ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

April 11, 2024

AGENDA
Meeting of the Advisory Committee on Bankruptcy Rules
April 11, 2024 | Denver, CO

1. Greetings, Introductions (Judge Connelly)

2. Approval of minutes of September 14, 2023, meeting (Judge Connelly)

3. Oral reports on meetings of other committees:

   A. Standing Committee – January 4, 2024 (Judge Connelly, Professors Gibson and Bartell)

   B. Advisory Committee on Appellate Rules – April 10, 2024 (Judge Bress)

   C. Advisory Committee on Civil Rules – April 9, 2024 (Judge McEwen)

   D. Bankruptcy Committee – December 7-8, 2023 (Judge Sarah Hall)

4. Intercommittee items.

   A. Report of Reporters' Privacy Rules Working Group (Tom Byron)

   B. Oral Report on Unified Bar Admissions (Professor Struve)

   C. Oral Report on the work of the Pro-se-electronic filing working group (Professor Struve)

5. Report of the Consumer Subcommittee (Judge Harner)

   A. Recommendation for final approval of proposed amendments to Rule 3002.1.

6. Report of the Forms Subcommittee (Judge Kahn)

   A. Reconsideration of proposed amendments to OF 309A and 309B (suggestion 22-BK-E) concerning deadlines for filing a financial management course certificate.

   B. Recommendation for final approval of new official forms related to proposed Rule 3002.1 amendments.

   C. Consider technical amendments to conform certain bankruptcy forms to the Restyled Bankruptcy Rules.

   D. Recommendation for final approval of proposed amendment regarding the Uniform Claim Identifier field in Official Form 410.

7. Report of the Technology, Privacy, and Public Access Subcommittee (Judge Oetken)

   A. Continued consideration of suggestions 22-BK-I, 23-BK-D, and 23-BK-J concerning SSN redaction in bankruptcy filings and the elimination of truncated SSNs in some form captions.

B. Consider suggestion 23-BK-C addressing remote testimony in contested matters.

Tab 7B March 6, 2024, memo by Professor Bartell.....238
Proposed Rules 9014(d), 9017, and new Rule 7043, and Committee Notes included in memo.

8. Report of the Business Subcommittee (Judge McEwen)

A. Recommendation regarding suggestion 23-BK-F to publish proposed amendments to Rule 3018(c).

Tab 8A March 19, 2024, memo by Professor Gibson.....244
Proposed Rule 3018(c) and Committee Note included in memo.

B. Consideration of suggestion 24-BK-A to allow masters in bankruptcy cases and proceedings.

Tab 8B March 19, 2024, memo by Professor Gibson.....252

9. Appellate Rules Subcommittee (Judge Bress)

A. Recommendation for final approval concerning proposed amendment to Rule 8006(g).

Tab 9A March 5, 2024, memo by Professor Bartell.....264
Rule 8006(g) and Committee Note.....265

10. New business.

11. Future meetings: The next meeting will be on September 12, 2024, Washington, DC.

12. Adjourn.

TAB 1

RULES COMMITTEES — CHAIRS AND REPORTERS

Committee on Rules of Practice and Procedure
(Standing Committee)

Chair	Reporter
Honorable John D. Bates United States District Court Washington, DC	Professor Catherine T. Struve University of Pennsylvania Law School Philadelphia, PA

Secretary to the Standing Committee

H. Thomas Byron III, Esq.
Administrative Office of the U.S. Courts
Washington, DC

Advisory Committee on Appellate Rules

Chair	Reporter
Honorable Jay S. Bybee United States Court of Appeals Las Vegas, NV	Professor Edward Hartnett Seton Hall University School of Law Newark, NJ

Advisory Committee on Bankruptcy Rules

Chair	Reporter
Honorable Rebecca B. Connelly United States Bankruptcy Court Harrisonburg, VA	Professor S. Elizabeth Gibson University of North Carolina at Chapel Hill Chapel Hill, NC

Associate Reporter

Professor Laura B. Bartell
Wayne State University Law School
Detroit, MI

Advisory Committee on Civil Rules

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	Associate Reporter
	Professor Andrew Bradt University of California, Berkeley Berkeley, CA

Advisory Committee on Criminal Rules

Chair	Reporter
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	Associate Reporter
	Professor Nancy J. King Vanderbilt University Law School Nashville, TN

Advisory Committee on Evidence Rules

Chair	Reporter
Honorable Patrick J. Schiltz United States District Court Minneapolis, MN	Professor Daniel J. Capra Fordham University School of Law New York, NY

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair	Reporter
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	Associate Reporter
	Professor Laura B. Bartell Wayne State University Law School Detroit, MI

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Honorable David A. Hubbert Deputy Assistant Attorney General (ex officio) United States Department of Justice Washington, DC	Honorable Ben Kahn United States Bankruptcy Court Greensboro, NC
Honorable Joan H. Lefkow United States District Court Chicago, IL	Honorable Catherine P. McEwen United States Bankruptcy Court Tampa, FL
Professor Scott F. Norberg Florida International University College of Law Miami, FL	Honorable J. Paul Oetken United States District Court New York, NY
Jeremy L. Retherford, Esq. Balch & Bingham LLP Birmingham, AL	Damian S. Schaible, Esq. Davis Polk & Wardwell LLP New York, NY
Nancy J. Whaley, Esq. The Offices of Nancy J. Whaley Atlanta, GA	Honorable George H. Wu United States District Court Los Angeles, CA

Liaisons	
Ramona D. Elliott, Esq. (*U.S. Trustees*) Executive Office for U.S. Trustees Washington, DC	Honorable Laurel M. Isicoff (*Committee on the Administration of the Bankruptcy System*) United States Bankruptcy Court Miami, FL

Liaisons
Honorable William J. Kayatta, Jr. (*Standing*) United States Court of Appeals Portland, ME

Clerk of Court Representative
Kenneth S. Gardner Clerk United States Bankruptcy Court Denver, CO

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Members	Position	District/Circuit	Start Date	End Date
Rebecca B. Connelly Chair	B	Virginia (Western)	Member: 2021 Chair: 2022	---- 2025
Daniel A. Bress	C	Ninth Circuit	2022	2025
Jenny L. Doling	ESQ	California	2023	2025
Michelle M. Harner	B	Maryland	2022	2025
Jeff Hopkins	D	Ohio (Southern)	2023	2025
David A. Hubbert*	DOJ	Washington, DC	----	Open
Ben Kahn	B	North Carolina (Middle)	2021	2026
Joan H. Lefkow	D	Illiois (Northern)	2023	2026
Catherine P. McEwen	B	Florida (Middle)	2021	2026
Scott F. Norberg	ACAD	Florida	2022	2025
J. Paul Oetken	D	New York (Southern)	2019	2025
Jeremy L. Retherford	ESQ	Alabama	2018	2024
Damian S. Schaible	ESQ	New York	2021	2026
George H. Wu	D	California (Central)	2018	2024
Nancy J. Whaley	ESQ	Georgia	2023	2026
S. Elizabeth Gibson Reporter	ACAD	North Carolina	2008	Open
Laura B. Bartell Associate Reporter	ACAD	Michigan	2017	2024

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
SUBCOMMITTEES
(2023–2024)

Appeals and Cross Border Insolvency Subcommittee Judge Daniel A. Bress, Chair Judge Jeffery P. Hopkins Judge Catherine Peek McEwen Damian S. Schaible, Esq. David Hubbert, Esq., ex officio Ramona D. Elliott, Esq., EOUST liaison Carly Giffin, Esq., FJC	**Business Subcommittee** Judge Catherine Peek McEwen, Chair Judge Daniel A. Bress Judge Benjamin Kahn Judge Joan H. Lefkow Judge J. Paul Oetken Damian S. Schaible, Esq. Jeremy L. Retherford, Esq. Ramona D. Elliott, Esq., EOUST liaison Kenneth S. Gardner, clerk representative Carly Giffin, Esq., FJC
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Forms Subcommittee Judge Benjamin Kahn, Chair Judge George H. Wu Jeremy L. Retherford, Esq. Jenny L. Doling, Esq. Nancy Whaley, Esq. David Hubbert, Esq., ex officio Ramona D. Elliott, Esq., EOUST liaison Kenneth S. Gardner, clerk representative Carly Giffin, Esq., FJC	
Appellate Rules Liaison: Judge Daniel A. Bress	**Bankruptcy Committee Liaison:** Judge Michelle M. Harner
Civil Rules Liaison: Judge Catherine Peek McEwen	

Updated January 9, 2024

RULES COMMITTEE LIAISON MEMBERS

Liaisons for the Advisory Committee on Appellate Rules	Andrew J. Pincus, Esq. *(Standing)* Hon. Daniel A. Bress *(Bankruptcy)*
Liaison for the Advisory Committee on Bankruptcy Rules	Hon. William J. Kayatta, Jr. *(Standing)*
Liaisons for the Advisory Committee on Civil Rules	Hon. D. Brooks Smith (*Standing*) Hon. Catherine P. McEwen *(Bankruptcy)*
Liaison for the Advisory Committee on Criminal Rules	Hon. Paul J. Barbadoro (*Standing*)
Liaisons for the Advisory Committee on Evidence Rules	TBD (*Criminal*) Hon. Edward M. Mansfield *(Standing)* Hon. M. Hannah Lauck (*Civil*)

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Effective December 1, 2023

Current Step in REA Process:

- Effective December 1, 2023

REA History:

- Transmitted to Congress (Apr 2023)
- Transmitted to Supreme Court (Oct 2022)
- Approved by Standing Committee (June 2022 unless otherwise noted)
- Published for public comment (Aug 2021 – Feb 2022 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 2	Proposed amendment developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	BK 9038, CV 87, and CR 62
AP 4	The proposed amendment is designed to make Rule 4 operate with Emergency Civil Rule 6(b)(2) if that rule is ever in effect by adding a reference to Civil Rule 59 in subdivision (a)(4)(A)(vi) of Appellate Rule 4.	CV 87 (Emergency CV 6(b)(2))
AP 26	The technical proposed amendment adds "Juneteenth National Independence Day" to the list of legal holidays.	AP 45, BK 9006, CV 6, CR 45, and CR 56
AP 45	The technical proposed amendment adds "Juneteenth National Independence Day" to the list of legal holidays.	AP 26, BK 9006, CV 6, CR 45, and CR 56
BK 3011	Proposed new subdivision (b) would require courts to provide searchable access to unclaimed funds on local court websites.	
BK 8003 and Official Form 417A	Proposed rule and form amendments are designed to conform to amendments to FRAP 3(c) clarifying that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment, or appealable order or degree.	AP 3
BK 9038 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	AP 2, CV 87, and CR 62
BK 9006(a)(6)(A)	Technical amendment approved by Advisory Committee without publication add Juneteenth National Independence Day to the list of legal holidays.	AP 26, AP 45, CV 6, CR 45, and CR 56
BK Form 410A	Published in August 2022. Approved by the Standing Committee in June 2023. The proposed amendments are to Part 3 (Arrearage as of Date of the Petition) of Official Form 410A and would replace the first line (which currently asks for "Principal & Interest") with two lines, one for "Principal" and one for "Interest." The amendments would put the burden on the claim holder to identify the elements of its claim.	

Revised December 7, 2023

Effective December 1, 2023

Current Step in REA Process:

- Effective December 1, 2023

REA History:

- Transmitted to Congress (Apr 2023)
- Transmitted to Supreme Court (Oct 2022)
- Approved by Standing Committee (June 2022 unless otherwise noted)
- Published for public comment (Aug 2021 – Feb 2022 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
CV 6	The technical proposed amendment adds "Juneteenth National Independence Day" to the list of legal holidays.	AP 26, AP 45, BR 9006, CR 45, and CR 56
CV 15	The proposed amendment to Rule 15(a)(1) is intended to remove the possibility for a literal reading of the existing rule to create an unintended gap. A literal reading of "A party may amend its pleading once as a matter of course within … 21 days after service of a responsive pleading or [pre-answer motion]" would suggest that the Rule 15(a)(1)(B) period does not commence until the service of the responsive pleading or pre-answer motion – with the unintended result that there could be a gap period (beginning on the 22nd day after service of the pleading and extending to service of the responsive pleading or pre-answer motion) within which amendment as of right is not permitted. The proposed amendment would preclude this interpretation by replacing the word "within" with "no later than."	
CV 72	The proposed amendment would replace the requirement that the magistrate judge's findings and recommendations be mailed to the parties with a requirement that a copy be served on the parties as provided in Rule 5(b).	
CV 87 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	AP 2, BK 9038, and CR 62
CR 16	The technical proposed amendment corrects a typographical error in the cross reference under (b)(1)(C)(v).	
CR 45	The technical proposed amendment adds "Juneteenth National Independence Day" to the list of legal holidays.	AP 26, AP 45, BR 9006, CV 6, and CR 56
CR 56	The technical proposed amendment adds "Juneteenth National Independence Day" to the list of legal holidays.	AP 26, AP 45, BR 9006, CV 6, and CR 45
CR 62 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	AP 2, BK 9038, and CV 87
EV 106	The proposed amendment would allow a completing statement to be admissible over a hearsay objection and cover unrecorded oral statements.	

Revised December 7, 2023

Effective December 1, 2023

Current Step in REA Process:

- Effective December 1, 2023

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- Transmitted to Congress (Apr 2023)
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- Published for public comment (Aug 2021 – Feb 2022 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
EV 615	The proposed amendment limits an exclusion order to the exclusion of witnesses from the courtroom. A new subdivision would provide that the court has discretion to issue further orders to "(1) prohibit disclosure of trial testimony to witnesses who are excluded from the courtroom; and (2) prohibit excluded witnesses from accessing trial testimony." Finally, the proposed amendment clarifies that the existing provision that allows an entity-party to designate "an officer or employee" to be exempt from exclusion is limited to one officer or employee.	
EV 702	The proposed amendment would amend Rule 702(d) to require the court to find that "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." In addition, the proposed amendment would explicitly add the preponderance of the evidence standard to Rule 702(b)–(d).	

Effective (no earlier than) December 1, 2024

Current Step in REA Process:

- Transmitted to Supreme Court (Oct 2023)

REA History:

- Approved by Standing Committee (June 2023 unless otherwise noted)
- Published for public comment (Aug 2022 – Feb 2023 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 32	Conforming proposed amendment to subdivision (g) to reflect the proposed consolidation of Rules 35 and 40.	AP 35, 40
AP 35	The proposed amendment would transfer the contents of the rule to Rule 40 to consolidate the rules for panel rehearings and rehearings en banc together in a single rule.	AP 40
AP 40	The proposed amendments address panel rehearings and rehearings en banc together in a single rule, consolidating what had been separate provisions in Rule 35 (hearing and rehearing en banc) and Rule 40 (panel rehearing). The contents of Rule 35 would be transferred to Rule 40, which is expanded to address both panel rehearing and en banc determination.	AP 35
Appendix: Length Limits	Conforming proposed amendments would reflect the proposed consolidation of Rules 35 and 40 and specify that the limits apply to a petition for initial hearing en banc and any response, if requested by the court.	AP 35, 40
BK 1007(b)(7) and related amendments	The proposed amendment to Rule 1007(b)(7) would require a debtor to submit the course certificate from the debtor education requirement in the Bankruptcy Code. Conforming amendments would be made to the following rules by replacing the word "statement" with "certificate": Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2).	
BK 7001	The proposed amendment would exempt from the list of adversary proceedings in Rule 7001, "a proceeding by an individual debtor to recover tangible personal property under § 542(a)."	
BK 8023.1 (new)	This would be a new rule on the substitution of parties modeled on FRAP 43. Neither FRAP 43 nor Fed. R. Civ. P. 25 is applicable to parties in bankruptcy appeals to the district court or bankruptcy appellate panel, and this new rule is intended to fill that gap.	AP 43
BK Restyled Rules	The third and final set of current Bankruptcy Rules, consisting of Parts VII-IX, are restyled to provide greater clarity, consistency, and conciseness without changing practice and procedure. The first set of restyled rules (Parts I & II) were published in 2020, and the second set (Parts III-VI) were published in 2021. The full set of restyled rules is expected to go into effect no earlier than December 1, 2024.	
CV 12	The proposed amendment would clarify that a federal statute setting a different time should govern as to the entire rule, not just to subdivision (a).	
EV 107	The proposed amendment was published for public comment as new Rule 611(d), but is now new Rule 107.	EV 1006

Effective (no earlier than) December 1, 2024

Current Step in REA Process:

- Transmitted to Supreme Court (Oct 2023)

REA History:

- Approved by Standing Committee (June 2023 unless otherwise noted)
- Published for public comment (Aug 2022 – Feb 2023 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
EV 613	The proposed amendment would require that, prior to the introduction of extrinsic evidence of a witness's prior inconsistent statement, the witness receive an opportunity to explain or deny the statement.	
EV 801	The proposed amendment to paragraph (d)(2) would provide that when a party stands in the shoes of a declarant or declarant's principal, hearsay statements made by the declarant or declarant's principal are admissible against the party.	
EV 804	The proposed amendment to subparagraph (b)(3)(B) would provide that when assessing whether a statement is supported by corroborating circumstances that clearly indicate its trustworthiness, the court must consider the totality of the circumstances and evidence, if any, corroborating the statement.	
EV 1006	The proposed changes would permit a properly supported summary to be admitted into evidence whether or not the underlying voluminous materials have been admitted. The proposed changes would also clarify that illustrative aids not admitted under Rule 1006 are governed by proposed new Rule 107.	EV 107

Effective (no earlier than) December 1, 2025

Current Step in REA Process:

- Published for public comment (Aug 2023 – Feb 2024 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (Jan and June 2023 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 6	The proposed amendments would address resetting the time to appeal in cases where a district court is exercising original jurisdiction in a bankruptcy case by adding a sentence to Appellate Rule 6(a) to provide that the reference in Rule 4(a)(4)(A) to the time allowed for motions under certain Federal Rules of Civil Procedure must be read as a reference to the time allowed for the equivalent motions under the applicable Federal Rule of Bankruptcy Procedure. In addition, the proposed amendments would make Rule 6(c) largely self-contained rather than relying on Rule 5 and would provide more detail on how parties should handle procedural steps in the court of appeals.	BK 8006
AP 39	The proposed amendments would provide that the allocation of costs by the court of appeals applies to both the costs taxable in the court of appeals and the costs taxable in the district court. In addition, the proposed amendments would provide a clearer procedure that a party should follow if it wants to request that the court of appeals to reconsider the allocation of costs.	
BK 3002.1 and Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R	Previously published in 2001. Like the prior publication, the 2023 republished amendments to the rule are intended to encourage a greater degree of compliance with the rule's provisions. A proposed midcase assessment of the mortgage status would no longer be mandatory notice process brought by the trustee but can instead be initiated by motion at any time, and more than once, by the debtor or the trustee. A proposed provision for giving only annual notices HELOC changes was also made optional. Also, the proposed end-of-case review procedures were changed in response to comments from a motion to notice procedure. Finally, proposed changes to 3002.1(i), redesignated as 3002.1(i) are meant to clarify the scope of relief that a court may grant if a claimholder fails to provide any of the information required under the rule. Six new Official Forms would implement aspect of the rule.	
BK 8006	The proposed amendment to Rule 8006(g) would clarify that any party to an appeal from a bankruptcy court (not merely the appellant) may request that a court of appeals authorize a direct appeal (if the requirements for such an appeal have otherwise been met). There is no obligation to file such a request if no party wants the court of appeals to authorize a direct appeal.	AP 6
Official Form 410	The proposed amendment would change the last line of Part 1, Box 3 to permit use of the uniform claim identifier for all payments in cases filed under all chapters of the Code, not merely electronic payments in chapter 13 cases. If approved, the amended form would go into effect December 1, 2024.	

Effective (no earlier than) December 1, 2025

Current Step in REA Process:

- Published for public comment (Aug 2023 – Feb 2024 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (Jan and June 2023 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
CV 16	The proposed amendments to Civil Rule 16(b) and 26(f) would address the "privilege log" problem. The proposed amendments would call for development early in the litigation of a method for complying with Civil Rule 26(b)(5)(A)'s requirement that producing parties describe materials withheld on grounds of privilege or as trial-preparation materials.	CV 26
CV 16.1 (new)	The proposed new rule would provide the framework for the initial management of an MDL proceeding by the transferee judge. Proposed new Rule 16.1 would provide a process for an initial MDL management conference, designation of coordinating counsel, submission of an initial MDL conference report, and entry of an initial MDL management order.	
CV 26	The proposed amendments to Civil Rule 16(b) and 26(f) would address the "privilege log" problem. The proposed amendments would call for development early in the litigation of a method for complying with Civil Rule 26(b)(5)(A)'s requirement that producing parties describe materials withheld on grounds of privilege or as trial-preparation materials.	CV 16

Legislation That Directly or Effectively Amends the Federal Rules
118th Congress
(January 3, 2023–January 3, 2025)

Ordered by most recent legislative action; most recent first

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
A bill to provide remote access to court proceedings for victims of the 1988 Bombing of Pan Am Flight 103 over Lockerbie, Scotland	**H.R. 6714** *Sponsor:* Van Drew (R-NJ) *Cosponsors:* Nadler (D-NY) Smith (R-NJ) **S. 3250** *Sponsor:* Cornyn (R-TX) *Cosponsor:* Gillibrand (D-NY)	CR 53	**Most Recent Bill Text:** https://www.congress.gov/118/plaws/publ37/PLAW-118publ37.pdf **Summary:** Provides remote access to criminal proceedings for victims of the 1988 Bombing of Pan Am Flight 103 over Lockerbie, Scotland notwithstanding any provision of the Federal Rules of Criminal Procedure or other law or rule to the contrary.	• 1/26/2024: S. 3250 signed by President; became Public Law No. 118-37 • 1/18/2024: House passed S. 3250 • 12/11/2023: H.R. 6714 introduced; referred to Judiciary Committee • 12/11/2023: S. 3250 received in the House and held at the desk • 12/06/2023: S. 3250 passed in the Senate with an amendment by unanimous consent • 12/06/2023: Senate Judiciary Committee discharged by Unanimous Consent • 11/08/2023: S. 3250 introduced in Senate; referred to Judiciary Committee
National Guard and Reservists Debt Relief Extension Act of 2023	**H.R. 3315** *Sponsor:* Cohen (D-TN) *Cosponsors:* Cline (R-VA) Dean (D-PA) Burchett (R-TN) **S. 3328** *Sponsor:* Durbin (D-IL) *Cosponsors:* 8 bipartisan cosponsors	Interim BK Rule 1007-I; Official Form 122A1; Official Form 122A1-Supp.	**Most Recent Bill Text:** https://www.congress.gov/118/plaws/publ24/PLAW-118publ24.pdf **Summary:** Extends the applicability of Interim Rule 1007-I and existing temporary amendments to Official Form 122A1 and Official Form 122A1-Supp. for four years after December 19, 2023.	• 12/19/2023: H.R. 3315 signed by President; became Public Law No 118-24. • 12/14/2023: H.R. 3315 passed Senate without amendment by Unanimous Consent • 12/11/2023: H.R. 3315 passed in the House • 11/29/2023: H.R. 3315 reported by the House Judiciary Committee • 11/15/2023: S. 3328 introduced; referred to Judiciary Committee • 05/15/2023: H.R. 3315 introduced in House; referred to Judiciary Committee

