluded its more than five-year consideration of an Official Form and related rules for chapter 13 plans by giving final approval to the amendment of one rule, the adoption of a new rule, and minor amendments to the proposed new Official Form. This action completed the Committee's approval process that was begun at the fall 2015 meeting, when amendments to eight additional rules and the Official Form were approved, but held in abeyance. The Committee now seeks the Standing Committee's approval of the entire package of chapter 13 plan form and rule amendments.

* * * * *

II. Action Items

A. Items for Final Approval Following Publication

The Committee requests that the Standing Committee approve amendments to Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009; new Rule 3015.1; and new Official Form 113. The Committee recommends that the package of rules and the form be submitted to the Judicial Conference at its March meeting and, if approved, that the rules be sent to the Supreme Court immediately thereafter so that, if promulgated by the Supreme Court by May 1, they may take effect on December 1, 2017. * * * * *

Action Item 1. Chapter 13 plan Official Form and rules package.

The Committee began considering the possibility of creating a chapter 13 plan Official Form at the spring 2011 meeting. At that meeting the Committee discussed Suggestions 10-BK-G and 10-BK-M, which proposed the promulgation of a national plan form. Judge Margaret Mahoney (Bankr. S.D. Ala.), who submitted one of the suggestions, noted that "[c]urrently, every district's plan is very different and it makes it difficult for creditors to know where to look for their treatment from district to district." The States' Association of Bankruptcy Attorneys ("SABA"), which submitted the other suggestion, stressed the impact of the Supreme Court's then-recent decision in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010). Because the Court held that an order confirming a plan is binding on all parties who receive notice, even if some of the plan provisions are inconsistent with the Bankruptcy Code or rules, SABA explained that creditors must carefully scrutinize plans prior to confirmation. Moreover, SABA noted, the Court imposed the obligation on bankruptcy judges to ensure that plan provisions comply with the Code, and thus uniformity of plan structure would aid, not only creditors, but also bankruptcy judges in carrying out their responsibilities. Following discussion of the suggestions, the Committee approved the creation of a working group to draft an Official Form for chapter 13 plans and any related rule amendments.

A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in August 2013. Approximately 150 comments were submitted. Because the Committee made significant changes to the form in response to comments, the revised form and rules were published again in August 2014.

At the spring 2015 meeting, the Committee considered the approximately 120 comments that were submitted after republication, many of which—including the joint comments of 144 bankruptcy judges—were strongly opposed to the adoption of a mandatory national form for chapter 13 plans. The Committee discussed a number of options relating to the chapter 13 national form and associated rules. No member favored completely abandoning the project, and no one favored proceeding with the proposed amendments to the nine rules without also proposing a national plan form. Although there was widespread agreement regarding the benefit of having a national plan form, Committee members generally did not want to proceed with a mandatory Official Form in the face of substantial opposition by bankruptcy judges and other bankruptcy constituencies. Accordingly, the Committee was generally inclined to explore the possibility of a compromise along the lines suggested by a group of commenters, led by

Bankruptcy Judges Marvin Isgur and Roger Efremsky ("the compromise group").[1] After a full discussion, the Committee voted unanimously to give further consideration to pursuing a proposal that would involve promulgating a national plan form and related rules, but that would allow districts to opt out of the use of the Official Form if certain conditions were met.

During the summer of 2015, the Forms Subcommittee, joined by former Committee chair Judge Gene Wedoff and chapter 13 trustee Jon Waage, considered how best to implement an opt-out proposal and how to respond to the substantive and stylistic comments that were submitted on the plan form and Rules 3002, 3015, and 9009 (the rules most closely associated with the opt-out proposal). The Consumer Subcommittee considered the comments submitted on Rules 2002, 3007, 3012, 4003, 5009, and 7001.

The Forms Subcommittee shared its proposed revisions of Official Form 113 and Rules 3002 and 3015 with members of the compromise group, some members of the consumer debtor bar, and some chapter 13 trustees. Prior to the fall 2015 meeting, the Committee received correspondence from the president of the National Association of Consumer Bankruptcy Attorneys ("NACBA") and from Representative John Conyers, Jr., the Ranking Member on the House Committee on the Judiciary, and Representative Hank Johnson, Ranking Member on the Subcommittee on Regulatory Reform, Commercial and Antitrust Law. Their primary concern was procedural: they advised the Advisory Committee not to approve a version of the opt-out approach without first publishing it for public comment.

At the fall 2015 meeting, the Committee gave approval to proposed Official Form 113 and related amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009—with some technical changes made in response to comments. The Committee voted to defer submitting those items to the Standing Committee in order to allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication. It directed the Forms Subcommittee to continue to obtain feedback on the opt-out proposal from a broad range of bankruptcy constituencies and to make a recommendation at the spring 2016 meeting regarding the need for additional publication.

The Subcommittee reached out to all relevant groups and invited them to provide feedback on the opt-out proposal, as set out in proposed Rules 3015 and 3015.1, as well as on whether they perceived a need for further publication. The following groups provided comments to the Subcommittee in response: National Bankruptcy Conference ("NBC"), National Conference of Bankruptcy Judges ("NCBJ"), National Association of Consumer Bankruptcy Attorneys ("NACBA"), the American Bankruptcy Institute's Consumer Committee, a large number of chapter 13 trustees whose comments were collected by the National Association of Chapter 13 Trustees, and an informal mortgage servicer group. While the bulk of the comments received were directed at the plan form itself, rather than at the opt-out proposal, three groups (NBC, NCBJ, and the mortgage servicers) and seven individual trustees did express support for allowing districts to opt out of a national plan form. In addition, Bankruptcy Judge Marvin Isgur (S.D. Tex.) circulated the opt-out proposal to the 144 bankruptcy judges who had submitted a

[1] Members of this group are Bankruptcy Judges Isgur, Efremsky, and Rebecca Connelly; George Stevenson, Rick Yarnell, and David Peake, who are chapter 13 trustees and past or present officers of the National Association of Chapter 13 Trustees; and creditors' attorneys Michael Bates (Wells Fargo Bank), Alane Becket (Becket & Lee, LLP), and Karen Cordry (National Association of Attorneys General).

letter in 2014 opposing a national plan form, and he reported that there was general acceptance of Rules 3015 and 3015.1 among the group.

