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*A Voluntary Organization Composed of Persons Interested in the  
Improvement of the Bankruptcy Code and Its Administration*

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\*Senior Conferee

ADMINISTRATIVE OFFICE  
SHARI A. BEDKER

May 17, 2021

**Submitted Via Email**

Judicial Conference of the United States  
Committee on Rules of Practice and Procedure  
Advisory Committee on Bankruptcy Rules  
Washington, DC 20544

[RulesCommittee\\_Secretary@ao.uscourts.gov](mailto:RulesCommittee_Secretary@ao.uscourts.gov)

Re: Proposed Amendments to the Federal Rules of Bankruptcy Procedure  
As Detailed in Suggestions 21-BK-B & 21-BK-C

Ladies and Gentlemen:

The National Bankruptcy Conference (“NBC”) is a voluntary, non-partisan, not-for-profit organization composed of about 60 of the nation’s leading bankruptcy judges, professors, and practitioners. The NBC has provided advice to Congress regarding bankruptcy legislation for approximately 80 years. I enclose a Fact Sheet providing further information about the NBC.

The NBC has reviewed the proposed rule changes set forth in a January 29, 2021 letter from forty-five law professors [Suggestion 21-BK-B], as subsequently refined by an email sent on behalf of three of those professors [Suggestion 21-BK-C] (together, the “Law Professors’ Proposal”). The NBC generally supports the Law Professors’ Proposal as a matter of bankruptcy policy to address the procedural issues created by requiring that actions under Bankruptcy Code section 542 be brought via adversary proceeding rather than by motion. As detailed in the law professors’ letter and Justice Sotomayor’s concurring opinion in *Fulton*, the current procedural structure creates particular problems for chapter 13 debtors. Revising the rules to permit section 542 actions to be pursued by motion in the first instance – subject always to the bankruptcy court’s ability under Bankruptcy Rule 9014(c) to impose additional Part VII rules when warranted by the facts and context of a particular dispute – would be a material improvement to the rules.

The NBC offers a handful of technical drafting refinements regarding the Law Professors’ Proposal:

- For the sake of completeness, the law professors’ proposed revisions to Bankruptcy Rule 7001(1) should specifically reference Bankruptcy Rule 6012 in the list of excluded proceedings.
- The law professors’ proposed revisions to the “other than” clause of Bankruptcy Rule 7001(1) could also be added to Bankruptcy Rule 7001(7) to eliminate any ambiguity about whether the proposed exclusions apply if a section 542 action is conceptualized as one “to obtain an injunction or other equitable relief.”
- Consistent with the restyling project that is underway, uses of “shall” in the proposed new Bankruptcy Rule 6012 should be replaced with “must” (i.e., in 6012(b), (c), and (f) (twice)).

Please contact us if the NBC can be of further assistance during your consideration of the Law Professors’ Proposal.

Sincerely,  
Douglas G. Baird  
Chair

Encl.

# NATIONAL BANKRUPTCY CONFERENCE

*A non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and any proposed changes to those laws.*

**History.** The National Bankruptcy Conference (NBC) was formed from a nucleus of the nation's leading bankruptcy scholars and practitioners, who gathered informally in the 1930's at the request of Congress to assist in the drafting of major Depression-era bankruptcy law amendments, ultimately resulting in the Chandler Act of 1938. The NBC was formalized in the 1940's and has been a resource to Congress on every significant piece of bankruptcy legislation since that time. Members of the NBC formed the core of the Commission on the Bankruptcy Laws of the United States, which in 1973 proposed the overhaul of our bankruptcy laws that led to enactment of the Bankruptcy Code in 1978, and were heavily involved in the work of the National Bankruptcy Review Commission (NBRC), whose 1997 report initiated the process that led to significant amendments to the Bankruptcy Code in 2005. Most recently, the Conference played a leading role in developing the Small Business Reorganization Act of 2019, Pub. L. 116-54.

**Current Members.** Membership in the NBC is by invitation only. Among the NBC's 60 active members are leading bankruptcy scholars at major law schools, as well as current and former judges from eleven different judicial districts and practitioners from leading law firms throughout the country who have been involved in most of the major corporate reorganization cases of the last three decades. The NBC includes leading consumer bankruptcy experts and experts on commercial, employment, pension, mass tort, and tax-related bankruptcy issues. It also includes former members of the congressional staff who participated in drafting the Bankruptcy Code as originally passed in 1978 and former members and staff of the NBRC. The current members of the NBC and their affiliations are set forth on the second page of this fact sheet.

**Policy Positions.** The Conference regularly takes substantive positions on issues implicating bankruptcy law and policy. It does not, however, take positions on behalf of any organization or interest group. Instead, the NBC seeks to reach a consensus of its members - who represent a broad spectrum of political and economic perspectives - based on their knowledge and experience as practitioners, judges, and scholars. The Conference's positions are considered in light of the stated goals of our bankruptcy system: debtor rehabilitation, equal treatment of similarly situated creditors, preservation of jobs, prevention of fraud and abuse, and economical insolvency administration. Conferees are always mindful of their mutual pledge to "leave their clients at the door" when they participate in the deliberations of the Conference.

**Technical and Advisory Services to Congress.** To facilitate the work of Congress, the NBC offers members of Congress, Congressional Committees and their staffs the services of its Conferees as non-partisan technical advisors. These services are offered without regard to any substantive positions the NBC may take on matters of bankruptcy law and policy.

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## National Bankruptcy Conference

P.O. Box 249 • Stanardsville, VA 22973

434-939-6008 Fax: 434-939-6030 • Email: [sbedker@nbconf.org](mailto:sbedker@nbconf.org) • Web: [www.nbconf.org](http://www.nbconf.org)

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Greensboro, NC

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Cincinnati, OH

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Jenner & Block LLP  
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San Francisco, CA

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U.S. Bankruptcy Court  
Nashville, TN

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Northwestern School of Law  
Chicago, IL

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New York, NY

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Chicago, IL

**John Rao, Esq.**

National Consumer Law Center  
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**K. John Shaffer, Esq.**

Quinn Emanuel Urquhart &  
Sullivan LLP  
Los Angeles, CA

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U.S. Bankruptcy Court  
Wilmington, DE

**\*Raymond L. Shapiro, Esq.**

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Philadelphia, PA

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U.S. Bankruptcy Court  
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**Henry J. Sommer, Esq.**

Philadelphia, PA

**James H.M. Sprayregen, Esq.**

Kirkland & Ellis LLP  
Chicago, IL

**Catherine Steege, Esq.**

Jenner & Block LLP  
Chicago, IL

**\*J. Ronald Trost, Esq.**

(retired)  
New York, NY

**Tara Twomey, Esq.**

National Consumer Bankruptcy  
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Jones Walker LLP  
New Orleans, LA

**Jane L. Vris, Esq.**

Guggenheim Securities  
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U.S. Bankruptcy Court (retired)  
Chicago, IL

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