Supreme Court Ethics, Recusal, and Transparency Act of 2023	**H.R. 926** *Sponsor:* Johnson (D-GA) *Cosponsors:* 135 Democratic cosponsors **S. 359** *Sponsor:* Whitehouse (D-RI) *Cosponsors:* 43 Democratic or Democratic-caucusing cosponsors	AP, BK, CV, CR	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr926/BILLS-118hr926ih.pdf https://www.congress.gov/118/bills/s359/BILLS-118s359rs.pdf **Summary:** Would require the Supreme Court and JCUS to issue and prescribe—through an expedited Rules Enabling Act process— (a) codes of conduct for justices and judges; (b) rules of procedure requiring certain disclosures by parties and amici; and (c) rules of procedure for prohibiting or striking an amicus brief that would result in disqualification of a justice, judge, or magistrate judge.	• 09/05/2023: S. 359 placed on Senate Legislative Calendar under General Orders • 07/20/2023: S. 359 reported with an amendment from Senate Judiciary Committee • 02/09/2023: S. 359 introduced in Senate; referred to Judiciary Committee • 02/09/2023: H.R. 926 introduced in House; referred to Judiciary Committee
Government Surveillance Transparency Act of 2023	**H.R. 5331** *Sponsor:* Lieu (D-CA) *Cosponsor:* Davidson (R-OH)	CR 41	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr5331/BILLS-118hr5331ih.pdf **Summary:** Would amend CR 41(f)(1)(B) by adding that an inventory shall disclose whether the provider disclosed to the government any electronic data not authorized by the court and whether the government searched persons or property without court authorization. Would provide for public access to docket records for certain criminal surveillance orders in accordance with rules promulgated by JCUS.	• 09/01/2023: H.R. 5331 introduced in House; referred to Judiciary Committee
Protecting Our Democracy Act	**H.R. 5048** *Sponsor:* Schiff (D-CA) *Cosponsors:* 158 Democratic cosponsors	CR 6; CV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr5048/BILLS-118hr5048ih.pdf **Summary:** Would require the Supreme Court and JCUS to prescribe rules—through an expedited Rules Enabling Act process—to ensure the expeditious treatment of a civil action brought to enforce a congressional subpoena. Would preclude any interpretation of CR 6(e) to prohibit disclosure to Congress of certain grand-jury materials related to individuals pardoned by the President.	• 07/27/2023: H.R. 5048 introduced in House; referred to Oversight & Accountability, Judiciary, Administration; Budget, Transportation & Infrastructure, Rules, Foreign Affairs, Ways & Means, and Intelligence Committees

Back the Blue Act of 2023	**H.R. 355** *Sponsor:* Bacon (R-NE) *Cosponsors:* 18 Republican cosponsors **H.R. 3079** *Sponsor:* Bacon (R-NE) *Cosponsors:* 20 Republican cosponsors **S. 1569** *Sponsor:* Cornyn (R-TX) *Cosponsors:* 41 Republican cosponsors	§ 2254 Rule 11	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr355/BILLS-118hr355ih.pdf https://www.congress.gov/118/bills/hr3079/BILLS-118hr3079ih.pdf https://www.congress.gov/118/bills/s1569/BILLS-118s1569is.pdf **Summary:** Would amend Rule 11 of the Rules Governing Section 2254 Cases by adding: "Rule 60(b)(6) of the Federal Rules of Civil Procedure shall not apply to a proceeding under these rules in a case that is described in section 2254(j) of title 28, United States Code."	• 05/11/2023: S. 1569 introduced in Senate; referred to Judiciary Committee • 05/05/2023: H.R. 3079 introduced in House; referred to Judiciary Committee • 01/13/2023: H.R. 355 introduced in House; referred to Judiciary Committee
Restoring Artistic Protection (RAP) Act of 2023	**H.R. 2952** *Sponsor:* Johnson (D-GA) *Cosponsors:* 31 Democratic cosponsors	EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2952/BILLS-118hr2952ih.pdf **Summary:** Would amend the Federal Rules of Evidence by adding a new Rule 416 to limit the admissibility of evidence of a defendant's creative or artistic expression against such defendant.	• 04/27/2023: Introduced in House; referred to Judiciary Committee
Sunshine in the Courtroom Act of 2023	**S. 833** *Sponsor:* Grassley (R-IA) *Cosponsors:* Klobuchar (D-MN) Durbin (D-IL) Blumenthal (D-CT) Markey (D-MA) Cornyn (R-TX)	CR 53	**Most Recent Bill Text:** https://www.congress.gov/118/bills/s833/BILLS-118s833is.pdf **Summary:** Would permit district court cases to be photographed, electronically recorded, broadcast, or televised, notwithstanding any other provision of law, after JCUS promulgates guidelines.	• 03/16/2023: Introduced in Senate; referred to Judiciary Committee

Bankruptcy Venue Reform Act	**H.R. 1017** *Sponsor:* Lofgren (D-CA) *Cosponsor:* 7 Democratic & 2 Republican cosponsors	BK	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr1017/BILLS-118hr1017ih.pdf **Summary:** Would require the Supreme Court to prescribe rules through the Rules Enabling Act process to allow government attorneys to appear and intervene in Title 11 proceedings without charge, and without meeting any requirement under any local court rule relating to attorney appearances or the use of local counsel, before any bankruptcy court, district court, or bankruptcy appellate panel.	• 02/14/2023: Introduced in House; referred to Judiciary Committee

Legislation Requiring Only Technical or Conforming Changes
118th Congress
(January 3, 2023–January 3, 2025)

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Election Day Holiday Act of 2024	**H.R. 7329** *Sponsor:* Eshoo (D-CA) *Cosponsor:* 21 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr7329/BILLS-118hr7329ih.pdf **Summary:** Would make Election Day a federal holiday.	• 02/13/2024: Introduced in House; referred to Oversight & Accountability Committee
Indigenous Peoples' Day Act	**H.R. 5822** *Sponsor:* Torres (D-AL) *Cosponsors:* 86 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr5822/BILLS-118hr5822ih.pdf **Summary:** Would replace the term "Columbus Day" with the term "Indigenous Peoples' Day" as a legal public holiday.	• 09/28/2023: Introduced in House; referred to Oversight & Accountability Committee
Diwali Day Act	**H.R. 3336** *Sponsor:* Meng (D-NY) *Cosponsors:* 15 Democratic & 1 Republican cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr3336/BILLS-118hr3336ih.pdf **Summary:** Would make Diwali (a/k/a Deepavali) a federal holiday.	• 05/15/2023: Introduced in House; referred to Oversight & Accountability Committee

September 11 Day of Remembrance Act	**H.R. 2382** *Sponsor:* Lawler (R-NY) *Cosponsors:* 4 Democratic & 2 Republican cosponsors **S. 1472** *Sponsor:* Blackburn (R-TN) *Cosponsor:* Wicker (R-MS)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2382/BILLS-118hr2382ih.pdf https://www.congress.gov/118/bills/s1472/BILLS-118s1472is.pdf **Summary:** Would make September 11 Day of Remembrance a federal holiday.	• 05/04/2023: S. 1472 introduced in Senate; referred to Judiciary Committee • 03/29/2023: H.R. 2382 introduced in House; referred to Oversight & Accountability Committee
Workers' Memorial Day	**H.R. 3022** *Sponsor:* Norcross (D-NJ) *Cosponsors:* 11 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2382/BILLS-118hr2382ih.pdf **Summary:** Would make Workers' Memorial Day a federal holiday.	• 04/28/2023: Introduced in House; referred to Oversight & Accountability Committee
St. Patrick's Day Act	**H.R. 1625** *Sponsor:* Fitzpatrick (R-PA) *Cosponsor:* Lawler (R-NY)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr1625/BILLS-118hr1625ih.pdf **Summary:** Would make St. Patrick's Day a federal holiday.	• 03/17/2023: Introduced in House; referred to Oversight & Accountability Committee
Lunar New Year Day Act	**H.R. 430** *Sponsor:* Meng (D-NY) *Cosponsors:* 58 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr430/BILLS-118hr430ih.pdf **Summary:** Would make Lunar New Year Day a federal holiday.	• 01/20/2023: Introduced in House; referred to Oversight & Accountability Committee
Rosa Parks Day Act	**H.R. 308** *Sponsor:* Sewell (D-AL) *Cosponsors:* 115 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr308/BILLS-118hr308ih.pdf **Summary:** Would make Rosa Parks Day a federal holiday.	• 01/12/2023: Introduced in House; referred to Oversight & Accountability Committee

Federal Judicial Center

Date: March 6, 2024

To: Advisory Committees on Rules of Practice and Procedure

From: Tim Reagan
Federal Judicial Center Research Division

Re: Federal Judicial Center Research Projects

This memorandum summarizes current and recently completed Federal Judicial Center research relevant to the Federal Rules of Practice and Procedure. Center researchers attend committee, subcommittee, and working-group meetings and provide empirical research as requested. The Center also conducts research to develop manuals and guides.

Current Research for Rules Committees

Complex Criminal Litigation Website

As suggested by the Criminal Rules Committee, the Center is developing as one of its special-topics websites (curated content) a collection of resources on complex criminal litigation.

Attorney Admissions

The Center is conducting research for the Standing Rules Committee's subcommittee on admissions to the district courts' bars.

Completed Research for Rules Committees

Default and Default Judgment Practices in the District Courts

At the request of the Civil Rules Committee, the Center studied district-court practices with respect to the entry of defaults and default judgments under Civil Rule 55. In most districts, the clerk of court enters defaults, perhaps in consultation with chambers. District practices with respect to entry of default judgments for a sum certain were more varied; in many districts, the clerk of court never enters default judgments pursuant to the national rule.

Mandatory Initial Discovery Pilot (MIDP)—Final Report

At the request of the Civil Rules Committee, the Center studied a pilot program in two districts, in which initial disclosures required by the Federal Rules of Civil Procedure were supplemented with broader disclosure requirements (www.fjc.gov/content/376773/mandatory-initial-discovery-

pilot-final-report). Among other findings, pilot cases had shorter disposition times than nonpilot cases, controlling for case type, district, and the effects of the Covid-19 pandemic.

Jury-Trial Demands in Terminated Civil Cases, Fiscal Years 2010–2019

Prepared for the Civil Rules Committee, this study observed that jury-trial demands were recorded in half of the federal courts' civil cases, but only 0.7% of civil cases were resolved by jury trials (www.fjc.gov/content/373277/jury-trial-demands-terminated-civil-cases-fiscal-years-2010-2019).

Federal Rule of Civil Procedure 42(a) Consolidation, Appellate Finality, and Hall v. Hall

Prepared for the Appellate Rules and Civil Rules Advisory Committees, this study examined potential issues arising from the Supreme Court's 2018 decision in *Hall v. Hall* that a case that has been consolidated with other cases may become appealable before other cases in the consolidation (www.fjc.gov/content/373279/federal-rule-civil-procedure-42a-consolidation-appellate-finality-and-hall-v-hall). The research did not observe widespread losses of appeal rights following the decision in *Hall*.

Federal Courts' Electronic Filing by Pro Se Litigants

In light of interest in whether self-represented litigants should be provided expanded electronic filing opportunities, the Center interviewed a modified random sample of seventy-eight clerks of court or members of their staffs in late 2021 and early 2022, including courts of appeals, district courts, and bankruptcy courts (www.fjc.gov/content/368499/federal-courts-electronic-filing-pro-se-litigants).

Electronic filing avoids the burden of visiting a courthouse or the delay inherent in regular mail. One option for electronic filing is use of the court's CM/ECF (case management, electronic case filing) system, which is how attorneys typically file now. Another option is email or its equivalent, such as an electronic drop box. Courts vary according to whether they generally permit or forbid these methods and whether they allow for exceptions to their general rules. Some courts have arrangements with some prisons (typically state prisons) for electronic submissions by prisoners.

Some courts do not require paper service by paper filers on parties already receiving electronic service.

Electronic Filing Times in Federal Courts

In light of a proposal to require electronic filing to be completed by the close of business on the day that the filing is due, the Center catalogued the times all docket entries were made in 2018 for all federal courts of appeals, district courts, and bankruptcy courts (www.fjc.gov/content/365889/electronic-filing-times-federal-courts). About nine in ten attorney filings were made before 6:00 p.m.

A survey of attorneys' practices and preferences was piloted but discontinued because of the Covid-19 pandemic. Preliminary pilot data suggested that most attorneys working for large firms preferred a filing deadline earlier than midnight, and most other attorneys preferred a midnight deadline.

Electronic Filing in State Courts

The Center surveyed electronic filing rules for thirty states selected to equally represent each of the federal circuits (www.fjc.gov/content/373599/electronic-filing-state-courts).

Current Research for Other Judicial Conference Committees

The Privacy Study: Unredacted Sensitive Personal Information in Court Filings

At the request of the Committee on Court Administration and Case Management, the Center is conducting research on unredacted personal information in public filings, an update to research prepared for the Committee on Rules of Practice and Procedure in 2010 and 2015 (Unredacted Social Security Numbers in Federal Court PACER Documents, www.fjc.gov/content/313365/unredacted-social-security-numbers-federal-court-pacer-documents).

Remote Public Access to Court Proceedings

At the request of the Committee on Court Administration and Case Management, the Center has conducted focus groups with district judges, magistrate judges, and bankruptcy judges to learn about their experiences during the pandemic providing remote public access to proceedings with witness testimony.

Case Weights for Bankruptcy Courts

Data collection has begun for the Center's updated research on case weights for bankruptcy courts. Case weights are used in the computation of weighted caseloads, which in turn are used when assessing the need for judgeships in bankruptcy courts. The research was requested by the Committee on Administration of the Bankruptcy System.

Completed Research for Other Judicial Conference Committees

Evaluation of the Interim Recommendations from the Cardone Report

In 2023, the Center completed for the Defender Services Committee and the Executive Committee an assessment of the implementation of thirty-five recommendations for how the courts manage their responsibilities under the Criminal Justice Act, which specifies how the courts provide financially needy criminal defendants with legal representation (www.fjc.gov/content/380873/evaluation-interim-recommendations-cardone-report). The

recommendations were provided in 2017 by the Cardone Committee, named after its chair, Western District of Texas Judge Kathleen Cardone.

Court Orders Issued During the COVID-19 Pandemic on Criminal Justice Act Interim Voucher Payments

This report—prepared as part of the Center's research on recommendations in the 2017 Cardone report—summarizes federal court orders issued during the coronavirus pandemic regarding interim payments to Criminal Justice Act panel attorneys (www.fjc.gov/content/376241/court-orders-issued-during-covid-19-pandemic-criminal-justice-act-interim-voucher).

Federal-State Court Cooperation: Surveys of U.S. District and U.S. Court of Appeals Chief Judges and State and Territorial Chief Justices and Court Administrators

Prepared for the Committee on Federal-State Jurisdiction, this report updates the findings of a 2016 survey of U.S. chief district judges regarding their past, current, and future plans for cooperation with the state courts, as well as their use of state-federal judicial councils as a forum for communication between the courts (www.fjc.gov/content/378684/federal-state-court-cooperation-surveys-us-district-and-us-court-appeals-chief-judges).

Other Current Research

Manual for Complex Litigation

The Center is preparing a fifth edition of its Manual for Complex Litigation (fourth edition, www.fjc.gov/content/manual-complex-litigation-fourth).

Reference Manual on Scientific Evidence

The Center is collaborating with the National Academies of Science, Engineering, and Medicine to prepare a fourth edition of the *Reference Manual on Scientific Evidence* (third edition, www.fjc.gov/content/reference-manual-scientific-evidence-third-edition-1).

Manual on Recurring Issues in Criminal Trials

The Center is preparing a seventh edition of what previously was called *Manual on Recurring Problems in Criminal Trials* (sixth edition, www.fjc.gov/content/manual-recurring-problems-criminal-trials-sixth-edition-0).

Benchbook for U.S. District Court Judges

The Center is preparing a seventh edition of its *Benchbook for U.S. District Judges* (sixth edition, www.fjc.gov/content/benchbook-us-district-court-judges-sixth-edition).

Other Completed Research

Special-Topic Website: Science Resources

The Center maintains a website for federal judges with resources related to scientific information and methods (www.fjc.gov/content/326577/overview-science-resources). Topics include fingerprint identification, neuroscience, the opioid crisis, DNA technologies, and water and the law.

Emergency Election Litigation: From Bush v. Gore to Covid-19

The Center prepared 513 case studies of how the federal courts have managed emergency election litigation from 2000 through 2020; the case studies include 717 individual emergency cases (www.fjc.gov/content/382726/emergency-election-litigation-federal-courts-bush-v-gore-covid-19). Individual case studies are also posted separately on the Center's website (www.fjc.gov/content/case-studies).

Jurisdictions with a High Number of Civil Jury Trials

Congress directed the Center to study factors related to high numbers of civil jury trials in some jurisdictions (www.fjc.gov/content/376750/jurisdictions-high-number-civil-jury-trials). The ten districts with the highest rates of civil jury trials were all small to medium in size. Civil trial rates ranged from 0.29% to 2.75%; the rates for a large majority of districts (82%) were between 0.5% and 1.5%.

COVID-19 and the U.S. District Courts: An Empirical Investigation

This examination of district-court case processing during the coronavirus pandemic showed an overall slowing of case processing but an overall reduction in backlogs (www.fjc.gov/content/374523/covid-19-district-courts-empirical-investigation). For some courts, however, their backlogs increased.

Resolving Unsettled Questions of State Law: A Pocket Guide for Federal Judges

The Center prepared a short guide to what federal judges might consider when applying unsettled questions of state law (www.fjc.gov/content/373468/resolving-unsettled-questions-state-law-pocket-guide-federal-judges).

National Security Case Studies: Special Case-Management Challenges

The Center published its seventh edition of *National Security Case Studies: Special Case-Management Challenges* in 2022 (www.fjc.gov/content/372882/national-security-case-studies-special-case-management-challenges-seventh-edition). The cases studied include terrorism prosecutions, espionage prosecutions, and other criminal and civil cases. Challenges include handling classified information and other security concerns.

Results of a Survey of U.S. District and Magistrate Judges: Use of Virtual Technology to Hold Court Proceedings

The Center surveyed federal district and magistrate judges about the use of virtual technology before and after the onset of the coronavirus pandemic (www.fjc.gov/content/370037/results-survey-district-magistrate-judges-virtual-technology-court-proceeding).

TAB 2

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of Sept. 14, 2023
Washington, D.C. and on Microsoft Teams

The following members attended the meeting in person:

Circuit Judge Daniel A. Bress
Bankruptcy Judge Rebecca Buehler Connelly
Jenny Doling, Esq.
Bankruptcy Judge Michelle M. Harner
David A. Hubbert, Esq.
Bankruptcy Judge Benjamin A. Kahn
District Judge Marcia Krieger
Bankruptcy Judge Catherine Peek McEwen
Jeremy L. Retherford, Esq.
Damian S. Schaible, Esq.
District Judge George H. Wu

The following members attended the meeting remotely:

District Judge Jeffery P. Hopkins
Debra L. Miller, Esq.
Professor Scott F. Norberg
District Judge J. Paul Oetken

The following persons also attended the meeting in person:

Professor S. Elizabeth Gibson, Reporter
Professor Laura B. Bartell, Associate Reporter
Senior District Judge John D. Bates, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Professor Catherine T. Struve, reporter to the Standing Committee
Ramona D. Elliott, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
Kenneth S. Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Circuit Judge William J. Kayatta, liaison from the Standing Committee
H. Thomas Byron III, Administrative Office
S. Scott Myers, Esq., Administrative Office
Shelly Cox, Administrative Office
Bridget M. Healy, Administrative Office
Allison A. Bruff, Administrative Office
Dana Yankowitz Elliott, Administrative Office
Zachary Hawari, Rules Law Clerk

Carly E. Giffin, Federal Judicial Center
Nancy Whaley, incoming Committee member
Rebecca Garcia, National Association of Chapter 13 Trustees

The following persons also attended the meeting remotely:

Professor Daniel R. Coquillette, consultant to the Standing Committee
District Judge Joan H. Lefkow, incoming Committee member
Bankruptcy Judge Laurel M. Isicoff, Liaison to the Committee on the Administration of the Bankruptcy System
Susan A. Jensen, Administrative Office
Teri Johnson, Law Office of Teri E. Johnson
Crystal Williams

Discussion Agenda

1. **Greetings and Introductions**

Judge Rebecca Connelly, chair of the Advisory Committee, first introduced Senior Inspector Dante Salazar of the Judicial Security Division, who provided a brief security announcement. Judge Connelly then welcomed the group and thanked everyone for joining this meeting, including those attending virtually. She thanked the members of the public attending in person or remotely for their interest. Two members of the Committee are attending their last meeting of the Committee, and Judge Connelly thanked District Judge Marcia Krieger and Debra Miller for their service. Joining the Committee as new members at the next meeting will be District Judge Joan H. Lefkow and Nancy Whaley, and she welcomed them. She also acknowledged the presence of observers both in person and remotely.

Judge Connelly then reviewed the anticipated timing of the meeting and stated that there would be a mid-morning break and another break for lunch. In-person participants were asked to turn on their microphones when they spoke and state their name before speaking for the benefit of those not present. Remote participants were asked to keep their cameras on and mute themselves and use the raise-hand function or physically raise their hands if they wished to speak. She noted that the meeting would be recorded.

2. **Approval of Minutes of Meeting Held on March 30, 2023**

The minutes were approved.

3. Oral Reports on Meetings of Other Committees

(A) *June 6, 2023, Standing Committee Meeting*

Judge Connelly gave the report.

(1) Joint Committee Business

(a) *Pro Se Electronic-Filing Project*

Professor Catherine Struve provided the Standing Committee a status report on inquiries made by Dr. Tim Regan of the Federal Judicial Center and herself with 17 court personnel in nine districts that had broadened electronic access for self-represented litigants. One of the primary areas of inquiry was whether there is any reason to require traditional service by self-represented litigants on other litigants who already receive notices of electronic filing. The districts that exempt self-represented litigants from paper service found that it added no additional burden on the courts' clerk's offices. Interviewees were also asked whether and how self-represented litigants obtain access to CM/ECF, and Professor Struve reported on the results of that question. The general consensus was that the benefits outweighed the risks.

(b) *Presumptive Deadline for Electronic Filing*

Judge Bates provided the Standing Committee a status report on consideration of a suggestion to change the filing deadline from midnight local time to an earlier time. The Standing Committee has reconstituted a joint subcommittee that previously considered this suggestion some years ago to consider it again in light of the decision by the Third Circuit to adopt a local rule making the deadline earlier in the day.

(c) *District-Court Bar Admission Rules*

Judge Bates reported on this item. Several of the advisory committees received a proposal on a unified bar-admission rule. A joint subcommittee – which includes representation from the Bankruptcy Rules Committee -- has been formed to review the proposal over the next year or two.

(2) Bankruptcy Rules Committee Business

The Standing Committee gave final approval to the Restyled Bankruptcy Rules and three other rules and one form, and approved two rules and six official forms for publication.