The response of NACBA to the Subcommittee's outreach was relatively brief. The president of the organization said that he could not speak for the thousands of NACBA members, and he urged the Committee to publish the proposals that were being considered. He asserted that "adoption of the 'compromise' proposal without providing a new comment period would not comply with the law and [would] subject such to litigation and added controversy." NCBJ also advised that the opt-out proposal be published for public comment.

At the spring 2016 meeting, the Committee unanimously approved the Forms Subcommittee's recommendation that the amendments to Rule 3015 and proposed new Rule 3015.1 be published for public comment. The Committee also unanimously agreed that the Committee should seek to publish Rules 3015 and 3015.1 on a truncated schedule. According to § 440.20.40(d) of the Guide to Judiciary Policy, "The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained." Because of the two prior publications and the narrow focus of the revised rules, the Committee believed that the usual 6-month comment period should be shortened so that an entire year could be eliminated from the period leading up to the effective date of the Committee's proposed rules and form.

The Standing Committee accepted the Committee's recommendation, and Rules 3015 and 3015.1 were published for public comment on July 1, 2016. The comment period ended on October 3. Eighteen written comments were submitted. In addition, five witnesses testified at a Committee hearing conducted telephonically on September 27; they also submitted their written testimony, which was posted along with the written comments.

A majority of the comments were supportive of the proposed rules' implementation of an Official Form for chapter 13 plans with the option for districts to use a single local form instead. Some of those comments suggested specific changes to particular rule provisions, which the Committee considered. The strongest opposition to the opt-out procedure came from NACBA and from three consumer debtor attorneys who testified at the hearing. They favored a mandatory national plan because of their concern that in some districts only certain plan provisions are allowed and plans with any nonstandard provisions are not confirmed. In addition, the bankruptcy judges of the Southern District of Indiana stated that they unanimously opposed Rule 3015(c) and (e) and Rule 3015.1 because they said that mandating the use of a "form chapter 13 plan," whether national or local, exceeds rulemaking authority.

At the fall 2016 meeting, the Committee unanimously accepted the Forms Subcommittee's recommendation that Rules 3015 and 3015.1 be approved with some changes that were responsive to comments submitted and that Official Form 113 (previously approved by the Committee) be amended in some minor respects and reapproved. The Committee concluded that no changes were needed to the published rules in response to comments expressing general opposition to the Committee's approach. The Committee concluded that promulgating a form for chapter 13 plans and related rules that require debtors to format their plans in a certain manner but do not mandate the content of such plans was consistent with the Rules Enabling Act. Further, given the significant opposition expressed to the original proposal of a mandatory

national plan form, the Committee concluded that it was it prudent to give bankruptcy districts the ability to opt out of using it, subject to certain conditions that would still achieve many of the goals the Committee sought in its original proposal. Finally, the Committee concluded it did not have the ability to address concerns that bankruptcy judges in some districts consistently refuse to confirm plans that are permissible under the Bankruptcy Code. Rather, litigants affected by such improper rulings should seek redress through an appeal.

*** * * * ***

April 27, 2017

Honorable Paul D. Ryan
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I have the honor to submit to the Congress the amendment to the Federal Rules of Civil Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying this rule are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated March 16, 2017; a redline version of the rule with committee note; an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the December 9, 2016 Report of the Advisory Committee on Civil Rules.

Sincerely,

/s/ John G. Roberts

April 27, 2017

Honorable Michael R. Pence
President, United States Senate
Washington, DC 20510

Dear Mr. President:

I have the honor to submit to the Congress the amendment to the Federal Rules of Civil Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying this rule are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated March 16, 2017; a redline version of the rule with committee note; an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the December 9, 2016 Report of the Advisory Committee on Civil Rules.

Sincerely,

/s/ John G. Roberts

April 27, 2017

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein an amendment to Civil Rule 4.

[*See infra* pp. __ __ __.]

2. That the foregoing amendment to the Federal Rules of Civil Procedure shall take effect on December 1, 2017, and shall govern in all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendment to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

PROPOSED AMENDMENT TO THE
FEDERAL RULES OF CIVIL PROCEDURE

Rule 4. Summons

* * * * *

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

* * * * *

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

March 16, 2017

MEMORANDUM

To: The Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff

RE: TRANSMITTAL OF PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court the proposed amendment to Rule 4 of the Federal Rules of Civil Procedure, which was approved by the Judicial Conference at its March 2017 session. The Judicial Conference recommends that the amendment be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendment, I am transmitting: (i) a "clean" copy of the affected rule incorporating the proposed amendment and accompanying Committee Note; (ii) a redline version of the same; (iii) an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the December 2016 Report of the Advisory Committee on Civil Rules.

Attachments

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE*

Rule 4. Summons

* * * * *

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

* * * * *

* New material is underlined.

Committee Note

This is a technical amendment that integrates the intended effect of the amendments adopted in 2015 and 2016.

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

*** * * * ***

FEDERAL RULES OF CIVIL PROCEDURE

Rule Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted a proposed technical amendment to restore the 2015 amendment to Rule 4(m), with a recommendation that it be approved and transmitted to the Judicial Conference.

Civil Rule 4(m) (Summons–Time Limit for Service) was amended on December 1, 2015, and again on December 1, 2016. In addition to shortening the presumptive time for service from 120 days to 90 days, the 2015 amendment added, as an exemption to that time limit, Rule 71.1(d)(3)(A) notices of a condemnation action. The 2016 amendment added to the list of exemptions Rule 4(h)(2) service on a corporation, partnership, or association at a place not within any judicial district of the United States.