Final Approval

Restyled Bankruptcy Rules

The Standing Committee gave final approval to the fully restyled bankruptcy rules.

Rule 1007 (Lists, Schedules, Statements, and Other Documents; Time to File), and conforming Amendments to Rules 4004, 5009, and 9006, and Abrogation of Form 423

The Standing Committee gave final approval to amended Rule 1007 which replaces the requirement that an individual debtor in Chapter 7 and Chapter 13 cases file a statement on an official form (Form 423) describing completion of a course in personal financial management with a requirement that the course provider's certificate of course completion be filed. Amendments to Rules 4004, 5009, and 9006 to replace references to a "statement" of completion with references to a "certificate" of completion were also approved. Official Form 423 was abrogated because it no longer served any purpose.

Rule 7001 (Types of Adversary Proceedings)

The Standing Committee gave final approval to the amendment to Rule 7001 to exclude from the list of adversary proceedings actions filed by individual debtors to recover tangible personal property under section 542(a) of the Bankruptcy Code.

Rule 8023.1 (Substitution of Parties)

The Standing Committee gave final approval to new Rule 8023.1 which governs the substitution of parties when a bankruptcy case is on appeal to a district court of BAP.

Official Form 410A (Mortgage Proof of Claim Attachment)

The Standing Committee gave final approval to an amendment that requires that the principal amount be itemized separately from interest.

Approval for Publication for Public Comment

Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case)

The Standing Committee approved for publication for public comment amendments to the rule that are responsive to the public comments made on proposed amendments published for comment in 2021. A judge member of the Standing Committee raised concerns about the revised provision for noncompensatory sanctions in (h)(2). After much discussion, Judge Connelly agreed to delete that provision and take it back to the Advisory Committee for further consideration. The third sentence in the last paragraph of the committee note was also struck for purposes of publication.

Rule 8006(g) (Request for Leave to Take a Direct Appeal to the Court of Appeals After Certification)

The Standing Committee approved for publication for public comment an amendment to Rule 8006(g) to make clear that any party to an appeal may request direct appeal to a court of appeals.

Official Forms Related to Rule 3002.1

The Standing Committee approved for publication for public comment Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R, which are the companion official forms to proposed amended Rule 3002.1.

Information Items

Judge Connelly, Professor Gibson, and Professor Bartell also reported on four information items.

(a) Update concerning suggestion to require complete redaction of social security numbers from filed documents.

(b) Update concerning suggestion to adopt a national rule addressing debtors' electronic signatures.

(c) Update on suggestions regarding the deadline for filing a certificate evidencing completion of the required course of personal financial management

(d) Update on proposed amendment to Rule 1007(h) to require disclosure of postpetition assets

(B) ***Meeting of the Advisory Committee on Appellate Rules***

The Advisory Committee on Appellate Rules is scheduled to meet on Oct. 19, 2023.

(C) ***Meeting of the Advisory Committee on Civil Rules***

The Advisory Committee on Civil Rules is scheduled to meet on Oct. 17, 2023.

(D) ***June 8-9, 2023, Meeting of the Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee")***

Judge Isicoff provided the report.

The Bankruptcy Committee met in June in Boston. The next meeting will be in December in Washington, D.C.

(1) **Changing in Personnel**.

Judge Connelly has been replaced as liaison from the Advisory Committee, and the Bankruptcy Committee looks forward to working with the new liaison. In addition Judge Darrow will be stepping down as chair of the Bankruptcy Committee on September 30. Judge Darrow, like her predecessors, has been a tremendous advocate for the Bankruptcy System. District Court Judge William Osteen will be taking over as chair of the Bankruptcy Committee on October 1. Judge Osteen has been a member of the Bankruptcy Committee for several years and the committee looks forward to his leadership.

(2) **Legislative Proposal Regarding Emergency Authority and Proposed Rule 9038**

The Bankruptcy Committee has been updated on the status of Rule 9038, the rule that will address emergency measures that may be taken by the courts and is on track to go effective on December 1. The Bankruptcy Committee appreciates the Rules Committee's work on this important effort.

Just as the Rules Committee was considering rules amendments under the CARES Act to deal with future emergencies, in spring 2020, the Bankruptcy Committee developed a legislative proposal to extend statutory deadlines and toll statutory time periods during the pandemic, which the Judicial Conference adopted. Unfortunately, Congress did not take any action on the legislative proposal, and on recommendation from the Bankruptcy Committee, the Conference rescinded the legislative proposal in March 2021.

Now that the national emergency related to COVID-19 has ended and many bankruptcy courts have resumed full, unrestricted operational status, the Bankruptcy Committee will consider a broader legislative proposal, which would provide a permanent grant of authority to extend statutory deadlines and toll statutory time periods during an ongoing emergency and could enable bankruptcy courts to respond more quickly to future emergency or major disaster declarations. Just like the narrower proposal that was tied to the COVID-19 emergency, the permanent grant of authority would not extend to the Bankruptcy Rules.

At its June meeting, the Bankruptcy Committee directed staff to further research and analyze the issues related to this potential legislative proposal so that the Committee can consider the proposal at the December meeting and determine whether to recommend that the Judicial Conference pursue it in Congress. If the Committee moves forward with this proposal, it will coordinate closely with the Rules Committee to ensure that there is no conflict or overlap.

(3) Legislative Proposal Regarding Chapter 7 Debtors' Attorney Fees

On recommendation of the Bankruptcy Committee, the Judicial Conference approved a proposal to seek legislation to amend the Bankruptcy Code to (1) make chapter 7 debtors' attorney fees due under a fee agreement nondischargeable; (2) add an exception to the automatic stay to allow for post-petition payment of chapter 7 debtors' attorney fees; and (3) provide for judicial review of fee agreements at the beginning of a chapter 7 case to ensure reasonable chapter 7 debtors' attorney fees. This legislative proposal seeks to address concerns about access to justice and access to the bankruptcy system related to the compensation of chapter 7 debtors' attorneys. The AO transmitted the legislative proposal to Congress in November 2022 and again in July 2023 to coincide with the start of the new Congressional session.

The proposal continues to be reviewed by Congressional staff, and several members of the Bankruptcy Committee have met with members of Congress to answer questions raised in connection with this proposal. If Congress enacts amendments to the Code based on this position, it is anticipated that, at a minimum, conforming changes to the Bankruptcy Rules would be required.

(4) Proposed Rule Amendments Related to Remote Public Access to Witness Testimony

The Bankruptcy Committee continues to monitor the status of the work of the Committee on Court Administration and Case Management (CACM) on remote public access to court proceedings.

This week the Judicial Conference approved a policy to expand remote audio access beyond the pre-Covid policy. It permits judges presiding over civil and bankruptcy cases to provide the public live audio access to non-trial proceedings that do not involve witness testimony. CACM recommended this revised policy change with the endorsement of the Bankruptcy Committee and the Committee on the Administration of the Magistrate Judges System. The Bankruptcy Committee stands by to assist the Rules Committee on any rule changes or modifications that such policy change might warrant.

The Bankruptcy Committee is interested to see how the Advisory Committee proceeds with the suggestion from the National Bankruptcy Conference to change the standard for allowing remote testimony in contested matters. The Bankruptcy Committee is very interested in the future of remote public access to court proceedings and remote witness testimony in certain types of proceedings.

(5) Potential Comment to Tab 5B (Application for Payment of Unclaimed Funds)

At its June meeting, the Bankruptcy Committee approved revisions to its best practices relating to unclaimed funds, also proposed by the Unclaimed Funds Expert Panel, along the same lines as the revisions made as a suggestion to the Advisory Committee and on the agenda for the meeting. A new best practice is intended to reduce fraudulent applications filed by persons who

assert that they are a successor claim holder—when in fact they are not—by encouraging bankruptcy courts to require proof that the application was sent to any previous owners of the claim. This will help ensure that the previous owner of a claim has an opportunity to dispute the claimant's ownership interest and that the bankruptcy court is not forced to investigate ownership issues.

The Bankruptcy Committee tweaked the new best practice, by adding language to the provision stating that if the applicant didn't send a copy of the application to previous owners, the applicant must have "enclosed a statement explaining why Applicant was not able to do so." There are scenarios where a bankruptcy judge might determine that service is not necessary, even though the applicant was *able* to do so. For example, where succession is based on a merger, and there are documents that show that the old entity (old-co) is now a new entity (new-co) by reason of the merger, the judge might determine that it's not necessary to serve old-co (because new-co is essentially the same entity as old-co, just with a new name). Therefore, they added the language "or an explanation why doing so is not necessary" after the phrase "not able to do so."

The Bankruptcy Committee suggests making a similar tweak in the suggested modifications to Form 1340 being considered by the Advisory Committee and to Section II.C.d of the Instructions in the new certificate of service section.

The Bankruptcy Committee looks forward to continuing to collaborate and work together with the Advisory Committee in the future.

Judge Connelly thanked Judge Isicoff, and announced to the Advisory Committee that Judge Harner would be the new liaison to the Bankruptcy Committee.

Subcommittee Reports and Other Action Items

4. **Report by the Consumer Subcommittee**

(A) ***Reconsideration of Proposed Rule 3002.1 Sanctions Provision***

Judge Harner and Professor Gibson provided the report.

At the spring Advisory Committee meeting, amendments to Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence) were approved for republication. The recommendation was presented to the Standing Committee at its June meeting, and the Standing Committee approved the amendments for republication with one deletion. In subdivision (h), the proposed amendments would have expressly authorized courts to award "in appropriate circumstances, noncompensatory sanctions." The impetus for the inclusion of the amendment was the Second Circuit's 2-1 decision in PHH Mortg. Corp. v. Sensenich *(In re* Gravel*)*, 6 F.4th 503 (2021), in which the court held that "[p]unitive sanctions do not fall within the 'appropriate relief' authorized by Rule 3002.1." Several bankruptcy courts have disagreed with the Second Circuit and have concluded that the rule does authorize the award of punitive damages. After lengthy discussions, Judge Connelly suggested that the

Advisory Committee should further consider the sanctions provision and withdrew that amendment, and the related committee note. The Standing Committee approved the remainder of Rule 3002.1 for republication.

The Subcommittee was asked to reconsider the noncompensatory sanctions provisions in light of the Standing Committee comments, and did so at its August 7 meeting. The Subcommittee decided to keep the issue on its agenda, but wait and see how the case law develops rather than seeking to reintroduce an additional sanction provision to subdivision (h). The Subcommittee does not see any urgency about consideration of this issue, and immediate amendment to subdivision (h) would likely require yet another republication of all of Rule 3002.1, which the Subcommittee considers undesirable.

There were no comments or questions from the Advisory Committee.

(B) ***Continued consideration of proposed amendment to Rule 5009(b) (Suggestions 22-BK-D and 23-BK-K)***

Judge Harner and Professor Gibson provided the report.

Last summer the Subcommittee began considering a suggestion submitted by Professor Laura Bartell (22-BK-D) to change the timing of the notice to chapter 7 and 13 debtors under Rule 5009(b), which reminds them of their need to file a statement of completion of a course on personal financial management. Since that time Tim Truman, a chapter 13 trustee, has submitted a related suggestion (22-BK-K) to change the deadline for chapter 13 debtors to file the statement.

The Subcommittee received feedback on those suggestions at last spring's Advisory Committee meeting, and took those comments into consideration in arriving at its recommendation.

The Subcommittee recommends an amendment to Rule 1007(c) to eliminate the deadline for filing a certificate of course completion issued by the provider of a course in personal financial management. The Bankruptcy Code requires only that the course be taken before a discharge can be issued. The Subcommittee does not want debtors to be denied a discharge merely because they do not meet a deadline imposed by the rules for submitting their certificate.

Second, assuming that amendment is approved, references to the deadline would be deleted in amendments to Rule 9006(b) and (c).

Professor Struve raised a question of whether, by removing the deadline, we are allowing courts to adopt a local rule imposing a deadline. Professor Gibson said that if the national rule has removed any deadline, it would be inconsistent with the national rule for a court to impose a deadline by local rule, but she does not know what the enforcement mechanism would be for eliminating conflicting local rules. Professor Coquillette said that the issue of inconsistency

between a local rule and national rule has been addressed before. He said that imposing a deadline when the national rule has none creates an inconsistency. There have been such situations, and local rules have been abrogated as a result. Challenges have been brought by a judge within that district or circuit.

Judge Harner said that perhaps there should be a deadline, i.e., the closing of the case. Professor Struve supported a linkage between Rules 1007(c)(4) and 5009, by requiring that debtor must file the certificate within the time specified in any notice under Rule 5009(b). Judge McEwen said that there is a deadline imposed by the Code for closing the case. Judge Connelly said that the rule does not tell the court when to close the case, only what the condition is to close the case. Ken Gardner said there is no requirement to close the case but that is a procedural matter. If there is an extension of time to file the certificate, the case would not be closed. Judge Harner asked if we linked the deadline to the notice in 5009, would that provide adequate certainty to the clerks for closing the case. Ken Gardner said it would. Professor Bartell expressed the view that imposing any deadline was inconsistent with the decision of the Subcommittee.

Professor Gibson then described the proposed amendments to Rule 5009(b) approved by the Subcommittee to require two reminder notices rather than just one and setting the dates for sending those notices for Chapter 7 cases (45 days after the petition is filed and 90 days after the petition is filed) and for Chapter 13 cases (45 days after the petition is filed and 60 days before the case will be closed). The second notice would state that the case can be closed without entering a discharge if the certificate is not filed within 30 days after the notice's date (for a Chapter 7 case) or within 60 days after the notice's date (for a Chapter 13 case)

Professor Gibson first noted that she had made a change in the first paragraph of the committee note to the proposed amended Rule 5009(b). Instead of the words "must get the case reopened," she inserted "must seek to have the case reopened" to reflect the fact that some courts do not permit reopening cases to file a certificate of course completion.

Professor Harner expressed discomfort with the timing of the second notice for chapter 13 cases (60 days before the case closing), suggesting that it should be sent if the certificate had not been filed by the time of plan completion. There was discussion of that suggestion, and concern expressed by Jenny Dolan and others that whether a plan had been completed might trigger litigation. Judge Kahn thought a better objective standard would be the filing of the trustee's final report. The Advisory Committee agreed to replace "at least 60 days before the case closing" with "at the time the chapter 13 trustee has filed a final report and final account" in revised Rule 5009(b)(3)(B).

Judge Kahn suggested that the notices contemplated by Rule 5009(b) might be appropriate for a bankruptcy form. Judge Harner agreed that the Forms Subcommittee should consider that suggestion.

Judge Connelly asked whether the timing for the second notice in a chapter 7 case (90 days after the petition is filed) would work in a case in which the Section 341 meeting of

creditors is held 21 days after the petition is filed (as permitted by Rule 2003(a)) and the 60 day period after that date expires under Rule 4004(a) so that the court is directed to grant a discharge under Rule 4004(c)(1). This could be fewer than 90 days after the filing date. Ken Gardner said that it is extremely unlikely that a meeting of creditors would be held 21 days after filing, but there is nothing in the proposed rule that precludes the clerk from sending the second notice earlier than 90 days after the filing date. In those rare cases, the clerk's office could so. Ramona Elliott expressed the view that the rule would work better if the period was tied to the date of the meeting of creditors because tying it to the petition date may make the period too long.

Judge Harner suggested adding the words "and the clerk has not yet sent a second notice" after the words "within 90 days after the petition is filed" in proposed Rule 5009(b)(3)(A). Ken Gardner supported that addition.

Judge Harner suggested that, rather than deleting Rule 1007(c)(4), language stating that there is no deadline for the filing of a financial management certificate might be inserted, but the case may be closed without discharge if the certificate is not filed within the periods specified in Rule 5009(b)(3).

Judge Kahn expressed concern about cases being left open indefinitely, but Ken Garner said that the case will be closed if the conditions for discharge are not met. The court retains discretion on how quickly that will happen. He emphasized that closing is not the issue – the issue is discharge.

It was suggested that instead of simply eliminating Rule 1007(c)(4), the provision be shown as "Abrogated" to make clear the intention to remove the deadlines for filing the financial management certificate. There was support for this approach, because it avoids having to renumber subsequent sections of Rule 1007(c). There was also discussion of making it clear in the committee note that the decision to eliminate the deadlines was intentional; subsequent discussion resulted in proposed language to be inserted in the last sentence of the committee note to Rule 1007(c)(4) that reads "…, but the rule no longer imposes—and the Committee rejected—an earlier deadline for doing so."

With those changes, the Advisory Committee recommended the revised Rules to the Standing Committee for publication.

(C) ***Continued consideration of proposed amendments to Rule 1007(h) (Suggestion 22-BK-H)***

Judge Harner and Professor Gibson provided the report.

Judge Catherine McEwen has submitted a suggestion to require the reporting of a debtor's acquisition of postpetition property in the chapter 11 case of an individual or in a chapter 12 or 13 case. Judge McEwen noted that Rule 1007(h) (Interests Acquired or Arising After Petition) requires the filing of a supplemental schedule only for property covered by § 541(a)(5)—that is, property acquired within 180 days after the filing of the petition by bequest,

devise, or inheritance; as a result of a property settlement with a spouse or a divorce; or as beneficiary of a life insurance policy. Not included within Rule 1007(h) are other postpetition property interests that become property of the estate under § 1115, 1207, or 1306.

This suggestion was considered by the Subcommittee last winter, and at the spring Advisory Committee meeting, the Subcommittee recommended that no action be taken on it. Following the Advisory Committee's discussion of the suggestion, it was referred back to the Subcommittee for further consideration.

The Subcommittee now recommends to the Advisory Committee an amendment to Rule 1007(h) that would explicitly allow the court to require the debtor to file a supplemental schedule to list property or income that becomes property of the estate under § 1115, 1207, or 1306. The subcommittee declined to recommend a national rule that would impose a duty of disclosure.

Judge McEwen proposed that the last sentence of the committee note be eliminated, because it expressed views on the types of rules a court should adopt. Judge Harner agreed – she thought the rule should permit the law to develop, and the less direction given the better for that process. Professor Gibson agreed to remove the last sentence of the committee note.

Judge Bates suggested that the first sentence of the committee note should be modified to change "amended to authorize a court to require" to "amended to clarify that a court may require" to avoid suggesting that the courts do not currently have that authority. His suggestion was adopted.

The Advisory Committee approved the proposed amendments to Rule 1007(h) for publication.

(D) ***Consider Suggestion 23-BK-B to require disclosure of corporate ownership statements in contested matters.***

Judge Harner and Professor Bartell provided the report.

Michael Gieseke, Staff Attorney for the Office of Chapter 12 & 13 Bankruptcy Trustee Kyle L. Carlson in Barnesville, MN, suggested adoption of a new rule requiring all non-governmental corporations in contested matters to make the same disclosures with respect to their corporate ownership as is currently required for a corporation that is a party to an adversary proceeding in Rule 7007.1.

Rule 7007.1 was intentionally limited to adversary proceedings because of the difficulties that would be created were it applicable to contested matters. In addition, the presiding judge may direct that Rule 7007.1 should apply in any particular contested matter in which disclosures are warranted.

The Subcommittee recommended that no action be taken in response to this suggestion and the Advisory Committee decided to take no action.

5. **Report by the Forms Subcommittee**

(A) ***Consider Comment BK-2021-002-0022 concerning amendment to Official Form 410S1 (Notice of Mortgage Payment Change)***

Judge Kahn and Professor Gibson provided the report.

After publication in 2021 of proposed amendments to Rule 3002.1 and implementing forms, John Rao filed a comment suggesting an amendment to existing Form 410S1. The amendment would reflect the proposed provisions in the amendments to Rule 3002.1(b) regarding payment changes in home equity lines of credit ("HELOCs"). He suggested changes to include disclosure of the one-time next payment that includes the reconciliation amount under Rule 3002.1(b)(3)(C) and a separate disclosure of the new payment amount without reconciliation under Rule 3002.1(b)(3)(D). The comment was treated as a suggestion and was considered by the Subcommittee at its summer meeting.

The current Form 410S1 has three parts plus a signature box – Part 1: Escrow Account Payment Adjustment; Part 2: Mortgage Payment Adjustment; and Part 3: Other Payment Change. The Subcommittee recommends for publication amendments modifying the form by creating a new Part 3 for the Annual HELOC Notice. It would solicit the information required by proposed Rule 3002.1(b)(2). The following direction would be added under "New total payment" at the top of the form: "For HELOC payment amounts, see Part 3." Existing Part 3 would become Part 4.

Because the process for amending official forms is one year shorter than the period for amending rules, the amendment to Official Form 410S1 could be published for comment in 2024 and, if approved, go into effect at the same time as the proposed amendments to Rule 3002.1, which were published for comment in 2023. The Advisory Committee approved the amendments for publication.

(B) ***Consider Endorsement of Proposed Changes to Director's Form 1340 (Suggestion 23-BK-I)***

Judge Kahn and Professor Bartell provided the report.

The Unclaimed Funds Expert Panel of the Financial Managers Working Group submitted a suggestion for amendments to Form 1340 (a Director's Form by which an applicant may seek payment of unclaimed funds), and to the instructions accompanying that form. The concern expressed by the Expert Panel was that fraudulent applications may be filed by persons who assert that they are a successor claim holder when in fact they are not. The proposed amendments would, among other things, require notice to be given to the owner of record and all other prior owners of the claim when the claim has been transferred, assigned, purchased, obtained by merger or acquisition, or another means of succession.

There were five changes suggested to the Form itself, and four suggested changes to the instructions. The Subcommittee accepted some of the proposed changes and rejected others, and recommended the revised form to the Advisory Committee for its approval and submission to the Administrative Office to make the changes.

Professor Cathie Struve suggested another change to the form and one to the instructions. In Part 2 of the form, second bullet point, she suggested adding the word "other" before the words "previous owner(s)" to be consistent with the instructions. In Part 2 of the form, third bullet point, and in the instructions, paragraph II(d)(2) on certificate of service, she suggested adding the word "Applicant" before "has enclosed a statement." She also noted duplicate language in the second bullet point of Part 2 of the form and suggested deleting "the names of" before "the Owner of Record."

Judge Isicoff had previously reported that the Bankruptcy Committee recommended a small change to the form and instructions to insert the words "or an explanation why doing so is not necessary" after the words "was not able to do so" in part 2, third bullet point, of the form and in paragraph II(d)(2) on certificate of service in the instructions. The Advisory Committee agreed to those changes.

Judge McEwen asked why there is a notary form rather than an option to make a declaration under penalty of perjury. Professor Bartell and Judge Kahn noted that this is not a change in the amended form, and they are not in a position to address why the original form was drafted in that manner.

The Advisory Committee approved the revised form and instructions and directed the Administrative Office to implement them.

(C) ***Possible reconsideration of Proposed Amendments to Official Forms 309A and 309B***

Professor Gibson provided the report.

At its fall meeting in 2022, the Advisory Committee approved for publication an amendment to part 9 (Deadlines) in Form 309A and 309B to set out the deadline to file the financial management course certificate and alert the debtor that the debtor must take an approved course about personal financial management and file with the court the certificate showing completion of the course unless the provider has done so.