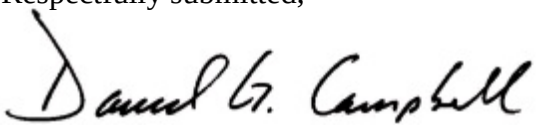
The 2016 amendment exempting Rule 4(h)(2) was prepared in 2014 before the 2015 amendment adding Rule 71.1(d)(3)(A) to the list of exemptions was in effect. Once the 2015 amendment became effective, it should have been incorporated into the proposed 2016 amendment then making its way through the Rules Enabling Act process. It was not, and, as a result, Rule 71.1(d)(3)(A) was omitted from the list of exemptions in Rule 4(m) when the 2016 amendment became effective. The proposed amendment restores Rule 71.1(d)(3)(A) to the list of exemptions in Rule 4(m). The proposed amendment is technical in nature—it is identical to the amendment published for public comment in 2013, approved by the Judicial Conference, and adopted by the Court. Accordingly, re-publication for public comment is not required.

The Standing Committee voted unanimously to support the recommendation of the Advisory Committee on Civil Rules.

> **Recommendation:** That the Judicial Conference approve the proposed amendment to Civil Rule 4(m) and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	Amy J. St. Eve
Gregory G. Garre	Larry D. Thompson
Daniel C. Girard	Richard C. Wesley
Susan P. Graber	Sally Q. Yates
Frank M. Hull	Robert P. Young, Jr.
Peter D. Keisler	Jack Zouhary
William K. Kelley	

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

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

FROM: Hon. John D. Bates, Chair
Advisory Committee on Civil Rules

DATE: December 9, 2016

RE: Report of the Advisory Committee on Civil Rules

Introduction

The Civil Rules Advisory Committee met at the Administrative Office of the United States Courts in Washington, D.C., on November 3, 2016.

* * * * *

One action item is presented. Part I recommends that Rule 4(m) be submitted to the Judicial Conference as a technical amendment to restore a provision inadvertently omitted from the proposal that took effect on December 1, 2016.

* * * * *

I. ACTION ITEM: RULE 4(m)

Rule 4(m) was amended on December 1, 2015, and again on December 1, 2016. The intended result of the two amendments is clear. But the proposed 2015 amendment was inadvertently overlooked in preparing the proposal that led to adoption of the 2016 amendment. This action item recommends approval of the intended rule text for submission to the Judicial Conference in March 2017 as a technical amendment, looking toward adoption by the Supreme Court this spring.

The proposed rule text revises the final sentence of Rule 4(m). Rule 4(m) establishes a presumptive time for serving the summons and complaint, allowing for extension by the court. The final sentence of the rule should read:

> This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

The two-step process of amending Rule 4(m) went astray in this way: The 2015 amendment began as part of a large package designed in part to accelerate the initial steps in a civil action. The published proposal shortened the presumptive time for service from 120 days to 60 days; after hearings and comments, the time was set at 90 days. While this change was being considered, the Department of Justice recommended that the exemptions be expanded to add Rule 71.1(d)(3)(A) notices of a condemnation action. This recommendation was accepted without controversy. As of December 1, 2015, service of a notice under Rule 71.1(d)(3)(A) was excluded from Rule 4(m).

The 2016 amendment added Rule 4(h)(2) to the set of exemptions. The addition was made in response to many comments on the published proposal that eventually became the 2015 amendment. These comments reflected uncertainty, even confusion, as to Rule 4(h)(2) service on a corporation, partnership, or association at a place not within any judicial district of the United States. Rule 4(h)(2) allows such service "in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i)." Invoking Rule 4(f) might bring service under (h)(2) within the Rule 4(m) exemption for service under Rule 4(f). That result makes sense—the problems with effecting prompt service outside the United States are much the same, and are augmented by shortening the presumptive time from 120 days to 90 days. But the rule text is ambiguous. So Rule 4(h)(2) was added to the exemptions.

The problem arose from preparing the Rule 4(h)(2) proposal by working from Rule 4(m) as it was in 2014, before the 2015 amendment. Adding the exemption for service under Rule 71.1(d)(3)(A) had been proposed, but final action was more than a year in the future. That change was inadvertently not included in the proposal that, as subsequently published, recommended, and adopted, read:

> This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1).

The possibility of correcting the rule text as a scrivener's error was explored with Congress. The outcome is that the official print for the House of Representatives Committee on the Judiciary will include this footnote:

> Rule 4(m) is set out above as it appears in the Supreme Court order of Apr. 28, 2016. As amended by the Supreme Court order of Apr.29, 2015, the last sentence of Rule 4(m) reads as follows: "This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1) or to service of a notice under Rule 71.1(d)(3)(A)." The language added to the last sentence in 2015, "or to service

of a notice under Rule 71.1(d)(3)(A)", probably should be part of Rule 4(m), but does not appear in the 2016 amendment.

The omission of Rule 71.1(d)(3)(A) from the list of exemptions should be corrected through the Rules Enabling Act process. The provision has already been published, reviewed, and adopted. Because the omission resulted from sheer inadvertence, the correction can be recommended for adoption without further publication.

* * * * *

April 27, 2017

Honorable Paul D. Ryan
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I have the honor to submit to the Congress the amendments to the Federal Rules of Evidence that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated September 28, 2016; a redline version of the rules with committee notes; an excerpt from the September 2016 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 7, 2016 Report of the Advisory Committee on Evidence Rules.

Sincerely,

/s/ John G. Roberts

April 27, 2017

Honorable Michael R. Pence
President, United States Senate
Washington, DC 20510

Dear Mr. President:

I have the honor to submit to the Congress the amendments to the Federal Rules of Evidence that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated September 28, 2016; a redline version of the rules with committee notes; an excerpt from the September 2016 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 7, 2016 Report of the Advisory Committee on Evidence Rules.

Sincerely,

/s/ John G. Roberts

April 27, 2017

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Evidence be, and they hereby are, amended by including therein amendments to Evidence Rules 803 and 902.

[*See infra* pp. ___ ___ ___.]

2. That the foregoing amendments to the Federal Rules of Evidence shall take effect on December 1, 2017, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Evidence in accordance with the provisions of Section 2074 of Title 28, United States Code.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE

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

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

* * * * *

(16) ***Statements in Ancient Documents.*** A statement in a document that was prepared before January 1, 1998, and whose authenticity is established.

* * * * *

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

* * * * *

(13) ***Certified Records Generated by an Electronic Process or System.*** A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

(14) ***Certified Data Copied from an Electronic Device, Storage Medium, or File.*** Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital

identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

September 28, 2016

MEMORANDUM

To: The Chief Justice of the United States and
Associate Justices of the Supreme Court

From: James C. Duff James C. Duff

RE: Transmittal of Proposed Amendments to the Federal Rules of Evidence

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 803(16) and 902 of the Federal Rules of Evidence, which were approved by the Judicial Conference at its September 2016 session. The Judicial Conference recommends that the amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting: (i) a "clean" copy of the affected rules incorporating the proposed amendments and accompanying Committee Notes; (ii) a redline version of the same; (iii) an excerpt from the September 2016 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the May 2016 Report of the Advisory Committee on Evidence Rules.

Attachments

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE*

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

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

* * * * *

(16) ***Statements in Ancient Documents.*** A statement in a document ~~that is at least 20 years old~~that was prepared before January 1, 1998, and whose authenticity is established.

* * * * *

Committee Note

The ancient documents exception to the rule against hearsay has been limited to statements in documents prepared before January 1, 1998. The Committee has

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

determined that the ancient documents exception should be limited due to the risk that it will be used as a vehicle to admit vast amounts of unreliable electronically stored information (ESI). Given the exponential development and growth of electronic information since 1998, the hearsay exception for ancient documents has now become a possible open door for large amounts of unreliable ESI, as no showing of reliability needs to be made to qualify under the exception.

The Committee is aware that in certain cases—such as cases involving latent diseases and environmental damage—parties must rely on hardcopy documents from the past. The ancient documents exception remains available for such cases for documents prepared before 1998. Going forward, it is anticipated that any need to admit old hardcopy documents produced after January 1, 1998 will decrease, because reliable ESI is likely to be available and can be offered under a reliability-based hearsay exception. Rule 803(6) may be used for many of these ESI documents, especially given its flexible standards on which witnesses might be qualified to provide an adequate foundation. And Rule 807 can be used to admit old documents upon a showing of reliability—which will often (though not always) be found by circumstances such as that the document was prepared with no litigation motive in mind, close in time to the relevant events. The limitation of the ancient documents exception is not intended to raise an inference that 20-year-old documents are, as a class, unreliable, or that they should somehow not qualify for admissibility under Rule 807. Finally, many old documents can be admitted for the non-hearsay purpose of proving notice, or as party-opponent statements.

The limitation of the ancient documents hearsay exception is not intended to have any effect on authentication of ancient documents. The possibility of authenticating an old document under Rule 901(b)(8)—or under any ground available for any other document—remains unchanged.

The Committee carefully considered, but ultimately rejected, an amendment that would preserve the ancient documents exception for hardcopy evidence only. A party will often offer hardcopy that is derived from ESI. Moreover, a good deal of old information in hardcopy has been digitized or will be so in the future. Thus, the line between ESI and hardcopy was determined to be one that could not be drawn usefully.

The Committee understands that the choice of a cut-off date has a degree of arbitrariness. But January 1, 1998 is a rational date for treating concerns about old and unreliable ESI. And the date is no more arbitrary than the 20-year cutoff date in the original rule. *See* Committee Note to Rule 901(b)(8) ("Any time period selected is bound to be arbitrary.").

Under the amendment, a document is "prepared" when the statement proffered was recorded in that document. For example, if a hardcopy document is prepared in 1995, and a party seeks to admit a scanned copy of that document, the date of preparation is 1995 even though the scan was made long after that—the subsequent scan does not alter the document. The relevant point is the date on which the information is recorded, not when the information is prepared for trial. However, if the content of

the document is *itself* altered after the cut-off date, then the hearsay exception will not apply to statements that were added in the alteration.

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

* * * * *

(13) ***Certified Records Generated by an Electronic Process or System.*** A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

Committee Note

Paragraph (13). The amendment sets forth a procedure by which parties can authenticate certain electronic evidence other than through the testimony of a foundation witness. As with the provisions on business records in Rules 902(11) and (12), the Committee has

found that the expense and inconvenience of producing a witness to authenticate an item of electronic evidence is often unnecessary. It is often the case that a party goes to the expense of producing an authentication witness, and then the adversary either stipulates authenticity before the witness is called or fails to challenge the authentication testimony once it is presented. The amendment provides a procedure under which the parties can determine in advance of trial whether a real challenge to authenticity will be made, and can then plan accordingly.

Nothing in the amendment is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including through judicial notice where appropriate.

A proponent establishing authenticity under this Rule must present a certification containing information that would be sufficient to establish authenticity were that information provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then authenticity is not established under this Rule. The Rule specifically allows the authenticity foundation that satisfies Rule 901(b)(9) to be established by a certification rather than the testimony of a live witness.

The reference to the "certification requirements of Rule 902(11) or (12)" is only to the procedural requirements for a valid certification. There is no intent to require, or permit, a certification under this Rule to prove the requirements of Rule 803(6). Rule 902(13) is solely

limited to authentication, and any attempt to satisfy a hearsay exception must be made independently.

A certification under this Rule can establish only that the proffered item has satisfied the admissibility requirements for authenticity. The opponent remains free to object to admissibility of the proffered item on other grounds—including hearsay, relevance, or in criminal cases the right to confrontation. For example, assume that a plaintiff in a defamation case offers what purports to be a printout of a webpage on which a defamatory statement was made. Plaintiff offers a certification under this Rule in which a qualified person describes the process by which the webpage was retrieved. Even if that certification sufficiently establishes that the webpage is authentic, defendant remains free to object that the statement on the webpage was not placed there by defendant. Similarly, a certification authenticating a computer output, such as a spreadsheet, does not preclude an objection that the information produced is unreliable—the authentication establishes only that the output came from the computer.

A challenge to the authenticity of electronic evidence may require technical information about the system or process at issue, including possibly retaining a forensic technical expert; such factors will affect whether the opponent has a fair opportunity to challenge the evidence given the notice provided.