Because the Consumer Subcommittee was considering whether the deadline in Rule 1007(c)(4) for filing the certificate of course completion should be eliminated, the Advisory Committee did not seek publication for public comment in June 2023. The Consumer Subcommittee has now recommended, and the Advisory Committee has approved, amendments to rule 1007(c)(4) eliminating a deadline for filing the certificate. As a result, the Subcommittee must consider whether to recommend withdrawal of the proposed amendments to Forms 309A and 309B or recommend a revision of the proposed amendment that eliminates any reference to a

deadline. The Subcommittee will make its recommendation at the spring 2024 meeting of the Advisory Committee.

6. **Report of the Technology, Privacy and Public Access Subcommittee**

(A) ***Continued Consideration of Suggestion 22-BK-I to Require Redaction of the Entire Social Security Number from Public Court Filings, Including the Last Four Digits of the Number***

Professor Bartell provided the report.

Senator Ron Wyden of Oregon sent a letter to the Chief Justice of the United States in August 2022, in which he suggested that federal court filings should be "scrubbed of personal information before they are publicly available." Portions of this letter, suggesting that the Rules Committees reconsider a proposal to redact the entire social security number ("SSN") from court filings, have been filed as a suggestion with each of the Rules Committees. The Bankruptcy Rules suggestion has been given the label of 22-BK-I.

At its last meeting the Advisory Committee agreed with the recommendation of the Subcommittee to defer consideration of the suggestion until the Federal Judicial Center completed its pending studies that would update the 2015 FJC privacy study and gather information about compliance with privacy rules and the extent of unredacted SSNs in court filings.

Since the last Advisory Committee meeting, the FJC has informed the Subcommittee that the privacy study will be limited to an examination of whether filings are complying with existing privacy rules. They will not study whether there have been any privacy breaches based on the redacted SSN because such a study is not feasible. In light of that information the Subcommittee still thinks the FJC privacy study may be useful in determining the extent to which disclosure of SSNs actually occurs, and whether those disclosures are made in the bankruptcy forms themselves or in documents that are attached to the forms by debtors, creditors and their attorneys. The Subcommittee also wishes to consider whether creditors actually need the last four number of the redacted SSN on all court filings where it is currently required by rule but not by statute.

Some information is going to be solicited in connection with Suggestion 23-BK-D regarding the need for full captions on Rule 2002 notices. The Subcommittee also wishes to consider whether there are benefits to the debtor if some bankruptcy filings, such as the discharge form, include the truncated SSN. The Subcommittee will be continuing to gather information to inform a recommendation on the suggestion at a future meeting.

Deb Miller stated that she had already begun the process of reaching out to various creditor groups, and they are looking forward to providing information.

(B) ***Consideration of Suggestions 23-BK-D and 23-BK-J to amend restyled Rule 2002(o) (currently 2002(n)) to eliminate the requirement that all notices given under Rule 2002 comply with the caption requirements set forth in Rule 1005***

Professor Bartell provided the report.

A suggestion was made by the Clerk of Court for the Bankruptcy Court for the District of Minnesota, in which clerks of court for eight other bankruptcy courts in the eighth Circuit joined, suggesting that Rule 2002(n) (restyled Rule 2002(o)) be amended to eliminate the requirement that the caption of every notice given under Rule 2002 comply with Rule 1005. The Bankruptcy Clerks Advisory Group submitted a second suggestion supporting the first one.

The clerks of court stated that the caption requirements "are substantial and can add a significant amount of length, and therefore cost, to a Rule 2002 notice" but also noted that bankruptcy courts in the Eighth Circuit routinely only provide the Rule 1005 captions only on the Notice of Bankruptcy Case (Official Forms 309A-I) and thereafter use the shorter caption.

The same concern was expressed at the time the rule was amended in 1991, and the Advisory Committee at its meeting of March 15-16, 1990, unanimously declined to provide for Rule 2002 notices to use the short caption rather than the Rule 1005 caption, agreeing with the reporter that "some creditors rely on the social security number to identify the debtors."

But no empirical research was done at the time, and if creditors have no need for the full caption after the notice of meeting of creditors, the suggestion might have merit. Deb Miller offered to create a survey (with the help of Jenny Doling) to canvas some creditor groups to try to ascertain whether they need the full caption on all Rule 2002 notices. After the Subcommittee receives the results of that survey, it will consider the suggestion further.

(C) ***Consider suggestion 23-BK-C from the National Bankruptcy Conference dealing with remote testimony in contested matters***

Professor Bartell provided the report.

The National Bankruptcy Conference submitted proposals to amend Rules 9014 and 9017 and create a new Rule 7043 to facilitate video conference hearings for contested matters in bankruptcy cases.

The suggestion proposes to eliminate the incorporation by reference in Rule 9017 of Fed. R. Civ. P. 43 (which generally requires witnesses' testimony to be taken in open court unless the court permits remote testimony "for good cause in compelling circumstances"), so it would no longer be applicable "in a bankruptcy case." Instead, new Rule 7043 would make Civil Rule 43 applicable in adversary proceedings. Rule 9014, dealing with contested matters, would be amended in two respects. First, it would make Civil Rule 43(d) (dealing with interpreters) applicable to contested matters and insert language identical to Civil Rule 43(c) (dealing with evidence on a motion). Second, it would delete the language requiring that testimony in a

contested matter be taken in the same manner as testimony in an adversary proceeding and instead insert language that mirrors Civil Rule 43(a) with the exception that the standard for allowing remote testimony would be "cause" rather than "good cause in compelling circumstances."

Professor Struve pointed out that in the committee note the words "advisory proceedings" should be "adversary proceedings."

Tom Byron questioned whether some mention of the change from "good cause" to "cause" should be made in the committee note. This is a restyling convention, and is not intended to change the meaning of the phrase. After some discussion, it was agreed that the following language should be inserted in the committee note: "Consistent with the other restyled bankruptcy rules, the phrase "good cause" used in Fed. R. Civ. P. 43 has been shortened to "cause" in Rule 9014(d)(1). No substantive change is intended."

The Advisory Committee supported the proposed amendments as a substantive matter. But Judge Bates asked if this is the first step towards a broader push for remote hearings in bankruptcy cases. Several Advisory Committee members stated that it was not. Rather, it is a carefully tailored response to a serious issue of access to justice, especially for pro se litigants and small business owners who must provide information in connection with a bankruptcy case and cannot afford to take off from work or to travel long distances to the court. There is no suggestion that the rule would be expanded to adversary proceedings. Even for contested matters, the presumption is that all testimony will be live and in court, and any change from that requires a request and judicial permission.

Judge Bates noted that there is pressure by some parties to expand video conferencing in federal court, and a CACM subcommittee is looking at the issue more broadly and will be reporting at its meeting in December. He suggested that the proposed rule amendments not be presented to the Standing Committee at its January meeting, but instead be held until the Advisory Committee can coordinate with CACM and get input as to whether these amendments cause any problems. Tom Byron stated that he has already been consulting with CACM staff, and the coordination can continue in preparation for the December CACM meeting.

Judge Bates also asked whether the Advisory Committee anticipates public reaction to these amendments saying that they do not go far enough to provide remote opportunities to the litigants. Judge Kahn thought there might be such a reaction, although the Judge Connelly was not so sure. Most bankruptcy practitioners recognize that evidence must be taken in a courtroom. This rule does not change that; it addresses a discrete problem. Judge Krieger agreed that in bankruptcy there is not a big appetite for remote hearings. The bankruptcy courts are likely to let other courts take the lead on this issue.

Dave Hubbard cautioned that the amended rules make it very important to determine whether a particular proceeding is an adversary proceeding or a contested matter. He said that sometimes parties bring an action as a contested matter when it actually should be an adversary proceeding, and if this rule becomes effective the agencies are not likely to let that slide.

Judge Harner suggested approving the proposed amendments, subject to coordination with CACM. Judge Krieger suggested deferring consideration of the amendments until the spring meeting, given that they could still be published if they are presented to the Standing Committee at its June meeting and delay would help with coordination efforts. The Advisory Committee voted to defer consideration of the amendments until its spring meeting.

7. **Report of the Business Subcommittee**

(A) ***Consider Suggestion 23-BK-F from the National Bankruptcy Conference regarding the method of voting in Chapter 9 and 11 cases under Rule 3018(c)***

Professor Gibson provided the report.

The National Bankruptcy Conference (NBC) proposes an amendment to Rule 3018(c) to authorize courts to treat as an acceptance or rejection of a plan in chapter 9 and chapter 11 cases a statement of counsel or other representatives that is part of the record in the case, including an oral statement at a confirmation hearing.

The problem addressed by the suggestion is the failure of the IRS and certain other federal and state agencies that are repeat players in bankruptcy cases to submit ballots either accepting or rejecting a proposed plan, even when they have no objection to the plan. Courts differ on whether failure to reject the plan is a deemed acceptance. The problem is particularly acute in Subchapter V cases, because if a creditor in an impaired class by itself does not submit a ballot, the plan becomes nonconsensual even if the nonvoting creditor supports confirmation. The plan then must be confirmed under § 1191(b) with a less favorable discharge available under § 1192.

The Subcommittee considered why the IRS and other agencies decline to vote. It is thought that the process for determining how a federal agency will vote on a reorganization plan is a complex one. For example, under § 1126(a) of the Bankruptcy Code, the decision whether to accept or reject the plan on behalf of the United States when the United States is a creditor or equity security holder must be made by the Secretary of the Treasury. Obtaining that decision might be time-consuming, especially if there is more than one federal agency involved in the case. The agency may also be reluctant to take a position on the plan as a whole rather than just its own treatment, so may be willing only to say that it does not oppose confirmation rather than stating that it supports the plan.

If the federal government is not willing to accept the plan at any time, including orally at the confirmation hearing, the proposed amendment may not make any difference. But the Subcommittee did agree with the NBC that if a nonvoting creditor stated on the record or stipulated its acceptance of the plan, even if it did not submit a ballot by the deadline for voting, its action should constitute a valid acceptance. It is possible that courts may view the statements made by the representatives of federal agencies to constitute acceptances under the amended

rule. Therefore, the Subcommittee recommended an amendment to Rule 3018(c) for publication which would allow an acceptance (or the change or withdrawal of a rejection) to be made in a statement on the record, including an oral statement at the confirmation hearing or a stipulation, made by an attorney for or an authorized agent of the creditor or equity security holder.

Judge McEwen agreed that the reasons suggested why agencies do not vote on plans is probably accurate. Dave Hubbard agreed that the current rule is too formalistic, but expressed worry about the impact of the amended rule in non-subchapter V cases, especially when there are last minutes changes to the plan of reorganization that might have serious consequences, such as third-party releases and exculpatory clauses. He emphasized that creditors are not legally required to vote, and they may have good reasons for declining to do so.

Ramona Elliott stated that the proposal is animated by subchapter V cases. Subchapter V has a mechanism for confirmation without acceptance, and the ABI Task Force on Subchapter V is looking at this very issue. There may be other available approaches to solving the problem. But this amendment is not likely to do so. Government agencies may still decline to accept a subchapter V plan.

Damian Schaible stated that he understands why creditors should be able to change their votes, and he supports that. But he doesn't think this is going to change agency policy. The merit of the proposed amendments is to permit a change of vote on the record as part of settlements at the confirmation hearing without further formal proceedings. This would not eliminate the requirements for revoting if there was a material change to the plan.

Judge McEwen stated that this amendment gives courts the flexibility to do what they are doing now. If there was a substantive change to the plan, there would be reballoting.

Judge Isicoff noted that the issue arises not only in subchapter V cases. She said she has these issues in single asset real estate cases all the time. The bank doesn't oppose the plan but refuses to sign a ballot that votes in favor of the plan. It is not limited to various government agencies. Lawyers have apologetically explained this to her at confirmation hearings.

Judge Kahn noted that Congress explicitly declined to treat failure to vote as an acceptance in the Small Business Reorganization Act, and these amendments do not do that. The amendments allow an affirmative statement on the record that the creditor supports confirmation to be treated as acceptance. Silence is not acceptance, and affirmative refusal to approve is not acceptance.

Mr. Schaible stated that these amendments do not solve the problem that motivated the National Bankruptcy Conference to make the suggestion, but they are useful for other purposes.

Professor Struve suggested a stylistic change. In Rule 3018(c)(1)(B) she suggested changing the words "that is" to "in a statement that is" and deleting the words "in a statement that is" at the beginning of (i).

It was also suggested that the committee note include language stating that "nothing in this rule is intended to create an obligation to accept or reject a plan."

The Advisory Committee approved both changes, and by a 12-to-1 vote approved the amended Rule 3018(c) for publication for public comments.

8. **Reporter Memo**

(A) ***Recommendation from Professor Bartell concerning Suggestion 23-BK-E recommending legislative and rule amendments to address contempt proceedings***

Professor Bartell provided the report.

An attorney in Baltimore, Maryland, Joshua T. Carback, submitted a "proposal for reforming judicial rules governing contempt proceedings." He proposed an amendment to Section 105(a) of the Bankruptcy Code to expressly allow bankruptcy courts to issue orders for civil and criminal contempt. If such a statutory change is made, he proposed amendments to Bankruptcy Rule 9020 to incorporate a new Fed. R. Civ. P. 42 governing civil contempt that would be similar to Fed. R. Crim. P. 42, which would also be amended "to eliminate unnecessary criminal contempt statutes and trim unnecessary contempt provisions in other criminal rules."

Because the Advisory Committee is not the proper venue for proposals to amend the Bankruptcy Code, and all proposed rule amendments are dependent on a statutory change to the Code, Professor Bartell recommended no action on the suggestion.

The Advisory Committee agreed to take no action on the suggestion.

9. **Update on the Work of the E-filing Deadline Joint Subcommittee**

Professor Struve gave the report.

The Joint Subcommittee was tasked with considering a suggestion made in 2019 by now-Chief Judge Michael Chagares of the U.S. Court of Appeals for the Third Circuit (and then chair of the Advisory Committee on Appellate Rules) to all the advisory committees that consideration be given to amending the rules to provide that the current midnight electronic filing deadline be rolled back to an earlier time, such as when the clerk's office closes in the respective court's time zone.

The Joint Subcommittee considered information received from the FJC in 2022 about actual filing patterns that shows that about 80% of filings in federal bankruptcy, district and appellate courts were made between 8 a.m. and 5 p.m. The Joint Subcommittee also considered the new Third Circuit rule (effective July 1, 2023) that moved the presumptive deadline for most electronic filings in that court of appeals from midnight to 5 p.m. The new rule evoked strong negative reactions from the bar. An internal Department of Justice survey of attorneys also

elicited negative comments, and one Subcommittee member reported similar reactions within that member's law firm.

After careful discussion at its meeting in August, the Joint Subcommittee unanimously voted to recommend that no action be taken on the suggestion, and that the Joint Subcommittee be disbanded. The Joint Subcommittee has on its docket Suggestion 19-BK-H, and the Advisory Committee must decide what to do with that suggestion.

The Advisory Committee decided to take the suggestion off its agenda.

10. **Update on the Work of the Pro-Se Electronic Filing Working Group**

Professor Struve gave the report.

The working group has been studying two broad topics: (1) increases to electronic access to court by self-represented litigants (whether via CM/ECF or alternative means) and (2) service (of papers subsequent to the complaint) by self-represented litigants on litigants who will receive a notice of electronic filing (NEF) through CM/ECF or a court-based electronic-noticing program. Professor Struve had hoped to be able to circulate a set of proposed rule amendments designed to eliminate the requirement of paper service on those receiving NEFs in time for the fall advisory committee meetings.

When the working group had its virtual meeting last week, the group seemed supportive of the concept. But the group felt that the proposed sketch of the possible amendment that she provided to the working group requires a rather significant re-draft. Therefore she is not circulating anything written to the advisory committees, because further work will be needed before the draft is ready for advisory-committee consideration.

However, the basic ideas that are under consideration among the reporters, as to service and perhaps also as to filing, are the following:

On service, in addition to eliminating the requirement of paper service on those receiving NEFs, the new idea would be to perform a more general overhaul of the service provisions with a view to making some other adjustments to reflect modern practices – in particular, to reorder the treatment of service so as to first discuss service by means of the NEF and then, only after that, to discuss other means of service that would be used when serving people who do not receive NEFs. She suggested that we might also consider a simpler description of service by means of the NEF, that would say something like, "the court's sending of the NEF counts as service" (precise wording still to be determined). The rules might also address the treatment of documents that are to be served but not filed with the court, perhaps by setting a presumption that service can be done by email to the email address that the court uses for NEFs. Further drafting is necessary before we can proffer these proposals concretely for each advisory committee to consider.

Ken Gardner said that one of the issues he is confronting is regarding the claims docket. The clerk's office gets two addresses on the claims form, one for notice and one for service. When they give the service list to the attorneys to serve anything under Rule 2002, for example, that list is inaccurate in many courts because the BNC has something behind the scenes that allows courts, if there is a nationally-filed address, to reconcile that and send the notice to the correct address. But if there is a different address on the claim form, it is possible that it won't be reconciled with the nationally-filed address because the attorney does not send through the BNC. One could revise the claim form to remove the second address, but otherwise we have to recognize that this is happening for attorneys who are trying to serve something. The BNC software is not shared with the clerks' offices because it is proprietary. This is a big issue for courts that should be considered by the Working Group. The attorneys cannot rely on the creditor matrix.

On filing, the new potential idea would be to consider the possibility of drafting a rule that would disallow districts from adopting blanket bans entirely denying all CM/ECF access to all self-represented litigants. The idea would be that even if a court generally disallows CM/ECF access for self-represented litigants, it should make reasonable exceptions to that policy. This idea is still in the nascent stages, and the reporters still need to hash out how the details might work. It is not clear whether this is an area where a uniform approach should be adopted across all rules, or one Advisory Committee should proceed ahead of the others. But Professor Struve welcomed suggestions on how to draft such a provision that would alleviate the CM/ECF-access skeptics' concerns.

11. **New Business**

There was no new business.

12. **Future Meetings**

The spring 2023 meeting has been scheduled for Apr 11, 2024, in a location to be announced.

13. **Adjournment**

The meeting was adjourned at 2:20 p.m.

TAB 3

TAB 3A

TAB 3A1

MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
January 4, 2024

The Judicial Conference Committee on Rules of Practice and Procedure (the Standing Committee) met in a hybrid in-person and virtual session in Austin, Texas, on January 4, 2024. The following members attended:

Judge John D. Bates, Chair
Judge Paul J. Barbadoro
Elizabeth J. Cabraser, Esq.
Louis A. Chaiten, Esq.
Judge William J. Kayatta, Jr.
Justice Edward M. Mansfield
Dean Troy A. McKenzie
Judge Patricia A. Millett
Hon. Lisa O. Monaco, Esq.*
Andrew J. Pincus, Esq.
Judge Gene E.K. Pratter
Judge D. Brooks Smith
Kosta Stojilkovic, Esq.
Judge Jennifer G. Zipps

The following attended on behalf of the Advisory Committees:

Advisory Committee on Appellate Rules –
Judge Jay S. Bybee, Chair
Professor Edward Hartnett, Reporter

Advisory Committee on Bankruptcy Rules –
Judge Rebecca B. Connelly, Chair
Professor S. Elizabeth Gibson, Reporter
Professor Laura B. Bartell, Associate Reporter

Advisory Committee on Civil Rules –
Judge Robin L. Rosenberg, Chair
Professor Richard L. Marcus, Reporter
Professor Andrew Bradt, Associate Reporter
Professor Edward H. Cooper, Consultant

Advisory Committee on Criminal Rules –
Judge James C. Dever III, Chair
Professor Sara Sun Beale, Reporter
Professor Nancy J. King, Associate Reporter

Advisory Committee on Evidence Rules –
Judge Patrick J. Schiltz, Chair

Others who provided support to the Standing Committee, in person or remotely, included Judge J. Paul Oetken, Chair of the Joint Subcommittee on Attorney Admission; Professor Catherine T. Struve, the Standing Committee's Reporter; Professor Daniel R. Coquillette, Professor Bryan A. Garner, Professor Joseph Kimble, and Joseph F. Spaniol, Jr., Esq., consultants to the Standing Committee; H. Thomas Byron III, Esq., Secretary to the Standing Committee; Allison A. Bruff, Esq., Bridget M. Healy, Esq., and S. Scott Myers, Esq., Rules Committee Staff Counsel; Shelly Cox, Rules Committee Staff; Zachary Hawari, Law Clerk to the Standing

* Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, represented the Department of Justice (DOJ) on behalf of Deputy Attorney General Lisa O. Monaco.

Committee; Hon. John S. Cooke, Director of the Federal Judicial Center (FJC); and Dr. Tim Reagan, Senior Research Associate, FJC.

OPENING BUSINESS

Judge John Bates, Chair of the Standing Committee, called the meeting to order. He welcomed attendees and members of the public, including those who were attending remotely. He also welcomed new Standing Committee members Justice Edward M. Mansfield and Louis A. Chaiten, Esq. Judge Bates recognized Professor Joseph Kimble for his selection by the Michigan State Bar to receive the Roberts P. Hudson Award for his service to the Bar and legal profession. He also noted that Professors Kimble and Garner deserve a lot of credit for their work on restyling the federal rules.

Upon motion by a member, seconded by another, and without dissent: **The Standing Committee approved the minutes of the June 6, 2023, meeting.**

Mr. Thomas Byron, Secretary to the Standing Committee, noted that the latest set of proposed rule amendments had been submitted to the Supreme Court for review and, if all goes smoothly, will be transmitted to Congress in the spring to take effect on December 1, 2024.

Judge Bates remarked that it is good for the Standing Committee to be aware of the projects underway by the FJC and that a short memorandum regarding that work begins on page 94 of the agenda book. Dr. Reagan explained that the FJC assigns liaisons to various Judicial Conference committees and conducts empirical research for the committees. The FJC's role, he explained, is to contribute methodological expertise and objective research capacity without taking policy positions. Judge Bates thanked the FJC for the continuing support and superb research done on behalf of the Rules Committees.

JOINT COMMITTEE BUSINESS

Joint Subcommittee on Attorney Admission

Judge J. Paul Oetken, chair of the Joint Subcommittee on Attorney Admission and a member of the Bankruptcy Rules Committee, and Professors Struve and Bradt reported on this item. A written report starts on page 101 of the agenda book. The joint subcommittee is considering a proposal from Dean Alan Morrison and others to make admission to the bars of the federal district courts more uniform.

Professor Struve noted the joint subcommittee was in the early stages of its work and thanked its members, who represent the Bankruptcy, Civil, and Criminal Rules Committees. She explained that the Morrison proposal highlights the variation in the criteria for admission to the bars of district courts. It notes that many federal districts require membership in the bar of the state in which the district is located, and in four states this in effect requires that lawyers pass the local state bar exam in order to be admitted to the district court bar. The proponents point out that the admission requirements can be time consuming and expensive and that seeking admission pro hac vice can also be burdensome given varying local counsel requirements and fees. They argue there is no reason for a district court to require in-state bar admission. Their petitions for various restrictive districts to change their local provisions have been unsuccessful.

The proposal contains three options. Option One is to centralize attorney admission and discipline within the Administrative Office of the United States Courts (AO), allowing attorneys in good standing in any state bar to be admitted to practice in any federal district court. Option Two provides that admission in any district court would entitle an attorney to practice in all other districts but would not centralize the process within the AO. Option Three bars district courts from having a local rule that would require in-state bar admission as a condition of admission to practice in the district court.