The reference to Rule 902(12) is intended to cover certifications that are made in a foreign country.

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

* * * * *

(14) ***Certified Data Copied from an Electronic Device, Storage Medium, or File.*** Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

Committee Note

Paragraph (14). The amendment sets forth a procedure by which parties can authenticate data copied from an electronic device, storage medium, or an electronic

file, other than through the testimony of a foundation witness. As with the provisions on business records in Rules 902(11) and (12), the Committee has found that the expense and inconvenience of producing an authenticating witness for this evidence is often unnecessary. It is often the case that a party goes to the expense of producing an authentication witness, and then the adversary either stipulates authenticity before the witness is called or fails to challenge the authentication testimony once it is presented. The amendment provides a procedure in which the parties can determine in advance of trial whether a real challenge to authenticity will be made, and can then plan accordingly.

Today, data copied from electronic devices, storage media, and electronic files are ordinarily authenticated by "hash value." A hash value is a number that is often represented as a sequence of characters and is produced by an algorithm based upon the digital contents of a drive, medium, or file. If the hash values for the original and copy are different, then the copy is not identical to the original. If the hash values for the original and copy are the same, it is highly improbable that the original and copy are not identical. Thus, identical hash values for the original and copy reliably attest to the fact that they are exact duplicates. This amendment allows self-authentication by a certification of a qualified person that she checked the hash value of the proffered item and that it was identical to the original. The rule is flexible enough to allow certifications through processes other than comparison of hash value, including by other reliable means of identification provided by future technology.

Nothing in the amendment is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including through judicial notice where appropriate.

A proponent establishing authenticity under this Rule must present a certification containing information that would be sufficient to establish authenticity were that information provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then authenticity is not established under this Rule.

The reference to the "certification requirements of Rule 902(11) or (12)" is only to the procedural requirements for a valid certification. There is no intent to require, or permit, a certification under this Rule to prove the requirements of Rule 803(6). Rule 902(14) is solely limited to authentication, and any attempt to satisfy a hearsay exception must be made independently.

A certification under this Rule can only establish that the proffered item is authentic. The opponent remains free to object to admissibility of the proffered item on other grounds—including hearsay, relevance, or in criminal cases the right to confrontation. For example, in a criminal case in which data copied from a hard drive is proffered, the defendant can still challenge hearsay found in the hard drive, and can still challenge whether the information on the hard drive was placed there by the defendant.

A challenge to the authenticity of electronic evidence may require technical information about the system or

process at issue, including possibly retaining a forensic technical expert; such factors will affect whether the opponent has a fair opportunity to challenge the evidence given the notice provided.

The reference to Rule 902(12) is intended to cover certifications that are made in a foreign country.

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

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FEDERAL RULES OF EVIDENCE

Rules Recommended for Approval and Transmission

The Advisory Committee on Evidence Rules submitted proposed amendments to Rules 803(16) and 902, with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments were circulated to the bench, bar, and public for comment in August 2015.

Rule 803(16)

Evidence Rule 803(16) provides a hearsay exception for "ancient documents"; that is, if a document is more than 20 years old and appears authentic, it is admissible for the truth of its contents. Over the years, the rationale for the exception has been criticized because it assumes that just because the document itself is authentic, all of the statements in the document are reliable enough to be admissible despite the fact they are hearsay. The Advisory Committee has long concurred with this criticism, but has not felt the need to address it because the exception is used infrequently. However, because electronically stored information can be retained for more than 20 years, a strong likelihood exists that the ancient documents exception will be used much more frequently going forward. Accordingly, the Advisory Committee determined that the time had come to address the ancient documents exception.

The decision to address the exception was based on a concern that, with its increased use, the exception could become a receptacle for *unreliable* hearsay—that is, if the hearsay is in fact

reliable it will probably be admissible under other reliability-based exceptions, such as the business records exception or the residual exception. Moreover, the need for an ancient documents exception is questionable as applied to electronically stored information, for the very reason that there may well be a great deal of *reliable* electronic data available to prove any dispute of fact.

The proposed amendment that was issued for public comment would have abrogated the ancient documents exception. While some commentators supported elimination of the exception, most did not. Lawyers in several specific areas—*e.g.*, product liability litigation involving latent diseases, land-use disputes, environmental clean-up disputes—said they had come to rely on the exception. After considering several alternatives, the Advisory Committee decided to amend the rule to limit the ancient documents exception to documents prepared before 1998. The year was chosen for two reasons: (1) going backward, it addressed the reliance-interest concerns of many commentators; and (2) going forward, reliable electronically stored information is likely to be preserved that can be used to prove the facts that are currently proved by scarce hardcopy. If the electronically stored information is generated by a business, then it is likely to be easier to find a qualified witness who is familiar with the electronic recordkeeping than it is under current practice to find a records custodian familiar with hardcopy practices from the 1960's and earlier. Moreover, the Committee Note emphasizes that the residual exception remains available to qualify old documents that are reliable, and makes clear the expectation that the residual exception not only can, but *should*, be used by courts to admit reliable documents prepared after January 1, 1998, that would have previously been offered under the ancient documents exception. The Advisory Committee unanimously approved the modification.

Excerpt from the September 2016 Report of the Committee on Rules of Practice and Procedure

Rule 902

The proposed amendments to Rule 902 (Evidence That Is Self-Authenticating) add two new subdivisions that would allow certain electronic evidence to be authenticated by a certification of a qualified person (in lieu of that person's testimony at trial). New Rule 902(13) would allow self-authentication of machine-generated information (such as a web page) upon a submission of a certificate prepared by a qualified person. New Rule 902(14) would provide a similar certification procedure for a copy of data taken from an electronic device, media, or file. The proposed new subdivisions are analogous to Rule 902(11) and 902(12), which permit a foundation witness to establish the authenticity and admissibility of business records by way of certification, with the burden of challenging authenticity on the opponent of the evidence. The purpose of the two new subdivisions is to make authentication easier for certain kinds of electronic evidence that, under current law, would likely be authenticated under Rule 901 but only after calling a witness to testify to authenticity. The Advisory Committee has found that electronic evidence is rarely the subject of a legitimate authenticity dispute yet, under current law, a proponent must still go to the expense of producing authenticating witnesses for trial. The amendments would alleviate the unnecessary costs of this production by allowing the qualifying witness to establish authenticity by way of certification.