Professor Struve explained that there have been periodic discussions about attorney admission criteria over the last 90 years. An attorney proposed a nationwide rule for the district courts in 2002, but it did not garner much rulemaking interest or discussion. In the early 2000s, Professor Coquillette examined the adjacent, but separate, topic of centralizing federal rules on attorney conduct, which received a lot of pushback. Professor Coquillette added that the DOJ was the moving party for the unified rules of attorney conduct, but every bar association was against it.

Professor Struve noted that Appellate Rule 46 is one model that already exists in the national rules. It provides for admission to the courts of appeals based on an attorney being of good moral and professional character and being admitted to practice in the United States Supreme Court, a state high court, or another federal court.

The joint subcommittee held its first meeting in October 2023. There was no interest in adopting Option One. There were questions of feasibility and concerns that a centralized office within the AO would lack the local knowledge and contacts required for effective attorney discipline proceedings.

There was some interest in Options Two and Three. In-state admission requirements are particularly burdensome, especially in states that require taking the bar exam for admission. But members were mindful of the local courts' interests in protecting the quality of law practice. Additionally, courts use admission fees for funding important work, and there could be revenue effects. The subcommittee was inclined to consider models with elements of Options Two and Three. There would likely still be separate applications to each district in which one wishes to practice and perhaps fees as well.

The subcommittee also recognized the need to be mindful of rulemaking authority and 28 U.S.C. § 1654, which refers to the rules of courts that permit attorney admission. However, the existence of Appellate Rule 46 suggests rulemaking on attorney admissions has not been foreclosed. Professor Coquillette recalled that some senators had offered to pass legislation giving the Rules Committees power to make rules involving attorney conduct. Going forward, the subcommittee plans to look further into these issues.

Professor Struve also reported that, in response to the agenda book materials, Dean Morrison and others explained that their primary goal is to eliminate barriers that prevent lawyers who are admitted to practice in one district from practicing in another. While not wedded to centralizing admission, they would suggest addressing district variation in how often attorneys must renew their licenses and how much the court charges. They have no interest in removing authority from individual districts to discipline attorneys.

Judge Bates explained that he populated the joint subcommittee with people from jurisdictions with different approaches so there will be a thorough examination through the subcommittee process. There are a lot of issues, and it is a pretty important matter for many courts across the country and for the Bar.

An academic member commented that Option Three has the most promise as there is no good reason today to require in-state bar admission. A practitioner member echoed that Option Three has the best chance of progressing. He acknowledged that there may be something to be served by requiring membership in the local bar but offered three points in support of something like Option Three. First, he noted that in-state bar admission is not a great proxy for experience. For example, he practiced in a particular district for years as an Assistant United States Attorney but was not able to be admitted as a private attorney because he was not barred in that state. Second, the concern around pro hac vice fees can be dwarfed by fees paid to local counsel. Third, reciprocity is not a full solution because defense attorneys must go wherever the case is.

A judge member made the point that spouses of military service members face extraordinary barriers when trying to maintain legal careers while moving around the country every few years. She emphasized the considerable difficulty and cost of admission to state bars and noted that many states already make exceptions to their bar requirements for military spouses. There is also a need to reduce the variable expenses, or possibly make an exception, for military spouses and others who cannot afford these expenses. Option Three should be the bare minimum and would show respect for military service members and their spouses.

Judge Bybee agreed that this project is well worth the effort to study. He noted, however, that diversity cases are an area in which attorneys need to know the state law. The state bar might object to an out-of-state attorney taking a matter from state court directly to federal court. That argument is less compelling for other forms of jurisdiction, but it is not clear how the rules could distinguish between diversity jurisdiction cases as opposed to other or mixed jurisdiction cases.

Professor Struve noted that the subcommittee had not yet considered the issue, but Dean Morrison's proposal attempted to rebut the diversity case argument in his submission.

Another judge member asked what it would cost to initiate Option One at the AO. She also asked about the range of fees across the country for admission pro hac vice, noting that such fees were a substantial source of court income in her district. She suggested that it might be desirable to encourage parity among those fees.

Professor Struve indicated the subcommittee had not conducted its own systematic study yet, but they had been informed that pro hac vice admission fees can reach $500 in some districts.

Another judge member questioned the aptness of the analogy between appellate and district practice given how circumscribed the responsibilities of counsel are on appeal as compared to litigation in the district court. Additionally, he would be cautious about making changes that would make cases less likely to feature repeat players; in his experience, the involvement of attorneys who are known to the court tends to increase the quality of practice.

Another judge member observed that there are many concerns wrapped up in this issue and many ways those concerns could be addressed. Option Three is the most promising. But it is

important to involve state bars in some respect because it is important for district courts and state bars to work together to monitor attorney practice and discipline. Option One is less preferable because it could lead to lower standards. She also noted that it has become more common for attorneys to practice remotely or in another close-proximity jurisdiction. Her district had an issue with attorneys who were living and practicing in the state but applying pro hac vice in every case, seemingly to get around the in-state bar requirement. If the rulemakers were to adopt an approach that mandates reciprocity, it may be that an attorney who lives in a particular jurisdiction for a certain amount of time should be required to be admitted to that bar, possibly with an exception for military spouses.

A practitioner member expressed sympathy for this proposal as someone who spends a great deal of time and money getting admitted pro hac vice in federal courts across the country. But he asked whether districts that require in-state bar admission justify that requirement based on better behavior from repeat, in-state attorneys. He also asked if the subcommittee had looked at whether it would be unauthorized practice of law for an attorney to litigate a lengthy diversity case in federal court without being admitted to that state's bar.

Professor Struve responded that the subcommittee had not yet looked into that issue but that it can.

A judge member noted that these issues are not limited to diversity cases. A federal case often has a federal claim with numerous state law claims under supplemental jurisdiction. There is a concern that, despite soliciting clients within a state, a national practitioner who can only represent clients in federal court might be less familiar with state law that can, at times, afford the plaintiff greater relief than federal law.

Judge Bates thanked the subcommittee for its work so far. He noted that the authority question is particularly important with respect to Option One but is not necessarily eliminated with respect to the other approaches. More examination needs to be done.

Judge Oetken thanked the members of the Standing Committee for their helpful comments.

Service and Electronic Filing by Self-Represented Litigants

Judge Bates introduced this agenda item, which appears on page 182 of the agenda book, and invited Professor Struve to provide an update.

Professor Struve reported that the pro se electronic filing and service working group is studying two topics: (1) whether to take steps to increase electronic access to the court for self-represented litigants by CM/ECF or otherwise and (2) whether self-represented litigants need to traditionally serve their papers on litigants who will receive a notice of electronic filings anyway. The report in the agenda book summarizes spring 2023 interviews that Professor Struve and Dr. Reagan conducted with officials in district courts. She expressed gratitude to Dr. Reagan and his colleagues for their work.

The working group hopes to develop concrete proposals on both issues for the advisory committees in their spring meetings. One potential proposal discussed in concept at the fall meetings, without eliciting immediate expressions of concern, was a rule that would set a baseline

requirement that districts that disallow CM/ECF access for self-represented litigants would need to make reasonable exceptions to that policy.

Electronic-Filing Deadlines Joint Subcommittee

Professor Struve reported on this topic. In 2019, Judge Michael Chagares proposed a study on whether the national rules on computing time should be amended to set the presumptive deadline for electronic filing earlier than midnight. In 2023, the Third Circuit adopted a local rule moving the filing deadline back in that court of appeals from midnight to 5:00 p.m. The E-Filing Deadlines Joint Subcommittee met in August 2023 and voted unanimously to recommend that no action be taken and that the subcommittee be disbanded. The Advisory Committees endorsed this recommendation at their fall meetings and removed the topic from their agendas.

Judge Bates asked if the Standing Committee had any objection to disbanding the joint subcommittee and putting this issue to rest for the moment. Hearing no objection, Judge Bates disbanded the joint subcommittee and removed the matter from the agenda. The Committee will monitor how things play out in the Third Circuit.

Redaction of Social Security Numbers

Mr. Byron reported that the advisory committee reporters have begun to discuss Senator Ron Wyden's proposal to require complete redaction of Social Security numbers in court filings, instead of the current requirement in the privacy rules of redacting all but the last four digits of those numbers. The reporters' discussions are still in the early stages.

Professor Marcus noted the likelihood that this project, and thus the Standing Committee, will need to confront the question of whether the various sets of rules should continue to take a uniform approach to this topic.

Mr. Byron elaborated that a desire for uniformity was one historical motivation for the current rules. The Bankruptcy Rules Committee had identified the last four digits of a Social Security number as being extremely valuable in bankruptcy cases for creditors and other participants. The other committees essentially deferred to the Bankruptcy Rules Committee on this issue and also required redaction of all but the last four digits. The working group is currently reconsidering whether uniformity is still a predominant concern that should overrule other concerns such as privacy or identity theft. There are also already some variations among the rule sets. One issue is whether the Criminal, Civil, and Appellate Rules Committees want to consider requiring full redaction.

Privacy Report

Judge Bates asked Mr. Byron to report on the status of the 2024 report to Congress.

Mr. Byron explained that the Judiciary has an ongoing statutory obligation to study and report to Congress every two years on the adequacy of the privacy rules. Rules Committee Staff has been working with staff from the Committee on Court Administration and Case Management (CACM) on the privacy report. CACM has requested some FJC research projects that are relevant

to this question, but those projects likely will not be completed in time to fully report their results to Congress this year.

Ideally, a draft report will be ready in time for the Standing Committee to consider and approve at the June meeting.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Bybee and Professor Hartnett presented the report of the Advisory Committee on Appellate Rules, which last met on October 19, 2023, in Washington, D.C. The Advisory Committee presented several information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 219.

Judge Bybee updated the Standing Committee on two proposals out for public comment. The Advisory Committee has received one comment on the proposed amendment to Rule 39. It has received no comments on the proposed amendment to Rule 6, which involves some very complicated changes dealing with direct appeals in bankruptcy cases. Judge Bybee thanked the Bankruptcy Rules Committee and others who commented on those changes prior to publication. The Advisory Committee will not hold hearings on Rules 6 and 36 due to a lack of requests to testify and expects to seek final approval from the Standing Committee in June 2024.

Information Items

Amicus Disclosures. Judge Bybee and Professor Hartnett reported on this item. The Advisory Committee hopes to have a proposal before the Standing Committee in June 2024.

Professor Hartnett provided background on the proposal. The Advisory Committee reviewed proposed legislation, the AMICUS Act, which would have treated repeat amicus curiae filers like lobbyists, requiring them to register and to disclose contributors who had provided 3% or more of their revenue. That approach was rejected by the Advisory Committee because there is a difference between lobbying and submitting a public amicus brief to which there is an opportunity to respond. On the other hand, sometimes judges care not only about the contents of an amicus's arguments but also who the amicus is.

The Advisory Committee has tried to balance disclosure with free speech and free association rights. The current draft recognizes the distinctions (a) between contributions by a party and by a nonparty and (b) between contributions earmarked for the preparation of a brief and contributions to the organization generally. For example, the 25% threshold for disclosure is meant to avoid discouraging speech and association while recognizing that this level of contribution could give the contributor real influence on the speech. Striking this balance also informed how to set a de minimis threshold amount for disclosure of earmarked contributions by a nonparty.

The Advisory Committee has narrowed down the questions at issue, and Judge Bybee reported on three recent developments.

First, as to the appropriate lookback period for determining contributions by a party, the Advisory Committee had considered whether the proposed rule should use a fiscal year or the 12-

month period preceding the brief's filing. Neither was perfect, but the Advisory Committee has arrived at an elegant solution and would welcome feedback. To determine the threshold contribution amount that would require disclosure, this approach would multiply the amicus's prior fiscal year revenue by 25% and see whether a party had contributed more than that dollar amount within the last 12 months. This effectively combines the two periods into a single, easily calculable figure and closes a potential loophole.

Second, the proposed amendment had incorporated language from the AMICUS Act that would have excluded from disclosure certain amounts received in the "ordinary course of business." But no one was sure what that language meant, and it did not seem essential. To simplify matters, the Advisory Committee has deleted that phrase from the proposed amendment.

Third, the current rule broadly requires disclosure of any contribution earmarked for a particular brief, but it exempts contributions by members of the amicus. That was seen by some as a loophole because it allowed someone to join an amicus at the last minute and avoid disclosure. The Advisory Committee proposed setting a de minimis contribution amount of $1,000 that would not be reportable even when earmarked for the preparation of a brief. This avoids problems arising with a GoFundMe-style amicus brief. For any contribution over $1,000, it must be disclosed unless it comes from someone who has been a member for at least 12 months. Anyone who has been a member for less than 12 months is treated like a nonmember.

Judge Bybee welcomed any input from the Standing Committee.

Judge Bates thanked Judge Bybee, Professor Hartnett, and the Advisory Committee for their work. This important project began with communications from members of Congress to the Supreme Court. The matter was referred to the Standing Committee and then to the Advisory Committee. It has a lot of ramifications and has drawn public and congressional interest.

A judge member agreed that these are elegant solutions and commended the Advisory Committee for its work. Regarding the last sentence of subdivision (d), she recalled the concern expressed about individuals joining an amicus for the purpose of contributing toward a brief. She inquired whether that is a problem, and, if so, whether such individuals would now get around having to disclose that they are funding a brief by creating a new amicus, rather than joining an existing one.

Judge Bybee explained the Advisory Committee's sense that there are people who are willing to form an amicus organization with a name that completely obscures who is behind it. To address this issue, under subdivision (d), while the amicus need not disclose the contributing members if the amicus has existed for fewer than 12 months, it must disclose the date of creation. There is also a new provision in Rule 29(a)(4)(D), requiring a concise description of the identity, history, experience, and interests of the amicus curiae, together with an explanation of how the brief and the perspective of the amicus will be helpful to the court.

A practitioner member commented that, unsurprisingly, there are people that see a case and would like to influence it without filing briefs in their own names, so they form organizations to do so. The disclosure of the date of creation is a check on this. It will flag to the reader that this is

an organization that does not have a long-standing interest or was formed for the purpose of filing an amicus brief if, for example, it was formed after the case was filed.

Another practitioner member added that nothing is perfect, but this solution does address the issue and provides relevant disclosure.

Another judge member also thought that the solution in subdivision (b) was elegant. However, the concern addressed in that subdivision (the relationship between the amicus and a party) was probably not the concern motivating the legislators who submitted the suggestion. It is more of a judicial-looking concern about the adversarial process. He expressed ambivalence on that issue because he was not sure how he would make better, or different, use of amicus briefs if he knew more about who was behind them beyond what they say and who the lawyers are.

Instead, subdivision (d) is directly responsive to the legislators' concerns, and some additions may be needed to guard against engineering to circumvent subdivision (d). For example, if someone funded an organization up front and it does the amicus briefing, would the amicus need to say anyone contributed funds for the brief? The Advisory Committee may want to consider something like submitting or drafting "briefs"—rather than "the brief," that is a particular brief—to capture an organization that is funded generally to file amicus briefs in a certain type of litigation.

A practitioner member wondered whether the $1,000 threshold is too high. It would not require that many like-minded payers each contributing $999 to fund a brief. If the focus is on GoFundMe campaigns, an amount in the $100 range might be more appropriate and make it much more difficult for a group of wealthy people to fund a brief through $999 contributions.

Judge Bates observed that a perfect product is not achievable here. He asked Judge Bybee to address another issue regarding whether to follow the Supreme Court in its recent change to permit amicus briefs without requiring leave of court or consent of the parties.

Judge Bybee explained that the current proposal follows the Supreme Court Rules in not requiring leave of court or consent of the parties. However, the Supreme Court recently issued its own ethics guidelines noting that it has different concerns from lower appellate courts due to the dynamics of disqualification. There is a rule of necessity at the Supreme Court under which the Justices will not regularly recuse due to amici, but that has not been the practice in courts of appeals. Large courts with sophisticated systems for identifying possible conflicts can fairly easily work around an amicus brief if it requires a judge's recusal at the panel stage. But it can be more complicated when the appeal progresses to en banc proceedings where an amicus could strategically file a brief to ensure the disqualification of a judge. The Advisory Committee is still thinking about these issues and would welcome thoughts on whether the rule should revert to the motion requirement to forestall the problem of a strategic en banc amicus filing.

Judge Bates remarked that he hoped that this discussion had been beneficial to the Advisory Committee's continuing efforts and that the Standing Committee would look forward to the next step.

In forma pauperis. Judge Bybee reported that the Advisory Committee has been working diligently and conducting surveys on in forma pauperis status and expected to have a proposal before the Standing Committee in June 2024.

Intervention on appeal. Judge Bybee reported that there is a subcommittee considering intervention on appeal. Although there is not yet a working draft, the subcommittee would appreciate getting a sense of where the Standing Committee stands on this issue. It is a controversial issue that has been studied by the Advisory Committee before, and it came up recently in the Supreme Court.

An academic member thought it would be a worthwhile undertaking to consider what a rule on intervention on appeal might look like. In teaching the relevant cases, he was surprised to learn about the system in the courts of appeals for handling intervention on appeal. They have tried to borrow Civil Rule 24, which itself has ambiguities and difficulties, to fit in the appellate structure. That might be fine because intervention on appeal should not be common. But he would encourage the Advisory Committee to think through this issue, which has come up so frequently in the last few years.

Judge Bybee thanked the Standing Committee for its comments, and Judge Bates thanked Judge Bybee and Professor Hartnett for their report.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Connelly and Professors Gibson and Bartell presented the report of the Advisory Committee on Bankruptcy Rules, which last met on September 14, 2023, in Washington, D.C. The Advisory Committee presented three action items and several information items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 249.

Judge Connelly reported that the Advisory Committee has been active, engaged, and productive. She thanked the reporters for the terrific job they have done.

Action Items

Proposed amendment to Rule 1007(h) (Interests in Property Acquired or Arising After a Petition Is Filed). Judge Connelly reported on this item. The text of the proposed amendment appears on page 256 of the agenda book.

Generally, everything a debtor owns becomes part of the bankruptcy estate. Rule 1007 sets a timeline for the debtor to file schedules of the estate's property. It also provides a deadline and mechanism for filing a supplemental schedule for certain types of property interests listed in Bankruptcy Code Section 541(a)(5) that the debtor acquires within 180 days after filing the petition.

However, bankruptcy cases under Chapters 11, 12, and 13 of the Code can take three to five years or longer to resolve, and property the debtor acquires during this period is also property of the estate. The proposal would amend Rule 1007 to account for supplemental schedules to list

those other postpetition property interests that the debtor acquires and that become property of the estate under Bankruptcy Code Section 1115, 1207, or 1306.

Courts have been managing this issue through local rules and administrative orders, and this rule would dispel any concern about whether local courts have the authority to do so. Local management is important because courts have different interpretations about whether a debtor has an ongoing obligation to report postpetition acquisitions other than what is currently required under Rule 1007(h). The Advisory Committee did not want to adopt a particular position on those questions. The proposal also serves to put the debtor and counsel on notice that the court might require the filing of a supplemental schedule.

An academic member commented that this seems like an opportunity to fill a gap in the rules. He recalled researching cases where, for example, a debtor has a valuable cause of action, seeks to pursue it post-bankruptcy, and could be estopped from asserting it later for failure to disclose it. However, given that case law has developed, he questioned whether there is a need for rulemaking. He does not object to publication but is nervous about unintended consequences.

Professor Bartell noted that this proposal does not address judicial estoppel for a cause of action that a debtor had at the time of filing the petition and failed to disclose. It only addresses postpetition assets. It is a weaker version of the original proposal, which would have created a mandatory rule for disclosure. That created problems with how to craft a test for what to disclose. Instead, this proposal empowers local courts to impose a disclosure requirement if they wish to do so.

Professor Gibson added that courts disagree about whether, in the absence of a request by a party, a U.S. trustee, or the court, a debtor in this situation has a continuing duty to reveal postpetition property. It would be helpful for courts that believe there is such a continuing duty to make that fact clear, because failure to satisfy that duty could lead to judicial estoppel.

Judge Connelly sought approval to publish the proposed amendment for public comment. Upon motion by a member, seconded by another, and without opposition: **The Standing Committee gave approval to publish the proposed amendment to Rule 1007(h) for public comment.**

Proposed amendment to Rule 3018 (Chapter 9 or 11—Accepting or Rejecting a Plan). Judge Connelly reported on this item. The proposed amendment starts on page 258 of the agenda book.

Rule 3018 governs creditor acceptance or rejection of a Chapter 9 or Chapter 11 plan for reorganization. Although Chapter 9 municipal reorganizations are pretty rare, Chapter 11 reorganizations are very common. (Chapter 11 reorganizations ordinarily involve a business debtor but could involve an individual debtor.) Plan confirmation criteria will be different depending on whether creditors have accepted the plan.

Under Rule 3018, creditors have an opportunity to vote on a plan by indicating acceptance or rejection through a written ballot. The proposal would amend subdivisions (a) and (c) to permit courts to also consider an acceptance—or the change or withdrawal of a rejection—that is made

by a creditor's attorney or authorized agent and is part of the record. That can be done orally at the confirmation hearing or by stipulation.

This proposal addresses two common practices. First, parties are often heavily involved in negotiations leading up to the plan confirmation hearing. This proposal would facilitate effective negotiations by allowing the court to consider acceptances at the confirmation hearing reflecting those negotiations. Second, creditors are not required to vote, and some do not vote at all for a variety of reasons. Most, but not all jurisdictions, do not treat a nonvote as an acceptance. This proposal would reduce the practical difficulties of submitting a written ballot in a four-to-five-week period. While that turn-around time has not proven a challenge for the private sector, it may be a barrier for the government, which is the least likely creditor to vote. Among other reasons not to vote, getting authorization from the Secretary of the Treasury in that timeframe may present an issue for the IRS. This rule would create a potential opportunity for the IRS to participate by authorizing the DOJ to accept a plan.

This proposal is particularly important for small businesses. Subchapter V of Chapter 11 was enacted in 2020 to allow a special fast track for small businesses that cannot typically afford regular Chapter 11 practice. If a subchapter V plan is confirmed as consensual with sufficient acceptances, discharge occurs, the debtor may exit Chapter 11, and the subchapter V trustee's service ends. That means the small business is not burdened with continuing administrative expenses. In contrast, if there are not sufficient acceptances, the debtor does not get an immediate discharge and must remain under the court's purview throughout the plan period. The subchapter V trustee is also the disbursing agent throughout this process. So, there are administrative expenses, and remaining in Chapter 11 for multiple years may have an impact on the business.

Judge Connelly acknowledged that the government expressed concern about this proposal during the Advisory Committee's discussions. The Advisory Committee felt publishing the proposal would provide useful feedback and give the government more time to review it.

Ms. Shapiro explained that the government opposed the proposal in the Advisory Committee because it was concerned that the rule change would pressure the government to accept plans that it lacks the resources to fully review. There was also concern that the change from requiring written acceptances to permitting oral acceptances might result in judges pressuring Assistant United States Attorneys to accept a plan that was not able to go through the process for government review and approval. That said, the government will vote in favor of publication, and it intends to submit a letter to the Advisory Committee setting out its concerns.