Commentators were generally supportive of the proposal. Following the public comment period, minor revisions to the Committee Notes were made in an effort to increase clarity and emphasize the importance of reasonable notice.

The Standing Committee voted unanimously to support both recommendations of the Advisory Committee on Evidence Rules.

Recommendation: That the Judicial Conference approve the proposed amendments to Evidence Rules 803(16) and 902, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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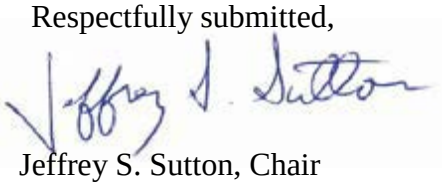
Respectfully submitted,



Jeffrey S. Sutton, Chair

Brent E. Dickson	Patrick J. Schiltz
Roy T. Englert, Jr.	Amy J. St. Eve
Gregory G. Garre	Larry D. Thompson
Daniel C. Girard	Richard C. Wesley
Neil M. Gorsuch	Sally Quillian Yates
Susan P. Graber	Jack Zouhary
William K. Kelley	

Excerpt from the May 7, 2016 Report of the Advisory Committee on Evidence Rules

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

MEMORANDUM

TO: Hon. Jeffrey S. Sutton, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. William K. Sessions, III, Chair
Advisory Committee on Evidence Rules

RE: Report of the Advisory Committee on Evidence Rules

DATE: May 7, 2016

I. Introduction

The Advisory Committee on Evidence Rules (the "Committee") met on April 29, 2016 in Alexandria, Virginia.

The Committee seeks final approval of two proposed amendments for submission to the Judicial Conference:

1. Amendment to Rule 803(16), the ancient documents exception to the hearsay rule, to limit its application to documents prepared before 1998; and

2. Amendment to Rule 902 to add two subdivisions that would allow authentication of certain electronic evidence by way of certification by a qualified person.

* * * * *

Excerpt from the May 7, 2016 Report of the Advisory Committee on Evidence Rules

II. Action Items

A. Amendment Limiting the Coverage of Rule 803(16)

Rule 803(16) provides a hearsay exception for "ancient documents." If a document is more than 20 years old and appears authentic, it is admissible for the truth of its contents. The Committee has considered whether Rule 803(16) should be eliminated or amended because of the development of electronically stored information. The rationale for the exception has always been questionable, because a document does not magically become reliable enough to escape the rule against hearsay on the day it turns 20. The Committee concluded that the exception has been tolerated because it has been used relatively infrequently, and usually because there is no other evidence on point. But because electronically stored information can be retained for more than 20 years, there is a strong likelihood that the ancient documents exception will be used much more frequently in the coming years. And it could be used as a receptacle for unreliable hearsay, because if the hearsay is in fact reliable it will probably be admissible under other reliability-based exceptions, such as the business records exception or the residual exception. Moreover, the need for an ancient documents exception is questionable as applied to ESI, for the very reason that there may well be a great deal of *reliable* electronic data available to prove any dispute of fact.

The proposed amendment that was issued for public comment would have eliminated the ancient documents exception. The public comment on that proposed elimination was largely negative, however. Most of the comments asserted that without the ancient documents exception, important documents in certain specific types of litigation would no longer be admissible—or would be admissible only through expending resources that are currently not necessary under Rule 803(16). Examples of litigation cited by the public comment include cases involving latent diseases; disputes over the existence of insurance; suits against churches alleged to condone sexual abuse by their clergy; cases involving environmental cleanups; and title disputes. Many of the comments concluded that the business records exception and the residual exception are not workable alternatives for ancient documents. The comments contended that the business records exception requires a foundation witness that may be hard to find, and that the residual exception is supposed to be narrowly construed. Moreover, both these exceptions would require a statement-by-statement analysis, which is not necessary under Rule 803(16), thus leading to more costs for proponents. Much of the comment was about the amendment's leading to extra costs of qualifying old documents.

In light of the public comment, the Committee abandoned the proposal to eliminate the ancient documents exception. But it also rejected the option of doing nothing. The Committee strongly believes that the ESI problem as related to Rule 803(16) is real. Because ESI can be easily and permanently stored, there is a substantial risk that the terabytes of emails, web pages, and texts generated in the last 20 or so years could inundate the courts by way of the ancient documents exception. Computer storage costs have dropped dramatically—that greatly expands the universe of information that could be potentially offered under the ancient documents exception. Moreover, the presumption of the ancient documents exception was that a hardcopy document kept around for 20 years must have been thought to have some importance; but that presumption is no longer the case with easily stored ESI. The Committee remains convinced that

it is appropriate and necessary to get out ahead of this problem—especially because the use of the ancient documents exception is so difficult to monitor. There are few reported cases about Rule 803(16) because no objection can be made to admitting the content of the document once it has been authenticated—essentially there is nothing to report. So tracking reported cases would not be a good way to determine whether ESI is being offered under the exception. Finally, the Committee adheres to its position that Rule 803(16) is simply a flawed rule; it is based on the fallacy that because a document is old and authentic, its contents are reliable. Therefore something must be done, at least, to limit the exception as to ESI.

The Committee considered a number of alternatives for amending Rule 803(16) to limit its impact. The alternatives of adding reliability requirements, or necessity requirements, were rejected. These alternatives were likely to lead to the increased costs of qualification of old documents, and extensive motion practice, that were opposed in the public comment. Ultimately, the Committee returned to where it started—the ESI problem. The Committee determined that the best result was to limit the ancient documents exception to documents prepared before 1998. That amendment will have no effect on any of the cases raised in the public comments, because the concerns were about cases involving records prepared well before 1998. And 1998 was found to be a fair date for addressing the rise of ESI. The Committee recognizes, of course, that any cutoff date will have a degree of arbitrariness, but it also notes that the ancient documents exception itself set an arbitrary time period for its applicability.