A judge member expressed that, while he had no issue with the rule, he wondered whether its structure worked. Current Rule 3018(a)(3) seems to require cause for any change or withdrawal of acceptance or rejection. The proposed additional text in Rule 3018(a)(3)—"The court may also do so as provided in (c)(1)(B)"—appears to permit the court to permit the change or withdrawal of a rejection without cause. It seems the tail has grown much larger than the dog here.

Professor Gibson acknowledged the judge member's point. She noted that courts are already accepting settlements and changes from rejections to acceptances at the confirmation hearing even without the rule explicitly allowing it.

Judge Connelly sought approval to publish the proposed amendment for public comment. Upon motion by a member, seconded by another, and without opposition: **The Standing Committee gave approval to publish the proposed amendment to Rule 3018(a) and (c) for public comment.**

Proposed amendment to Official Form 410S1 (Notice of Mortgage Payment Change). Judge Connelly reported on this item. The proposed revised form starts on page 260 of the agenda book.

Proposed amendments to Rule 3002.1, which require mortgage creditors in a Chapter 13 case to disclose payment changes and other details that occur over the course of the case were published for public comment in 2023. The proposal addresses home equity lines of credit (HELOCs), among other issues. There can be a lot of variation in HELOC payments, and the proposed rule would allow the notice of change to be made either at the time of the change or annually with a reconciliation amount.

One of the public comments to Rule 3002.1 noted a need to update the official form to implement this change. The forms subcommittee determined that Official Form 410S1 should be revised to provide space for an annual HELOC notice at Part 3. If the proposed amendment is published in 2024, the form will be on the same timeline to take effect as proposed Rule 3002.1.

Judge Connelly sought approval to publish the proposed amendment for public comment. Upon motion by a member, seconded by another, and without opposition: **The Standing Committee gave approval to publish the proposed amendment to Official Form 410S1 for public comment.**

Information Items

Judge Connelly stated that none of the information items mentioned in the Advisory Committee's report required approval or specific feedback at this time. She elaborated on two items.

Reconsideration of proposed Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case). At the June 2023 Standing Committee meeting, Judge Connelly requested permission to publish extensive changes to Rule 3002.1, including amendments to the subdivision addressing noncompliance that would authorize the court to enforce the rule by awarding noncompensatory sanctions. There was a robust discussion at the meeting, and, at Judge Connelly's request, Rule 3002.1 was published for comment without the provision on noncompensatory sanctions so that the Advisory Committee could discuss the points raised by the Standing Committee.

The Advisory Committee will defer further discussion of that subdivision for now, pending consideration of the public comments on Rule 3002.1 and further development in the case law.

Remote testimony in contested matters. The Advisory Committee is considering a proposal to address the procedure for a bankruptcy judge to permit remote testimony in contested matters in bankruptcy cases. The proposed amendments were discussed in September, but the Advisory Committee deferred any recommendation so that certain Judicial Conference

committees, particularly CACM, could be informed and have an opportunity to provide input. The Advisory Committee plans to consider the proposal further at its meeting in April, and there will probably be an agenda item on this topic for the Standing Committee's meeting in June.

Professor Marcus observed that Civil Rule 43(a)'s strong presumption in favor of non-remote open-court testimony might in future be altered based in part on experience under the Bankruptcy Rules.

Judge Bates thanked Judge Connelly and the Advisory Committee.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Rosenberg and Professors Marcus and Bradt presented the report of the Advisory Committee on Civil Rules, which last met on October 17, 2023, in Washington, D.C. The Advisory Committee presented several information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 288.

Judge Rosenberg updated the Standing Committee on proposals out for public comment. In August 2023, proposed amendments to Rules 16 and 26, dealing with privilege log issues, and a new Rule 16.1 on multidistrict litigation (MDL) proceedings were published for public comment. Public comments can be viewed on the regulations.gov website, and a summary of the comments will be provided in the Advisory Committee's spring agenda book. The Advisory Committee is holding three public hearings on these changes. Twenty-four witnesses testified at the first hearing, which was held in person in Washington, D.C., on October 16, 2023. The next two hearings are scheduled for January 16 and February 6, 2024, and will be conducted remotely. So far, there have been 16 written submissions for the January 16 hearing and 32 witnesses scheduled to testify. Another 24 witnesses are currently scheduled for the February hearing.

Information Items

Rule 41 Subcommittee. Judge Rosenberg and Professor Bradt reported on this item.

Judge Cathy Bissoon chairs the subcommittee considering Rule 41(a). There is a circuit split about the meaning of the word "action" in Rule 41(a)(1)(A), which allows the plaintiff to dismiss an action by filing a notice or stipulation of dismissal. Some courts only allow an entire action to be dismissed, not a claim or an action against a particular party. Those courts require an amendment under Rule 15 for dropping anything less than the entire action.

The subcommittee has engaged in outreach to several attorney groups since the last report to the Standing Committee, including Lawyers for Civil Justice, the American Association for Justice, and the National Employment Lawyers Association. The subcommittee also sent a letter to federal judges through the Federal Judges Association. There were only eight responses, which were somewhat ambivalent and reflected different interpretations of the rule.

Judge Rosenberg reported that, to date, there have been sketches of possible rule amendments but no concrete proposals. There will be a subcommittee meeting before the April Advisory Committee meeting, and it is possible that the subcommittee may agree upon a proposal

to present to the full committee. An amended rule could clarify how much leeway a plaintiff has to dismiss something less than the entire action and whether that should extend to individual claims. Tangential considerations include the deadline by which a plaintiff can voluntarily dismiss without a stipulation or court order, who must sign a stipulation of dismissal, and which dismissals should be with or without prejudice.

Professor Bradt added that in the subcommittee's extensive outreach, the first question was whether there is a real-world problem for litigants. The answer seems to be yes, particularly in jurisdictions that interpret the rule to allow voluntary dismissal only of the entire action. That often leads to makeshift solutions, serial amendments to complaints, and follow-on motion practice and pleadings. The rough consensus of the members of the subcommittee seems to be that the rule ought to be more flexible than limiting dismissal to the entire action, but the degree of flexibility will be debated at upcoming meetings.

Discovery Subcommittee. Judge Rosenberg and Professor Marcus reported on this item. Chief Judge David Godbey chairs the Discovery Subcommittee. Judge Rosenberg noted that a number of issues were being considered by the subcommittee.

Serving subpoenas. The first issue is service of subpoenas under Rule 45(b)(1), and discussion begins on page 294 of the agenda book. There is some ambiguity on whether service is satisfied by something other than in-hand service. The prior Rules Law Clerk prepared an extensive memorandum on the requirements in state courts. There was no consistent thread to provide guidance, but the subcommittee has concluded that the rule's ambiguity has produced sufficient wasteful litigation activity to warrant an effort to clarify the rule.

The subcommittee's consensus was that requiring in-person service in every instance was not desirable. The proposed sketch at page 295 in the agenda book materials would permit subpoena service by any means of service authorized under Rule 4(d), (e), (f), (h), or (i), or authorized by court order or by local rule if reasonably calculated to give notice.

Professor Marcus noted that this is a work in progress. At the Advisory Committee meeting, the DOJ raised concerns about the inclusion of Rule 4(i), and the Advisory Committee expects to hear more.

Filing under seal. Judge Rosenberg reported that the next issue relates to filing under seal. The Advisory Committee has received a number of submissions urging that the rules explicitly recognize that a protective order under Rule 26(c) invokes a good cause standard, rather than the more demanding standards in the common law and First Amendment context for sealing court files. The subcommittee discussed making an explicit distinction between filing under seal and the issuance of a protective order for materials exchanged through discovery. It has developed a proposed sketch for Rule 26(c)(4) and Rule 5(d)(5), appearing on page 297 of the agenda book, and feedback would be welcome.

The Advisory Committee discussed that making it more difficult to file under seal could prove troublesome in litigation with highly confidential, technical, and competitive information. The attorney members stressed the variation across districts. There were also suggestions to consult with clerks' offices since they are essential to the day-to-day handling of these issues.

Professor Marcus observed that the aspect of the draft proposal that emphasizes that existing Rule 26(c) does itself not authorize filing under seal had been discussed in previous years. He suggested that the Standing Committee's input would be particularly useful on the further sketches presented in the agenda book at pages 300-03 concerning procedures for handling motions to seal. Such procedural questions include (1) whether the motion to seal must be filed openly, (2) whether materials can be filed under a tentative or preliminary seal to meet deadlines, (3) whether the party seeking to file under seal needs to give notice to anyone with a confidentiality interest, (4) what happens if the motion to seal is not granted, (5) when the seal will be removed, (6) whether a member of the public can intervene to seek to unseal sealed materials, and (7) whether a party can retrieve its sealed materials from the court's file after termination of the action (and how such a retrieval would affect the record in the event of an appeal).

A practitioner member commented that this is a complicated topic. While a lot of cases have confidential information, there is a lot of over-designation, and if parties are persistent about sealing, it can come down to how much the other party or the court wants to push back. Certain kinds of cases may also present various First Amendment issues, which should not be defined by rule. The member wondered whether the rule should set a floor while the Committee Note could recognize that First Amendment or other concerns could lead the court to be more aggressive in policing sealing.

A judge member emphasized the great inconsistency in case law as to the difference between protective orders and sealing orders. She also noted that district courts will likely apply a different standard in criminal cases (for example, as to plea and sentencing issues) than they do in civil cases. There is a need for guidance concerning what a court ought to consider when thinking about a sealing order and whether it should be different in civil and criminal cases. She added that it can be a significant technical challenge for the clerk's office when a party requests for only part of a large filing to be sealed.

Alluding to the work (more than a decade previously) of the Standing Committee's Privacy Subcommittee, Professor Marcus recalled that there had been considerable concern over access to information in presentence reports; but this, he observed, is not the Civil Rules Committee's focus. The sketch also was not intended to alter the scope of First Amendment and common law rights to access court documents.

Another judge member commented that the motion should tell the court why the records need to be sealed. It would not be possible to set a hard-and-fast rule governing whether the motion to seal can itself be filed under seal. There should be no taking back of documents once filed on CM/ECF. If a motion is denied, the party can refile it in a manner consistent with what the court ordered. Otherwise, the material should remain inaccessible and effectively under seal but not able to be used in the case. That preserves the record for appeal. Professor Marcus asked if the bracketed language in the sketch that says "unless the court orders otherwise" (page 300, line 409 in the agenda book) would work. The judge member agreed that would make sense and the party can request that it be filed under seal and give a reason why.

Judge Bates observed that this is a very complex, large project for the Advisory Committee and its subcommittee. It is also a fairly difficult area because any rule would have tremendous

effects on the various districts and their local rules. Because of the inconsistency, it would require revision of local rules, as well.

Cross-border discovery. Judge Rosenberg and Professor Marcus reported that consideration of cross-border discovery is in the very early stages. The proposal comes from Judge Michael Baylson, who presented at the Advisory Committee's October meeting. He and Professor Gensler have prepared an article published in *Judicature* entitled "Should the Federal Rules Be Amended to Address Cross-Border Discovery?" They propose that the Advisory Committee should consider how the Civil Rules could better guide judges and attorneys in cases involving foreign discovery. The Sedona Conference submitted a letter in support.

The Advisory Committee recognized that this will be a major undertaking but felt it is worth pursuing. This topic may not be limited to discovery and evidence gathering and could implicate Rule 44.1, regarding proof of foreign law, and service of process. A new subcommittee chaired by Judge Manish Shah has been appointed to undertake this project. The first subcommittee meeting will be in January.

When, in the 1980s, the rulemakers sent to the Supreme Court a proposed amendment dealing with discovery for use in U.S. cases, the United Kingdom objected, the Court returned the proposal to the rulemakers, and no further action was taken. Professor Marcus observed that in *Societe Nationale Industrielle Aerospatiale v. U.S. District Court*, 482 U.S. 522 (1987), the Supreme Court refused to require first resort to the Hague Convention procedures for foreign discovery and allowed the federal courts to use the Federal Rules as to the parties before the American court. The proposed rule was criticized as following the view of the dissent in *Aerospatiale* rather than the view of the majority. However, things have changed significantly since the 1980s due to the increase in discovery of digital materials. Professor Marcus noted that, more recently, Judge David Campbell successfully used the Hague Convention procedures in a case before him.

Professor Marcus also observed that a separate statute, 28 U.S.C. § 1782, governs U.S. discovery for use in proceedings abroad. The subcommittee will also consider whether to address that topic.

Professor Marcus asked for suggestions about what to do and who might be an expert on this subject.

A judge member recalled listening to Judge Baylson and Judge Lee Rosenthal discussing this topic. Judge Baylson is very knowledgeable and has dedicated a great deal of considerable thought to it.

Ms. Shapiro noted that the DOJ has a great deal of experience with cross-border discovery and mutual legal assistance requests. It was noted that Joshua Gardner will represent the DOJ on the subcommittee.

Rule 7.1 Subcommittee. Judge Rosenberg reported that the subcommittee is considering suggestions from Judge Ralph Erickson and Magistrate Judge Patricia Barksdale, prompted by the concern that the recusal statute potentially covers significantly more situations than the disclosure requirement in Rule 7.1(a). The Rule 7.1 Subcommittee, chaired by Justice Jane N. Bland, was

created in March 2023 to consider whether a rule amendment is needed to better inform judges of the circumstances that might trigger the statutory duty to recuse.

Currently, Rule 7.1(a) provides for disclosure of any parent corporation of a party and any publicly held corporation owning 10% or more of a party's stock. In contrast, the recusal statute, 28 U.S.C. § 455(b)(4), provides that a judge shall recuse when he knows that he, individually or as a fiduciary, or his spouse or his minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding. The statute defines "financial interest" as ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party.

To address this potential gap, Judge Erickson suggested requiring disclosure of grandparent corporations. Magistrate Judge Barksdale proposed requiring that parties check all the judge's publicly available financial disclosures and file a notice of any conflict.

The Advisory Committee has also considered the local rules from the 50 district courts that have rules on this subject, which are catalogued in a memorandum from a former Rules Law Clerk. There are a few options being considered.

The Judicial Conference's Codes of Conduct Committee has indicated that the Advisory Committee's consideration of a potential rule amendment would not conflict with its work. There is also relevant pending legislation, the Judicial Ethics and Anti-Corruption Act of 2023, which would bar a justice or judge from owning any interest in any security, trust, commercial real estate, or privately held company, with exceptions for mutual funds and government (or government-managed) securities.

The subcommittee plans to meet before the full Advisory Committee meeting in April with the goal of presenting a proposed amendment, if any is deemed necessary, at the April meeting.

Professor Bradt explained that the drafting challenge—and where Standing Committee feedback would be helpful—is in figuring out language to sufficiently capture the full range of circumstances in which a judge might be required to recuse without making the disclosure requirement unduly burdensome. One problem with only requiring disclosure of a parent corporation is that there might still be a grandparent company or other related entity giving the judge a financial interest.

There have also been concerns that it would be difficult for a rule to capture the everchanging landscape of financial instruments and business associations. Local rules have taken a wide variety of approaches. Some local rules expand the general categories of entities to be disclosed beyond those in Rule 7.1(a), using words like "affiliation" or "entity." Others require disclosure of defined financial relationships, like an insurer or third-party litigation funder. Another option is to require disclosure of entities owning a percentage of stock smaller than 10%. The 10% ownership threshold in the current rule is thought to serve as a proxy for control. A lower percentage might better capture the financial interest requirement of the recusal statute.

Judge Bates observed that, while there was no feedback from the Standing Committee right now, there is more work to do, and that may engender some feedback in the future.

Random Case Assignment. Judge Rosenberg and Professor Bradt reported on this item. The Advisory Committee decided at the October meeting to accept the random assignment of cases as a project to explore. Attention on this issue has increased due to concerns that in high-profile cases, especially cases seeking nationwide injunctions against executive action, plaintiffs are engaged in a form of forum shopping, particularly in single-judge divisions of district courts.

The Brennan Center for Justice submitted a proposal urging the adoption of a rule to require the randomization of judicial assignment within districts for certain civil cases. Others have also expressed interest in this topic. In July 2023, nineteen United States senators sent a letter to Judge Rosenberg. The following month, the American Bar Association (ABA) adopted a resolution urging federal courts to implement district-wide random case assignment. The House and Senate Judiciary Committees have also held hearings on issues related to nationwide injunctions and forum shopping.

Judge Rosenberg noted that there are questions about whether a national rule can require reallocation of business among divisions of a district court or whether, under 28 U.S.C. § 137, such questions are beyond the scope of rulemaking. Since the October meeting, Professor Bradt has been researching the threshold consideration of whether this is an area for potential rulemaking.

Professor Bradt set out a sequence of relevant questions to consider. First, would a rule on this topic be a general rule of practice and procedure such that it falls within the Rules Enabling Act (REA)'s grant of rulemaking authority? Second, if so, should the supersession clause of the REA be invoked to override the provision in Section 137 giving districts local control over the division of their business? There are also statutory provisions governing the structure of district courts, including divisions, and, for prudential reasons, the Advisory Committee has avoided rulemaking in this area. There are further prudential questions of whether the Advisory Committee ought to act and, if so, what a rule might look like.

In tailoring any potential rule, it would be necessary to define the problem they would be seeking to solve. That is, in which kinds of cases should a rule impose a random case assignment requirement? The Brennan Center submission suggested that a rule should encompass any case in which a party seeks injunctive relief that may have an effect outside the district. The ABA suggested any case in which the United States is a party. Various local rules identify particular subject matters of cases.

Professor Bradt requested feedback from the Standing Committee about whether this is an appropriate subject for rulemaking.

Judge Bates commented that this is obviously an issue of great importance to the Judiciary. These initial issues of authority and prudential considerations of whether this is something that should be addressed through the rules process are very important and need to be thought about at the outset.

A judge member noted that there might be some benefit to working on this issue, even if it turns out not to be within the scope of authority of the Rules Committees. There might be a future legislative proposal on this topic at some point, and it would be nice to have had a committee like

this advance its thinking so that the Judiciary might be able to make suggestions to Congress. A practitioner member agreed. There is a need for objective analysis of what might be done. Although a little out of order, coming up with some ideas of what a solution might be, even if we ultimately do not act, could contribute to informing other actors who might be more able to do something directly. Judge Bates agreed that it can be illuminating to other possible actors that the Rules Committees are looking seriously at an issue and that they have some ideas as to how it can be approached.

Ms. Shapiro noted that the DOJ sent the Advisory Committee a letter in December formally taking the position that rulemaking on this subject is within the grant of authority in the REA. Judge Rosenberg commented that the DOJ's extensive and helpful letter came in after the agenda book materials were put together. Judge Bates agreed the letter was comprehensive and thoroughly addressed the authority question although it did not address the important prudential issues as much.

Professor Hartnett flagged a terminology issue. Although commentators often use the term "nationwide injunction," the problem is not an injunction's geographic scope. An injunction in a patent case barring one party from infringing the other's patent standardly does apply outside the district of the court that entered the injunction. The concern is that the injunction reaches beyond the parties. Using the terminology of "nonparty" injunction is more accurate and reduces the risk of a rule that does not address the real problem.

Another practitioner member echoed Professor Hartnett's observation that it is important to think carefully about the problem the Advisory Committee might target. But "nonparty" does not solve the issue of forum shopping to enjoin the United States.

Professor Hartnett clarified that the problem with injunctions against the United States arises when the injunction is read not only to enjoin the United States with regard to a particular plaintiff, but also with respect to nonparties.

Professor Coquillette commented that the prudential consideration is central. When Congress gets involved by making a rule directly, style and consistency can suffer, so it is a fundamental principle that the Rules Committees should be cautious about issues that Congress is considering.

Demands for Jury Trials in Removed Actions. Judge Rosenberg and Professor Marcus reported on this item. A 2015 suggestion focused on the 2007 restyling project's change in the tense of a verb in Rule 81(c). When this submission was initially presented to the Standing Committee in 2016, two members of the Standing Committee proposed a change to Rule 38 to change the default rule so that parties need not demand a jury trial. Such a change would have obviated the need to consider the underlying Rule 81(c) suggestion. After considerable research by the FJC, the Advisory Committee decided not to propose a change in Rule 38's default rule on jury demands, and that proposal was removed from the Advisory Committee's agenda. The Advisory Committee will consider the Rule 81(c) suggestion again at its April meeting, but the Standing Committee need not spend time on it right now.

Other topics. Judge Rosenberg and Professor Marcus reported on a few issues that the Advisory Committee lacked the capacity and resources to consider presently but that remained on its agenda.

The Advisory Committee has paused consideration on a Civil Rule 62(b) suggestion related to notice of premiums for supersedeas bonds. The proposal comes from the Appellate Rules Committee after it published a proposed change to Appellate Rule 39 in response to a Supreme Court decision. This issue is discussed in the agenda book starting on page 316. Judge Bates observed that the Appellate Rules Committee believes there is a possible need for a change to Civil Rule 62 but that the Civil Rules Committee was not as sure. He invited the advisory committees to continue discussing the subject outside the context of this meeting.

Another information item concerned a proposal about attorney's fee awards for Social Security appeals. Professor Marcus noted that the Supplemental Rules for Social Security cases only went into effect about a year ago. Moreover, one district is considering a local rule on this topic. Further experience could inform any later rulemaking efforts; in the meantime, the Advisory Committee does not recommend action on this proposal.

Professor Marcus directed the Committee's attention to the discussion in the agenda book (starting at page 328) of items to be removed from the Advisory Committee's agenda.

Judge Bates thanked Judge Rosenberg and the reporters for the thoroughness of their report on many important subjects.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Dever and Professors Beale and King presented the report of the Advisory Committee on Criminal Rules, which last met on October 26, 2023, in Minneapolis, Minnesota. The Advisory Committee presented three information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 367.

Information Items

Rule 17 and pretrial subpoena authority. Judge Dever reported that Judge Nguyen chairs the subcommittee examining potential changes to Rule 17 concerning subpoenas. There was a conference in October 2022 where the subcommittee gathered information about whether there is a problem with Rule 17, whether there are differences from court to court in the application of Rule 17, and how the *Nixon* standard of relevance, admissibility, and specificity is being applied. It has continued to gather information about this issue from experts and attorneys in industries associated with potentially relevant issues, such as the Stored Communications Act.

The subcommittee is now in the drafting process and has a meeting scheduled in February to discuss specific language. There are some basic principles outlined on page 369 of the agenda book. For example, there needs to be judicial supervision of any subpoena issued because it carries the authority of the court. The rule also needs to distinguish between personal or confidential information and other information. There should also be an option for an ex parte process.

Rule 23 and government consent to bench trials. Judge Dever reported on this item. To have a bench trial, Rule 23(a) currently requires a written request from the defendant, the consent of the United States, and the approval of the court. The Federal Criminal Procedure Committee of the American College of Trial Lawyers proposes removing the government from that process when the defendant can provide reasons sufficient to overcome the presumption in favor of a jury trial.

The Advisory Committee had questions about the proposal at its April 2023 meeting and gathered information from the DOJ and the defense community. The Advisory Committee discussed the findings at its meeting in October. The proposal initially suggested there might be a backlog of cases due to the pandemic, but that turned out not to be the case. Only eight of the 94 districts said there was something of a backlog. But any rule change would not happen soon enough to address it. The Advisory Committee also learned that there is not a uniform DOJ policy on whether the government consents to a bench trial, and it varies by United States Attorney. In some districts the United States Attorney's Office always prefers a jury trial.

The Advisory Committee also discussed the leading Supreme court case addressing Rule 23, *Singer v. United States*, 380 U.S. 24 (1965), which recognized that the court could order a bench trial over the government's objection where there were compelling reasons associated with a defendant's need to get a fair trial. There were also a couple of cases that arose during the pandemic in which a court invoked the *Singer* language. The Advisory Committee could not find sufficient space between the *Singer* standard and other reasons that would be sufficient to overcome the presumption in favor of a jury trial.

The Advisory Committee voted overwhelmingly, but not unanimously, to remove this item from its agenda.

Judge Dever explained that the Advisory Committee also discussed the defense bar's concern that defendants were not receiving an acceptance of responsibility credit when they only went to trial to preserve a suppression issue for appeal. It viewed this as a Sentencing Guidelines issue, rather than an issue with the Federal Rules of Criminal Procedure.

Professor Beale recalled that the Advisory Committee discussed notifying the United States Sentencing Commission about this issue, but there was a question about whether such communication should come from the Criminal Rules Committee or the Standing Committee.

Judge Bates remarked that the mechanism of a communication to the Sentencing Commission could be worked out if the Advisory Committee thought it was a good idea and the Standing Committee agreed. The question was whether the Standing Committee agreed that the Sentencing Commission should be informed that the Advisory Committee thought an issue exists with respect to the acceptance of responsibility credit.

Professor Beale noted that some judges already give an acceptance of responsibility credit in this circumstance, but defense counsel reported that they frequently cannot get the credit. The Advisory Committee does not believe there is a uniform practice. But the Advisory Committee did not conduct an in-depth study on the issue and preferred to ask the Sentencing Commission to examine it.

Judge Dever added that U.S.S.G. § 3E1.1 currently gives the judge discretion. It does not say that a defendant who goes to trial cannot get the credit. But in the Commentary to § 3E1.1, the Application Notes do not include an example for giving the defendant credit after going to trial to preserve an issue for appeal. The Advisory Committee was unsure if the Sentencing Commission could amend the Application Notes to add an explicit example of this.

Judge Bates commented that the Advisory Committee's observation was that it would be a good idea to communicate to the Sentencing Commission that this seems to be an issue that might merit some examination, but not to make any specific recommendation.

A judge member asked for clarification on what would be communicated as a good idea. Is it that, if anyone is going to look at this issue, it should be the Sentencing Commission as opposed to the Rules Committees? She noted that judges have a lot of discretion at sentencing, and it is important to present this as an issue for the Sentencing Commission without taking a position.

Another judge member asked if the proposition was to formally communicate a concern.

Judge Bates asked the Advisory Committee to word the proposition.

Professor Beale stated that concerns were raised at the Advisory Committee's meeting about this issue. The Advisory Committee felt it was not a Criminal Rules issue but wanted to communicate those concerns to the Sentencing Commission. The Advisory Committee would take no position on whether the Sentencing Commission should do something. Rather, it would transmit those concerns, saying that the issue is not properly addressed to the Rules Committees.

Judge Dever commented that the Advisory Committee would be happy to send a letter to the Sentencing Commission but that it did not want to get ahead of the Standing Committee.

Judge Bates thought it was important for the Standing Committee to know whether the concern came from the Advisory Committee or only some of its members.

Professor King responded that the concern was raised by several members of the Advisory Committee. At the end of the discussion, Judge Dever asked the Advisory Committee about sending something to the Sentencing Commission. There was committee-wide agreement that the appropriate place to resolve this concern was at the Sentencing Commission and that it was important enough that the Advisory Committee wanted it to be conveyed. At the end of the meeting, Judge Bates and Judge Dever had a conversation about who should do it.

Judge Bates clarified that the communication, which might come from the Standing Committee or the Advisory Committee, would be a factual recitation—namely, that these concerns were raised but the Advisory Committee felt that they were more appropriately addressed to the Sentencing Commission.

A judge member stated that he does not see the role of the Standing Committee as being a clearinghouse of concerns and suggestions. Usually, the Rules Committees do not refer things along. They tell the suggester when they have come to the wrong place. Consequently, when one of the Rules Committees formally refers something to another governmental body, that referral conveys that the committee has a serious concern that should require more attention than it might

have received otherwise. There might be occasions on which the Rules Committees would make such a referral, but they should only do so after employing the same sort of vetting process that they use when making recommendations on rules. There may be other sides to the issue. For example, he suspected some United States Attorneys might have a different perspective than the defense counsel who had voiced concerns.

In light of the last-mentioned comment, Judge Bates asked Ms. Shapiro whether she had any comments to contribute on behalf of the DOJ. She did not. Professor Struve commented that a DOJ representative at the Advisory Committee meeting had observed that this issue might belong with the Sentencing Commission.

Judge Bates commented that they may be making more out of this issue than was needed. In fairness to the Advisory Committee, it was doing the right thing by checking with the Standing Committee. Judge Bates asked if there were any other concerns with the Advisory Committee sending something to the Sentencing Commission indicating the issue had come up and that the view was that it should be referred to the Sentencing Commission for any further exploration.

The judge member with the prior concern cautioned against creating a precedent of the Advisory Committee referring matters even if it includes a referral statement that the committee was not taking any position. But he acknowledged that the disclaimers would ameliorate the concern that a referral would come with a recommendation.

Judge Bates observed that this was a little different from what typically happens when a Rules Committee, possibly through the Rules Committee Staff, coordinates with another Judicial Conference Committee, often CACM. Communications with the Sentencing Commission regarding potential changes to the Guidelines or commentary are more sensitive and require care. But it is not beyond the capacity of the Advisory Committee to take that into account when drafting a letter to the Sentencing Commission.

Judge Bates asked if there were any other concerns about the Advisory Committee taking that sort of modest communication. Aside from the judge member who spoke earlier, there were no objections.

Rule 53 and broadcasting court proceedings in the cases of United States v. Donald J. Trump. Judge Dever reported on this item. Thirty-eight members of Congress asked the Judicial Conference to authorize the broadcasting of court proceedings in the cases of *United States of America v. Donald J. Trump*. The Advisory Committee discussed the lack of Rules Enabling Act authority to promulgate a rule applying to a single defendant and noted that any rule would become effective, at the absolute earliest, in December 2026, which would likely be after a trial in the relevant cases. A coalition of media organizations later submitted a suggestion on this topic more generally, apart from the specific cases against Donald Trump.

In light of this, the Advisory Committee has formed a subcommittee to study whether to propose amendments to Rule 53. The subcommittee anticipates meeting in March, and the Advisory Committee plans to discuss this issue at its April meeting.

Judge Dever added that, for anyone who wanted to get a history of the issues, the AO has a terrific paper on its website titled *History of Cameras, Broadcasting, and Remote Public Access*

in Courts. Thirty years ago, the Advisory Committee, in a divided vote, recommended that Rule 53 be amended to permit broadcasting consistent with Judicial Conference policy. At the Standing Committee, the chair cast a tie-breaking vote, and the proposal went to the Judicial Conference where it was voted down. Rule 53 has not been substantively amended since it took effect in 1946.

Judge Dever also noted that some cross-committee projects are described in the Criminal Rules Committee's written report in the agenda book. Judge Bates observed that the Criminal Rules Committee was considering some important issues. The Rule 17 issue is a big one, and there is a lot of work yet to be done. There has been a lot going on recently regarding remote proceedings and broadcasting, and it may be the right time to look seriously at Rule 53.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Schiltz presented the report of the Advisory Committee on Evidence Rules, which last met on October 27, 2023, in Minneapolis, Minnesota. The Advisory Committee presented several information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 399.

Information Items

Judge Schiltz reported that at the last meeting, the Advisory Committee heard from two panels. The first panel, made up of five law professors, was invited to speak on any changes they would make to the Federal Rules of Evidence. A second panel featured two experts in artificial intelligence who educated the Advisory Committee about AI and its implications for litigation and the Evidence Rules. The focus was on deep fakes and the ability of AI to produce convincing, but fake, evidence that is hard to detect and will present a real problem for federal trials.

Following the presentations, the Advisory Committee discussed the suggestions, and decided to pursue three matters.

The first proposal being considered is a potential amendment to Rule 609, which addresses when prior convictions can be brought up to impeach a witness on the stand. The proposal is that only convictions for crimes indicating actual dishonesty or false statement would be admissible to impeach, and other types of convictions would not be admissible. The argument is that other types of convictions are not especially probative of credibility. There is also a high price to a defendant who wants to testify but is worried about the admission of prior convictions for crimes such as attempted murder or child pornography.

The second proposal is for a new Rule 416 governing the admissibility of evidence that a victim of alleged misconduct—most often sexual misconduct—had previously made false accusations of similar misconduct. This proposal came from one of the professors on the first panel, who noted that there is a great deal of confusion in the case law about how to treat evidence that a victim of an alleged crime had made false accusations of similar alleged crimes.

The third proposal is a possible amendment to the hearsay rule. The committee is considering two options with respect to out-of-court statements made by a witness on the stand who is under oath and subject to cross examination. A broad option could say that no such prior statements made by a testifying witness can be excluded as hearsay—although it could still be

excluded under Rule 403. A narrower version could say that no prior *inconsistent* statement of a testifying witness can be excluded under the hearsay rule. Today, a prior inconsistent statement can be introduced for its truth only if made under oath at a prior proceeding, which is rare.

The Advisory Committee also plans to hold a conference to further its study of AI and machine-based evidence. The issues, including authentication, hearsay, and expert testimony, are incredibly complicated, and AI technology is changing quickly. The committee's initial focus will likely be on issues of authenticity.

Judge Bates observed that the Chief Justice has focused on AI as an important issue for the Judiciary. These are very difficult issues that the Advisory Committee is considering. In some regards, the difficulty lies in understanding the issues. As to Rule 609, any change in that Rule will be controversial. He thanked Judge Schiltz for the report and the committee's continuing efforts on all those matters.

OTHER COMMITTEE BUSINESS

The Rules Law Clerk provided a legislative update. The legislation tracking chart begins on page 416 of the agenda book. Since the agenda book was published in December, the National Guard and Reservists Debt Relief Extension Act of 2023 became law, meaning that Interim Bankruptcy Rule 1007-I will continue to apply for at least another four years.

Action Item

Judiciary Strategic Planning. This was the last item on the meeting's agenda. Judge Bates asked the Standing Committee to authorize him to work with Rules Committee Staff to respond to the Judicial Conference regarding strategic planning. Without objection, the Standing Committee authorized Judge Bates to work with Rules Committee Staff to submit a response regarding Strategic Planning on behalf of the Standing Committee.

CONCLUDING REMARKS

Judge Bates thanked the Standing Committee members and other attendees. The Standing Committee will next convene on June 4, 2024, in Washington, D.C.

TAB 3A2

Agenda E-19 (Summary)
Rules
March 2024

SUMMARY OF THE

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

This report is submitted for the record and includes the following items for the information of the Judicial Conference:

Agenda E-19
Rules
March 2024

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:

The Committee on Rules of Practice and Procedure (Standing Committee or Committee) met on January 4, 2024. All members participated.

Representing the advisory committees were Judge Jay S. Bybee, chair, and Professor Edward Hartnett, Reporter, Advisory Committee on Appellate Rules; Judge Rebecca Buehler Connelly, chair, Professor S. Elizabeth Gibson, Reporter, and Professor Laura B. Bartell, Associate Reporter, Advisory Committee on Bankruptcy Rules; Judge Robin L. Rosenberg, chair, Professor Richard L. Marcus, Reporter, Professor Andrew Bradt, Associate Reporter, and Professor Edward Cooper, consultant, Advisory Committee on Civil Rules; Judge James C. Dever III, chair, Professor Sara Sun Beale, Reporter, and Professor Nancy J. King, Associate Reporter, Advisory Committee on Criminal Rules; and Judge Patrick J. Schiltz, chair, Advisory Committee on Evidence Rules.

Also participating in the meeting were Professor Catherine T. Struve, the Standing Committee's Reporter; Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee; H. Thomas Byron III, the Standing Committee's Secretary; Allison A. Bruff, Bridget M. Healy, and Scott Myers, Rules Committee Staff Counsel; Zachary T. Hawari, Law Clerk to the Standing Committee; John S. Cooke, Director, and Dr. Tim Reagan, Senior Research Associate, Federal Judicial Center; and

Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, Department of Justice, on behalf of Deputy Attorney General Lisa O. Monaco.

In addition to its general business, including a review of the status of pending rule amendments in different stages of the Rules Enabling Act process and pending legislation affecting the rules, the Standing Committee received and responded to reports from the five advisory committees. The Committee also received an update on the coordinated work among the Appellate, Bankruptcy, Civil, and Criminal Rules Committees to consider two suggestions affecting all four Advisory Committees—suggestions to allow expanded access to electronic filing by pro se litigants and to modify the presumptive deadlines for electronic filing. (The Advisory Committees had removed the latter suggestion from their agendas, and the Committee approved the disbanding of the joint subcommittee that had been formed to consider it.) Additionally, the Committee received a report from a joint subcommittee (composed of representatives from the Bankruptcy, Civil, and Criminal Rules Committees) concerning a suggestion to adopt nationwide rules governing admission to practice before the U.S. district courts. The Standing Committee also heard a report concerning coordinated efforts by several advisory committees concerning a suggestion to require complete redaction of social security numbers and an update from its Secretary on the 2024 report to Congress on the adequacy of the privacy rules.

FEDERAL RULES OF APPELLATE PROCEDURE

Information Items

The Advisory Committee met on October 19, 2023. The Advisory Committee discussed several issues, including possible amendments to Rule 29 (Brief of An Amicus Curiae) and Appellate Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis). In addition, the Advisory Committee considered suggestions regarding intervention

on appeal and the redaction of social security numbers in court filings. The Advisory Committee removed from its agenda suggestions regarding the record in agency cases and regarding filing deadlines.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules and Form Approved for Publication and Comment

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rule 1007(h) (Interests in Property Acquired or Arising After a Petition Is Filed), Rule 3018 (Chapter 9 or 11—Accepting or Rejecting a Plan), and Official Form 410S1 (Notice of Mortgage Payment Change) with a recommendation that they be published for public comment in August 2024. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 1007(h) (Interests in Property Acquired or Arising After a Petition Is Filed)

The proposed amendment to Subdivision (h) would clarify that a court may require an individual chapter 11 debtor or a chapter 12 or chapter 13 debtor to file a supplemental schedule to report property or income that comes into the estate post-petition under § 1115, 1207, or 1306.

Rule 3018(c) (Form for Accepting or Rejecting a Plan; Procedure When More Than One Plan Is Filed)

Subdivision (c) would be amended to provide more flexibility in how a creditor or equity security holder may indicate acceptance, or a change or withdrawal of a rejection, of a plan in a chapter 9 or chapter 11 case. In addition to allowing acceptance by written ballot, the amended rule would also authorize a court to permit a creditor or equity security holder to accept a plan (or change or withdraw its rejection of the plan) by means of its attorney's or authorized agent's statement on the record, including by stipulation or by oral representation at the confirmation hearing. A conforming change would be made to subdivision (a)(3) ("Changing or Withdrawing an Acceptance or Rejection").

Official Form 410S1 (Notice of Mortgage Payment Change)

The amended form would provide space for an annual Home Equity Line of Credit notice.

Information Items

The Advisory Committee met on September 14, 2023. In addition to the recommendation discussed above, the Advisory Committee continued its consideration of a suggestion to require redaction of the entire social security number from filings in bankruptcy and gave preliminary consideration to a suggestion for a new rule addressing a court's decision to allow remote testimony in contested matters in bankruptcy cases.

FEDERAL RULES OF CIVIL PROCEDURE

Information Items

The Advisory Committee on Civil Rules met on October 17, 2023, and considered several information items. The Advisory Committee continued to discuss Rule 41 (Dismissal of Actions), and in particular whether to amend the rule to address caselaw limiting Rule 41(a) dismissals to dismissals of an entire action. It also discussed the work of the discovery subcommittee, which is considering proposals to amend Rule 45 (Subpoena) and to address filing under seal. The Advisory Committee formed a new subcommittee to study cross-border discovery. The Advisory Committee also heard updates from its subcommittee on Rule 7.1 (Disclosure Statement). The Advisory Committee commenced consideration of suggestions concerning civil case assignment in the district courts.

Other topics discussed by the Advisory Committee include the Bankruptcy Rules Committee's consideration of a suggestion to permit remote testimony in contested matters, a suggestion to amend Rule 62(b) (Stay of Proceedings to Enforce a Judgment), a suggestion to amend Rule 54(d)(2)(B) (Judgment; Costs) with respect to attorney-fee awards in Social Security

cases, and a suggestion to amend Rule 81(c) (Applicability of the Rules in General; Removed Actions) with respect to jury demands in removed cases.

The Advisory Committee also discussed and removed from its agenda suggestions regarding Rule 10 (Form of Pleadings), Rule 11 (Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions), Rule 26(a)(1) (Initial Disclosure), Rule 30(b)(6) (Depositions by Oral Examination), Rule 53 (Masters), and Rule 60(b)(1) (Relief from a Judgment or Order), and a proposed new rule on contempt.

At upcoming hearings, the Civil Rules Committee will hear testimony from many witnesses on the proposed amendments that have been published for public comment—namely, proposed amendments to Rule 16(b)(3) (Pretrial Conferences; Scheduling; Management) and Rule 26(f)(3) (Duty to Disclose; General Provisions Governing Discovery) and proposed new Rule 16.1 (Multidistrict Litigation).

FEDERAL RULES OF CRIMINAL PROCEDURE

Information Items

The Advisory Committee on Criminal Rules met on October 26, 2023, and considered several information items. The Advisory Committee continues to consider a possible amendment to Rule 17 (Subpoena), prompted by a suggestion from the White Collar Crime Committee of the New York City Bar Association. The Advisory Committee's Rule 17 subcommittee will develop a draft of a proposed amendment to clarify the rule and to expand the scope of parties' authority to subpoena material from third parties before trial.

The Committee also considered a recent request from 38 members of Congress to authorize broadcasting of proceedings in the cases of *United States v. Donald J. Trump*. The Committee concluded that it does not have the authority under the Rules Enabling Act to exempt specific cases from Rule 53 (Courtroom Photographing and Broadcasting Prohibited), which

generally prohibits the broadcasting of judicial proceedings from the courtroom in criminal cases. Further, any amendment to Rule 53 to allow exceptions for particular cases—for example, the cases of *United States v. Donald J. Trump*—would not take effect earlier than December 1, 2026, due to the requirements of the rulemaking process set forth by the Rules Enabling Act and Judicial Conference Procedures. The Committee received a later suggestion from a media coalition to amend Rule 53 to permit broadcasting of criminal proceedings. Given the timing of its receipt, the proposal was not discussed by the Committee at its October 2023 meeting, but the chair appointed a subcommittee to consider the proposal going forward.

The Advisory Committee decided to remove from its agenda a proposal submitted by the Federal Criminal Procedure Committee of the American College of Trial Lawyers to amend Rule 23 (Jury or Nonjury Trial) to eliminate the requirement that the government consent to a defendant's waiver of a jury trial. In order for a bench trial to occur, current Rule 23 requires a written waiver by the defendant of the right to trial by jury, the government's consent, and the court's approval. Among a variety of concerns discussed by the Advisory Committee, one relates to a defendant's ability to obtain credit for acceptance of responsibility under U.S.S.G. § 3E1.1(b) after a jury trial held solely to preserve an antecedent issue for appeal when the government has declined to either accept a conditional plea or consent to a bench trial. Though some members of the Advisory Committee voiced support for clarifying that judges may award acceptance of responsibility in these circumstances, members saw this as a Guidelines issue, not a rules issue. The Advisory Committee expressed support for making the United States Sentencing Commission aware of the concerns expressed by some members of the Committee. After discussion, the Standing Committee (over one member's objection) determined that the Advisory Committee chair could convey the members' concerns to the Sentencing Commission.

FEDERAL RULES OF EVIDENCE

Information Items

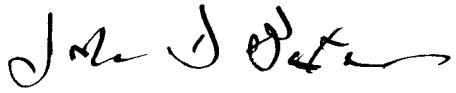
The Advisory Committee on Evidence Rules met on October 27, 2023. In connection with the meeting, the Advisory Committee held a panel discussion with several Evidence scholars on suggestions for changes to the Evidence Rules, followed by a presentation by experts on artificial intelligence and "deep fakes." Following the panel discussion and presentation, the Advisory Committee discussed the potential rule amendments raised by the presenters. In particular, the Advisory Committee decided to consider a possible amendment to delete Rule 609(a)(1), which allows admission of felony convictions not involving dishonesty or false statement, and another possible amendment that would add a new Rule 416 to the Evidence Rules to govern the admissibility of evidence of false accusations. In addition, the Advisory Committee will consider a possible amendment to Rule 801(d)(1) (Definitions That Apply to This Article; Exclusions from Hearsay) to provide for broader admissibility of prior statements of testifying witnesses. The Advisory Committee considered but decided not to pursue a possible amendment to Rule 803(4) (Exceptions to the Rule Against Hearsay) that would have narrowed the hearsay exception for statements made for purposes of medical treatment or diagnosis by excluding from that exception statements made to a doctor for purposes of litigation.

JUDICIARY STRATEGIC PLANNING

The Committee was asked to provide recommendations for discussion topics at the next long-range planning meeting scheduled for March 11, 2024 and future long-range planning meetings of Judicial Conference committee chairs. Recommendations on behalf of the

Committee were communicated to Judge Scott Coogler, the judiciary planning coordinator, by letter dated January 11, 2024.

Respectfully submitted,



John D. Bates, Chair

Paul Barbadoro	Lisa O. Monaco
Elizabeth J. Cabraser	Andrew J. Pincus
Louis A. Chaiten	Gene E.K. Pratter
William J. Kayatta, Jr.	D. Brooks Smith
Edward M. Mansfield	Kosta Stojilkovic
Troy A. McKenzie	Jennifer G. Zipps
Patricia Ann Millett	

TAB 4

TAB 4A

MEMORANDUM

To: Advisory Committee Chairs

From: Reporters' Privacy Rules Working Group
H. Thomas Byron III, Chief Counsel, Rules Committee Staff
Zachary Hawari, Rules Law Clerk

Re: Update on Review of Privacy Rules

Date: March 19, 2024

I. Background and Overview

In 2022, Senator Ron Wyden suggested that the Rules Committees reconsider whether to require complete redaction of social-security numbers (SSNs) in federal-court filings (suggestions 22-AP-E, 22-BK-I, 22-CV-S, 22-CR-B). The redaction requirements—including the requirement that filers redact all but the last 4 digits of SSNs—are generally consistent across the privacy rules (Appellate Rule 25(a)(5), Bankruptcy Rule 9037, Civil Rule 5.2(a), and Criminal Rule 49.1(a)). See E-Government Act of 2002, Pub. L. No. 107-347, § 205(c)(3)(A)(ii), 116 Stat. 2914 ("Such rules shall provide to the extent practicable for uniform treatment of privacy and security issues throughout the Federal courts.").