The Committee has considered the possibility that in the future, cases involving latent diseases, CERCLA, etc. will arise. But the Committee has concluded that in such future cases, the ancient documents exception is unlikely to be necessary because, going forward from 1998, there is likely to be preserved, reliable ESI that can be used to prove the facts that are currently proved by scarce hardcopy. If the ESI is generated by a business, then it is likely to be easier to find a qualified witness who is familiar with the electronic recordkeeping than it is under current practice to find a records custodian familiar with hardcopy practices from the 1960's and earlier. Moreover, the Committee has emphasized in the Committee Note that the residual exception remains available to qualify old documents that are reliable; the Note states the Committee's expectation that the residual exception not only can, but *should* be used by courts to admit reliable documents prepared after January 1, 1998 that would have previously been offered under the ancient documents exception.

The Committee unanimously recommends that the Standing Committee approve the * * * * * amendment to Rule 803(16), and the Committee Note, for submission to the Judicial Conference[.]

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B. Proposed Amendment to Evidence Rule 902

At its Spring 2015 meeting, the Committee unanimously approved a proposal to add two new subdivisions to Rule 902, the rule on self-authentication. The first provision would allow self-authentication of machine-generated information, upon a submission of a certification prepared by a qualified person. The second proposal would provide a similar certification

procedure for a copy of data taken from an electronic device, medium or file. These proposals are analogous to Rules 902(11) and (12) of the Federal Rules of Evidence, which permit a foundation witness to establish the authenticity of business records by way of certification.

The proposals have a common goal of making authentication easier for certain kinds of electronic evidence that are, under current law, likely to be authenticated under Rule 901 but only by calling a witness to testify to authenticity. The Committee has concluded that the types of electronic evidence covered by the two proposed rules are rarely the subject of a legitimate authenticity dispute, but it is often the case that the proponent is nonetheless forced to produce an authentication witness, incurring expense and inconvenience—and often, at the last minute, opposing counsel ends up stipulating to authenticity in any event.

The self-authentication proposals, by following the approach taken in Rule 902(11) and (12) regarding business records, essentially leave the burden of going forward on authenticity questions to the opponent of the evidence. Under those rules a business record is authenticated by a certificate, but the opponent is given "a fair opportunity" to challenge both the certificate and the underlying record. The proposals for new Rules 902(13) and 902(14) would have the same effect of shifting to the opponent the burden of going forward (not the burden of proof) on authenticity disputes regarding the described electronic evidence.

Applications of Rules 902(13) and (14)

At the Standing Committee meeting in Spring 2015, Committee members inquired as to what kind of information might be authenticated under these new provisions. The Committee (with the substantial assistance of John Haried, who initially proposed these amendments) has prepared the following examples to illustrate how Rules 902(13) and (14) may be used:

Examples of how Rule 902(13) can be used:

1. Proving that a USB device was connected to (i.e., plugged into) a computer: In a hypothetical civil or criminal case in Chicago, a disputed issue is whether Devera Hall used her computer to access files stored on a USB thumb drive owned by a co-worker. Ms. Hall's computer uses the Windows operating system, which automatically records information about every USB device connected to her computer in a database known as the "Windows registry." The Windows registry database is maintained on the computer by the Windows operating system in order to facilitate the computer's operations. A forensic technician, located in Dallas, Texas, has provided a printout from the Windows registry that indicates that a USB thumb drive, identified by manufacturer, model, and serial number, was last connected to Ms. Hall's computer at a specific date and time.

> **Without Rule 902(13):** Without Rule 902(13), the proponent of the evidence would need to call the forensic technician who obtained the printout as a witness, in order to establish the authenticity of the evidence. During his or her testimony, the forensic technician would typically be asked to testify about his or her background and qualifications; the process by which digital forensic examinations are conducted in general; the steps taken by the forensic technician during the examination of Ms. Hall's

computer in particular; the process by which the Windows operating system maintains information in the Windows registry, including information about USB devices connected to the computer; and the steps taken by the forensic examiner to examine the Windows registry and to produce the printout identifying the USB device.

Impact of Rule 902(13): With Rule 902(13), the proponent of the evidence could obtain a written certification from the forensic technician, stating that the Windows operating system regularly records information in the Windows registry about USB devices connected to a computer; that the process by which such information is recorded produces an accurate result; and that the printout accurately reflected information stored in the Windows registry of Ms. Hall's computer. The proponent would be required to provide reasonable written notice of its intent to offer the printout as an exhibit and to make the written certification and proposed exhibit available for inspection. If the opposing party did not dispute the accuracy or reliability of the process that produced the exhibit, the proponent would not need to call the forensic technician as a witness to establish the authenticity of the exhibit. (There are many other examples of the same types of machine-generated information on computers, for example, internet browser histories and wifi access logs.)

2. Proving that a server was used to connect to a particular webpage: Hypothetically, a malicious hacker executed a denial-of-service attack against Acme's website. Acme's server maintained an Internet Information Services (IIS) log that automatically records information about every internet connection routed to the web server to view a web page, including the IP address, webpage, user agent string and what was requested from the website. The IIS logs reflected repeated access to Acme's website from an IP address known to be used by the hacker. The proponent wants to introduce the IIS log to prove that the hacker's IP address was an instrument of the attack.

Without Rule 902(13): The proponent would have to call a website expert to testify about the mechanics of the server's operating system; his search of the IIS log; how the IIS log works; and that the exhibit is an accurate record of the IIS log.

With Rule 902(13): The proponent would obtain the website expert's certification of the facts establishing authenticity of the exhibit and provide the certification and exhibit to the opposing party with reasonable notice that it intends to offer the exhibit at trial. If the opposing party does not timely dispute the reliability of the process that produced the registry key, then the proponent would not need to call the website expert to establish authenticity.

3. Proving that a person was or was not near the scene of an event: Hypothetically, Robert Jackson is a defendant in a civil (or criminal) action alleging that he was the driver in a hit-and-run collision with a U.S. Postal Service mail carrier in Atlanta at 2:15 p.m. on March 6, 2015. Mr. Jackson owns an iPhone, which has software that records machine-generated dates, times, and GPS coordinates of each picture he takes with his iPhone. Mr. Jackson's iPhone contains two pictures of his home in an Atlanta suburb at about 1 p.m. on March 6. He wants to introduce into evidence the photos together with the metadata, including

the date, time, and GPS coordinates, recovered forensically from his iPhone to corroborate his alibi that he was at home several miles from the scene at the time of the collision.

Without Rule 902(13): The proponent would have to call the forensic technician to testify about Mr. Jackson's iPhone's operating system; his search of the phone; how the metadata was created and stored with each photograph; and that the exhibit is an accurate record of the photographs.

With Rule 902(13): The proponent would obtain the forensic technician's certification of the facts establishing authenticity of the exhibits and provide the certification and exhibit to the opposing party with reasonable notice that it intends to offer the exhibit at trial. If the opposing party does not timely dispute the reliability of the process that produced the iPhone's logs, then the proponent would not have to call the technician to establish authenticity.

4. Proving association and activity between alleged co-conspirators: Hypothetically, Ian Nichols is charged with conspiracy to commit the robbery of First National Bank that occurred in San Diego on January 30, 2015. Two robbers drove away in a silver Ford Taurus. The alleged co-conspirator was Dain Miller. Dain was arrested on an outstanding warrant on February 1, 2015, and in his pocket was his Samsung Galaxy phone. The Samsung phone's software automatically maintains a log of text messages that includes the text content, date, time, and number of the other phone involved. Pursuant to a warrant, forensic technicians examined Dain's phone and located four text messages to Ian's phone from January 29: "Meet my house @9"; "Is Taurus the Bull out of shop?"; "Sheri says you have some blow"; and "see ya tomorrow." In the separate trial of Ian, the government wants to offer the four text messages to prove the conspiracy.

Without Rule 902(13): The proponent would have to call the forensic technician to testify about Dain's phone's operating system; his search of the phone's text message log; how logs are created; and that the exhibit is an accurate record of the iPhone's logs.

With Rule 902(13): The proponent would obtain the forensic technician's certification of the facts establishing authenticity of the exhibit and provide the certification and exhibit to the opposing party with reasonable notice that it intends to offer the exhibit at trial. If the opposing party does not timely dispute the reliability of the process that produced the iPhone's logs, then the court would make the Rule 104 threshold authenticity finding and admit the exhibits, absent other proper objection.

Hearsay Objection Retained: Under Rule 902(13), the opponent – here, criminal defendant Ian—would retain his hearsay objections to the text messages found on Dain's phone. For example, the judge would evaluate the text "Sheri says you have some blow" under F.R.E. 801(d)(2)(E) to determine whether it was a coconspirator's statement during and in furtherance of a conspiracy, and under F.R.E. 805, to assess the hearsay within hearsay. The court might exclude the text "Sheri says you have some blow" under either rule or both.

Example of how Rule 902(14) can be used

In the armed robbery hypothetical, above, forensic technician Smith made a forensic copy of Dain's Samsung Galaxy phone in the field. Smith verified that the forensic copy was identical to the original phone's text logs using an industry standard methodology (*e.g.*, hash value or other means). Smith gave the copy to forensic technician Jones, who performed his examination at his lab. Jones used the copy to conduct his entire forensic examination so that he would not inadvertently alter the data on the phone. Jones found the text messages. The government wants to offer the copy into evidence as part of the basis of Jones's testimony about the text messages he found.

> **Without Rule 902(14):** The government would have to call two witnesses. First, forensic technician Smith would need to testify about making the forensic copy of information from Dain's phone, and about the methodology that he used to verify that the copy was an exact copy of information inside the phone. Second, the government would have to call Jones to testify about his examination.
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> **With Rule 902(14):** The proponent would obtain Smith's certification of the facts establishing how he copied the phone's information and then verified the copy was true and accurate. Before trial the government would provide the certification and exhibit to the opposing party—here defendant Ian—with reasonable notice that it intends to offer the exhibit at trial. If Ian's attorney does not timely dispute the reliability of the process that produced the Samsung Galaxy's text message logs, then the proponent would only call Jones.

The Committee has carefully considered whether the self-authentication proposals would raise a Confrontation Clause concern when the certificate of authenticity is offered against a criminal defendant. The Committee is satisfied that no constitutional issue is presented, because the Supreme Court has stated in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 322 (2009), that even when a certificate is prepared for litigation, the admission of that certificate is consistent with the right to confrontation if it does nothing more than authenticate another document or item of evidence. That is all that these certificates would be doing under the Rule 902(13) and (14) proposals. The Committee also relied on the fact that the lower courts have uniformly held that certificates prepared under Rule 902(11) do not violate the right to confrontation; those courts have relied on the Supreme Court's statement in *Melendez-Diaz.* The Committee determined that the problem with the affidavit found testimonial in *Melendez-Diaz* was that it certified the accuracy of a drug test that was itself prepared for purposes of litigation—a certification cannot render constitutional an underlying report that itself violates the Confrontation Clause. There is of course no intention or implication from the amendment that a certification could somehow be a means of bringing otherwise testimonial reports into court. But the Committee concluded that if the underlying report is not testimonial, the certification of authenticity will not raise a constitutional issue under the current state of the law.

In this regard, the Note approved by the Committee emphasizes that the goal of the amendment is a narrow one: to allow authentication of electronic information that would

otherwise be established by a witness, instead to be established through a certification by that same witness. The Note makes clear that these are authentication-only rules and that the opponent retains all objections to the item other than authenticity --- most importantly that the item is hearsay or that admitting the item would violate a criminal defendant's right to confrontation.

The Committee unanimously recommends that the proposed amendment to Rule 902, adding new subdivisions (13) and (14), and their Committee Notes, be approved by the Standing Committee and submitted to the Judicial Conference.

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