The partial SSN redaction requirement in the privacy rules was adopted and retained in large part due to concerns that participants in bankruptcy cases needed the last 4 digits of a debtor's SSN. In light of that history, the Advisory Committees concluded in 2022 that the Bankruptcy Rules Committee should first determine the extent to which that need remains paramount before the Appellate, Civil, and Criminal Rules Committees consider whether any different approach would be warranted in non-bankruptcy cases. The Bankruptcy Rules Committee has tentatively determined that it would not be feasible to require complete redaction of SSNs in all bankruptcy filings, but that committee is considering a range of options that could include eliminating SSNs from some filings. Those issues remain under review and are unlikely to result in a recommendation to publish any proposed amendments to the Bankruptcy Rules before 2025.

The reporters and Rules Committee Staff have been discussing Senator Wyden's suggestion and related issues concerning the privacy rules. We have tentatively concluded that any amendments to the Civil and Criminal Rules concerning the redaction of SSNs should not be considered in isolation but should be part of a more considered review of the privacy rules. The following sections outline possible areas of inquiry that the Rules Committees might consider.

II. Sketch of Rules Amendments Requiring Complete Redaction of SSNs

The Rules Committees could consider amendments that would require complete SSN redaction by amending Civil Rule 5.2(a) and Criminal Rule 49.1(a) along these lines:

> (a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing must [fully] redact the social-security number or taxpayer-identification number and may include only:
>
> (1) ~~the last four digits of the social-security number and taxpayer-identification number;~~
>
> ~~(2)~~ the year of the individual's birth;
>
> (~~3~~2) the minor's initials; and
>
> (4~~3~~) the last four digits of the financial-account number.

The Bankruptcy Rules Committee is considering this suggestion, among other possible approaches to amending the rules governing SSNs in bankruptcy filings.[1]

Several considerations warrant a broader review of the privacy rules before moving forward to consider this or a similar proposal in isolation. First, the Federal Judicial Center is conducting a study of unredacted privacy information—including SSNs—in court filings. That study could help inform the Rules Committees' understanding of whether the privacy rules warrant further review and possible amendment. Second, the Rules Committees have received additional suggestions concerning possible amendments to the privacy rules. While the proposal outlined above could move forward while the committees consider other suggestions, the Rules Committees generally seek to avoid multiple proposed amendments to any individual rule, preferring instead to present a single set of consolidated changes after comprehensive consideration. This approach helps educate courts, litigants, and the public about rules changes, avoiding confusion and the risk of amendment fatigue.

Because the committees will be considering other privacy rule suggestions, as well as the conclusions of the ongoing FJC study, it seems prudent to consider any proposed amendment requiring full redaction of social-security numbers along with any other proposed amendments to the privacy rules that the committees conclude may be warranted after careful review of the issues.

[1] There would likely be no need for an amendment of Appellate Rule 25(a)(5), which specifies that the other privacy rules apply to appellate filings in particular categories of cases.

III. Other Privacy Rule Issues

A. The Bankruptcy Rules Committee is considering suggestions to streamline the caption on many notices by limiting or eliminating detailed information about a debtor, including the debtor's SSN, from subsequent notices after the meeting of creditors notice (23-BK-D, 23-BK-J). That committee is considering the suggestions in conjunction with its ongoing consideration of the continuing need and utility of including the last 4 digits of an individual's SSN in bankruptcy filings.

B. The Department of Justice has recently submitted a suggestion to amend Criminal Rule 49.1(a)(3), which currently requires including in a filing only the initials of a known minor, to require instead the use of a pseudonym in order to better protect the privacy interests of minors who are victims or witnesses (suggestion 24-CR-A). Because similar requirements appear in the Bankruptcy and Civil Rules, and are incorporated in the Appellate Rules, the suggestion has been forwarded to those advisory committees as well (suggestions 24-AP-B, 24-BK-D, 24-CV-C).

C. Nearly 20 years have passed since the Rules Committees initially considered the privacy rules, and this could present a timely opportunity to review the rules and consider whether any amendments might be warranted in light of the passage of time, or whether practice under the rules has identified other areas of concern. For example, the committees could consider whether any other personal information, not included in the redaction requirements, might warrant protection today.

Some issues could concern provisions that are common to the privacy rules. For example, the exemptions from the redaction requirements in subdivision (b) of each of the privacy rules include language that could be ambiguous or overlapping; additional inquiry could identify whether any of these provisions pose a practical problem to litigants or courts. And the waiver provision in subdivision (h) might warrant clarification. Those inquiries should proceed on a coordinated basis, either by continuing the work of the reporters' working group, by designating one advisory committee to take the lead, or by asking the Standing Committee Chair to appoint a joint subcommittee.

Moreover, an Advisory Committee might seek to consider issues solely related to filings in appellate, bankruptcy, civil, or criminal proceedings. For example, the Bankruptcy Rules Committee is already considering such questions. And the Criminal Rules Committee might review several provisions in Criminal Rule 49.1 that address unique concerns, such as arrest or search warrants and charging documents (Rule 49.1(b)(8)-(9)).

* * * *

The Rules Committee Staff will continue to work with the relevant Advisory Committee Chairs and reporters to identify any areas of common concern and to

assist in any necessary coordination. We anticipate that the reporters' advisory group will continue its discussions over the next several months. Each Advisory Committee can also consider whether it wishes to appoint a subcommittee to consider these issues or instead to await further information.

TAB 4B

Oral Report on Unified Bar Admission in Federal Courts

Item 4B will be an oral report.

TAB 4C

Oral Report on E-Filing by Self-Represented Litigants

Item 4C will be an oral report.

TAB 5

TAB 5A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: COMMENTS ON RULE 3002.1 AMENDMENTS

DATE: MARCH 19, 2024

Last August the Standing Committee republished for comment proposed amendments to Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence). Ten sets of comments concerning the rule were submitted. They range from addressing specific wording issues and proposed deadlines to raising some broader issues, such as the scope of the rule and whether limitations should be placed on the authority to file a motion to determine the status of a mortgage.

The Subcommittee considered these comments during its meeting on March 5 and now recommends the changes discussed in this memo in response to the comments. Following the memo in the agenda book are a draft of Rule 3002.1 as proposed for the Advisory Committee's approval and a summary of all the comments that were submitted.

Subdivision (a) – In General

The Subcommittee recommends that the word "contractual" be deleted from line 9 and that instead the clause read, "for which the plan provides for the trustee or debtor to make payment on the debt." Several comments were submitted suggesting this deletion. They explained that sometimes home mortgages may be modified in chapter 13—such as those paid in full or short-term mortgages—and they are paid according to the terms of the plan, rather than strictly according to the terms of the contract. The Subcommittee thought that the rule should apply in this situation and that making this change would not require republication.

Comments suggested other expansions of the rule's applicability that the Subcommittee decided against. These included making the rule applicable to mortgages on property other than the debtor's principal residence and to liens not created by agreement, such as statutory liens. These suggestions may have merit, as they would assist debtors in emerging from chapter 13 with mortgages and other types of real-property liens current or paid in full. However, because proposed amendments to the rule have now been published twice, the Subcommittee did not want to propose any changes to subdivision (a) that would require yet another publication. It thought that expanding the rule beyond the debtor's principal residence or making it applicable to statutory liens runs that risk. Otherwise, new types of creditors could be affected who were not given notice that the rule would apply to them.

The Subcommittee also declined to recommend any additional change to subdivision (a)—beyond deleting "installment"—to clarify that the rule applies to reverse mortgages for which there has been a default. Instead it recommends an expanded discussion in the Committee Note (lines 298-300) to clarify the rule's applicability to mortgages of that type.

Subdivision (b) – Notice of a Payment Change; Home-Equity Line of Credit; Effect of an Untimely Notice; Objection

In response to several of the mortgage organizations' comments, the Subcommittee recommends stating in subdivision (b)(3)(B) that a payment decrease is effective on the actual payment due date, even if that date is in the past. There are instances where a payment decrease is retroactively applied, and the debtor should get the benefit of that decrease. As revised, (b)(3)(B) would state that the effective date of the new payment amount is, "when the notice concerns a payment decrease, on the actual payment due date, even if prior to the notice."

The National Bankruptcy Conference ("NBC") commented that Official Form 410-S1 should be modified to provide for the new HELOC disclosures. That matter has already been acted on. On the Advisory Committee's recommendation, the Standing Committee at its January meeting approved amendments to the form for publication in August.

Subdivision (e) – Determining Fees, Expenses, or Charges

The Subcommittee recommends no changes to the published version of subdivision (e). Two mortgage organizations commented that the time to challenge fees, expenses, or charges that have been noticed should be shorter. The existing rule has a one-year deadline because the amount involved might be so small that it would be more cost effective to challenge several in one motion. The proposed provision allows the court to shorten the period if requested by a party in interest. It was added with late-in-the-case motions in mind. The Subcommittee also does not recommend authorizing an extension of the deadline beyond one year, as the NBC suggested. One year seems adequate, especially given the mortgage groups' assertion that the time period is too long.

Subdivision (f) – Motion to Determine Status; Response; Court Determination

The Subcommittee recommends making two changes to this subdivision. First, in (f)(2) it recommends extending the deadline for responding to a trustee's or debtor's motion from 21 to 28 days. Mortgage organizations commented that they need that amount of time to respond properly, and it is the amount of time that subdivision (g)(3) provides for responding to the trustee's end-of-case notice.

Second, the Subcommittee agrees with the NBC's comment that on line 157 the phrase "and enter an appropriate order" should be added at the end of the sentence in order to be consistent with other provisions in the rule about the court's determination.

Mortgage organizations suggested a number of limitations that they thought should be added to prevent the abusive use of this subdivision. Those restrictions included limiting the time period during which a motion to determine the status of a mortgage could be filed or limiting the number of times it could be filed, specifying potential remedies for the mortgage claimant if the provision is misused, providing that a pro se debtor must provide an attestation as to the facts set forth in the motion, and providing that it is a ground for setting aside an adverse order if the movant failed to name and serve the correct mortgage claimant/servicer. The Subcommittee recommends that no changes be made in response to the comments. If a debtor, debtor's attorney, or trustee files a motion under this provision, Rule 9011 applies and could result in sanctions if the court determines that the motion was filed "for any improper purpose" or that the factual allegations lack evidentiary support. Furthermore, relief would be available outside of this rule if an adverse order is entered against a party that was not served.

Subdivision (g) – Trustee's End-of-Case Notice of Payments Made; Response; Court Determination

The Subcommittee recommends that in the title and in subdivision (g)(1), the words "payments" and "paid" be changed to "disbursements" and "disbursed." That terminology better describes the role of chapter 13 trustees; they are disbursing agents, not payors. The Subcommittee also recommends deleting two uses of "contractual" in (g)(1)(B) to be consistent with the recommended change to subdivision (a).

In subdivision (g)(1)(A), the Subcommittee recommends deleting "if any" on line 167 after "what amount" in order to avoid suggesting that a trustee who makes no disbursements to the mortgage claim holder does not need to file an end-of-case notice. It also recommends adding to the Committee Note at lines 359-362 the statement that "If the trustee has disbursed no amounts to the claim holder under either or both categories, the notice should be filed stating $0 for the amount disbursed."

Several comments noted that in subdivision (g)(4)(A), no deadline was stated for filing a motion to determine the status of the mortgage if the claim holder responded to the trustee's notice. It merely said that the motion could be filed "[a]fter service of the response." Agreeing with the comments, the Subcommittee recommends that the first sentence of subparagraph (A) be rewritten to make a 45-day deadline applicable to that situation as well as to when the claim holder does not respond to the notice.

In subdivision (g)(4)(B), the Subcommittee recommends that the time for the claim holder to respond to the motion be changed from 21 to 28 days, just as in subdivision (f)(2).

Subdivision (h) – Claim Holder's Failure to Give Notice or Respond

The Subcommittee recommends no changes to this subdivision. The NBC suggested that subdivision (h) include sanction provisions similar to Civil Rule 37(b)(2) for failure to comply with a court order entered under the rule. These sanctions would include holding the disobedient party in contempt, directing that the matters embraced in the order or other designated facts be taken as established for purposes of a contested matter or adversary proceeding arising in or related to the case, and prohibiting the claim holder from supporting or opposing designated claims or defenses or from introducing designated matters in evidence.

The Subcommittee concluded that the sanction of contempt is not appropriate here and that subdivision (h)(1) already sufficiently addresses the NBC's other proposed sanctions. The orders authorized by Rule 3002.1 are unlike the orders for which Civil Rule 37(b)(2) applies. The latter rule provides sanctions, including contempt, for the failure "to provide or permit discovery," including disobeying an order under Rule 37(a) compelling discovery. These are orders requiring a party to do something. *See, e.g., Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) ("Under traditional principles of equity practice, courts have long imposed civil contempt sanctions to 'coerce the defendant into compliance' with an injunction or 'compensate the complainant for losses' stemming from the defendant's noncompliance with an injunction."). The orders authorized by Rule 3002.1, by contrast, do not compel action. Instead, they are in the nature of declaratory judgments, determining the status of the mortgage. As such, they are enforceable by precluding the losing party from relitigating the issues or taking positions contrary to the orders, but not by civil contempt.

Committee Note

In addition to the changes discussed above, the Subcommittee recommends conforming changes to the Committee Note.

TAB 5A1

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

Rule 3002.1. ~~Notice Relating to~~ Chapter 13 ~~Claims~~ Claim Secured by a Security Interest in the Debtor's Principal Residence ~~in a Chapter 13 Case~~[2]

(a) In General. This rule applies in a Chapter 13 case to a claim that is secured by a security interest in the debtor's principal residence and for which the plan provides for the trustee or debtor to make ~~contractual installment~~ payments on the debt. Unless the court orders otherwise, the ~~notice~~ requirements of this rule cease when an order terminating or annulling the automatic stay related to that residence becomes effective.

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

[2] The changes indicated are to the restyled version of Rule 3002.1, not yet in effect.

(b) Notice of a Payment Change; Home-Equity Line of Credit; Effect of an Untimely Notice; Objection.

(1) ***Notice by the Claim Holder—In General.*** The claim holder must file a notice of any change in the payment amount, ~~of an installment payment~~ including ~~any change~~ one resulting from an interest-rate or escrow-account adjustment. ~~At least 21 days before the new payment is due, the~~ The notice must be ~~filed and~~ served on:

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

Except as provided in (b)(2), it must be filed and served at least 21 days before the new payment is due. ~~If the claim arises from a home-equityline of credit, the court may~~

~~modify this requirement.~~

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

(A) *Deadline for the Initial Filing; Later Annual Filing.* If the claim arises from a home-equity line of credit, the notice of a payment change must be filed and served either as provided in (b)(1) or within one year after the bankruptcy-petition filing, and then at least annually.

(B) *Content of the Annual Notice.* The annual notice must:

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

(ii) include a reconciliation amount to account for any

overpayment or underpayment during the prior year.

(C) *Amount of the Next Payment.* The first payment due at least 21 days after the annual notice is filed and served must be increased or decreased by the reconciliation amount.

(D) *Effective Date.* The new payment amount stated in the annual notice (disregarding the reconciliation amount) is effective on the first payment due date after the payment under (C) has been made and remains effective until a new notice becomes effective.

(E) *Payment Changes Greater Than $10.* If the claim holder chooses to give

annual notices under (b)(2) and the monthly payment increases or decreases by more than $10 in any month, the holder must file and serve (in addition to the annual notice) a notice under (b)(1) for that month.

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

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

(B) when the notice concerns a payment decrease, on the actual payment due date, even if it is prior to the notice.

(4) ***Party in Interest's Objection.*** A party in interest who objects to ~~the~~ a payment change noticed under (b)(1) or (b)(2) may file and serve a motion to determine ~~whether the change is required to maintain payments under § 1322(b)(5)~~the change's validity. Unless the court orders otherwise, if no motion is filed ~~by~~ before the day ~~before~~ the new payment is due, the change goes into effect on that date.

(c) Fees, Expenses, and Charges Incurred After the Case Was Filed; Notice by the Claim Holder. The claim holder must file a notice itemizing all fees, expenses, and charges incurred after the case was filed that the holder asserts are recoverable

against the debtor or the debtor's principal residence. Within 180 days after the fees, expenses, or charges ~~were~~ are incurred, the notice must be filed and served on the individuals listed in (b)(1).~~:~~

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

(d) Filing Notice as a Supplement to a Proof of Claim. A notice under (b) or (c) must be filed as a supplement to ~~the~~ a proof of claim using Form 410S-1 or 410S-2, respectively. The notice is not subject to Rule 3001(f).

(e) Determining Fees, Expenses, or Charges. On a party in interest's motion ~~filed within one year after the notice in (c) was served~~, the court must, after notice and a hearing, determine whether paying any claimed fee, expense, or charge is required by the

underlying agreement and applicable nonbankruptcy law. ~~to cure a default or maintain payments under § 1322(b)(5).~~The motion must be filed within one year after the notice under (c) was served, unless a party in interest requests and the court orders a shorter period.

(f) Motion to Determine Status; Response; Court Determination.

(1) ***Timing; Content and Service.*** At any time after the date of the order for relief under Chapter 13 and until the trustee files the notice under (g)(1), the trustee or debtor may file a motion to determine the status of any claim described in (a). The motion must be prepared using Form 410C13-M1 and be served on:

- the debtor and the debtor's attorney, if the trustee is the movant;
- the trustee, if the debtor is the movant; and
- the claim holder.

(2) ***Response; Content and Service.*** If the claim holder disagrees with facts set forth in the motion, it must file a response within 28 days after the motion is served. The response must be prepared using Form 410C13-M1R and be served on the individuals listed in (b)(1).

(3) ***Court Determination.*** If the claim holder's response asserts a disagreement with facts set forth in the motion, the court must, after notice and a hearing, determine the status of the claim and enter an appropriate order. If the claim holder does not respond to the

motion or files a response agreeing with the facts set forth in it, the court may grant the motion based on those facts and enter an appropriate order.

(f~~g~~) ~~Notice of the Final Cure Payment.~~ Trustee's End-of-Case Notice of Disbursements Made; Response; Court Determination.

(1) ~~*Contents of a Notice*~~ ***Timing and Content***. Within ~~30~~ 45 days after the debtor completes all payments due to the trustee under a Chapter 13 plan, the trustee must file a notice:

(A) stating ~~that the debtor has paid in full the~~ what amount ~~required~~ the trustee disbursed to the claim holder to cure any default ~~on the claim~~and whether it has been cured; ~~and~~

(B) ~~informing~~ stating what amount the trustee disbursed to the claim holder

for payments that came due during the pendency of the case and whether such payments are current as of the date of the notice; and~~the claim holder of its obligation to file and serve a response under (g).~~

(C) informing the claim holder of its obligation to ~~file and serve a response~~ respond under (g)(3).

(2) ***~~Serving the Notice~~ Service*.** The notice must be prepared using Form 410C13-N and be served on:

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

(3) ***Response*.** The claim holder must file a response to the notice within 28 days after its service. The response, which is not subject

to Rule 3001(f), must be filed as a supplement to the claim holder's proof of claim. The response must be prepared using Form 410C13-NR and be served on the individuals listed in (b)(1).

~~(3) ***The Debtor's Right to File.*** The debtor may file and serve the notice if:~~

~~(A) the trustee fails to do so;~~

~~(B) and the debtor contends that the final cure payment has been made andall plan payments have been completed.~~

(4) ***Court Determination of a Final Cure and Payment.***

(A) *Motion*. Within 45 days after service of the response under (g)(3) or after service of the trustee's notice under (g)(1) if no response is filed by the claim holder, the debtor or trustee

may file a motion to determine whether the debtor has cured all defaults and paid all required postpetition amounts on a claim described in (a). The motion must be prepared using Form 410C13-M2 and be served on the entities listed in (f)(1).

(B) *Response.* If the claim holder disagrees with the facts set forth in the motion, it must file a response within 28 days after the motion is served. The response must be prepared using Form 410C13-M2R and be served on the individuals listed in (b)(1).

(C) *Court Determination.* After notice and a hearing, the court must determine whether the debtor has

cured all defaults and paid all required postpetition amounts. If the claim holder does not respond to the motion or files a response agreeing with the facts set forth in it, the court may enter an appropriate order based on those facts.

~~**(g) Response to a Notice of the Final Cure Payment.**~~

~~**(1)** ***Required Statement.*** Within 21 days after the notice under (f) is served, the claim holder must file and serve a statement that:~~

~~(A) indicates whether:~~

~~(i) the claim holder agrees that the debtor has paid in full the amount required to cure any default on the claim; and~~

~~(ii) the debtor is otherwise current on all payments under~~

~~§ 1322(b)(5); and~~

~~(B) itemizes the required cure or postpetition amounts, if any, that the claim holder contends remain unpaid as of the statement's date.~~

~~(2) ***Persons to be Served.*** The holder must serve the statement on:~~

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

~~(3) ***Statement to be a Supplement.*** The statement must be filed as a supplement to the proof of claim and is not subject to Rule 3001(f).~~

~~**(h) Determining the Final Cure Payment.** On the debtor's or trustee's motion filed within 21 days after the statement under (g)is served, the court must, after notice and ahearing, determine whether the debtor has cured the default and made all required~~

~~postpetition payments.~~

(~~i~~h) Claim Holder's Failure to Give Notice or Respond. If the claim holder fails to provide any information as required by ~~(b), (c), or (g)~~this rule, the court may, after notice and a hearing, ~~take one or both of these actions~~do one or more of the following:

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

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

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

Committee Note

The rule is amended to encourage a greater degree of compliance with its provisions and to allow assessments of

a mortgage claim's status while a chapter 13 case is pending in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred. Stylistic changes are made throughout the rule, and its title and subdivision headings have been changed to reflect the amended content.

Subdivision (a), which describes the rule's applicability, is amended to delete the words "contractual" and "installment" in the phrase "contractual installment payments" in order to clarify and broaden the rule's applicability. The deletion of "contractual" is intended to make the rule applicable to home mortgages that may be modified and are being paid according to the terms of the plan rather than strictly according to the contract, including mortgages being paid in full during the term of the plan. The word "installment" is deleted to clarify the rule's applicability to reverse mortgages. They are not paid in installments, but a debtor may be curing a default on a reverse mortgage under the plan. If so, the rule applies.

In addition to stylistic changes, subdivision (b) is amended to provide more detailed provisions about notice of payment changes for home-equity lines of credit ("HELOCs") and to add provisions about the effective date of late payment change notices. The treatment of HELOCs presents a special issue under this rule because the amount owed changes frequently, often in small amounts. Requiring a notice for each change can be overly burdensome. Under new subdivision (b)(2), a HELOC claimant may choose to file only annual payment change notices—including a reconciliation figure (net overpayment or underpayment for the past year)—unless the payment change in a single month is for more than $10. This provision also ensures at least 21 days' notice before a payment increase takes effect.

As a sanction for noncompliance, subdivision (b)(3) now provides that late notices of a payment increase do not go into effect until the first payment due date after the required notice period (at least 21 days) expires. The claim holder will not be permitted to collect the increase for the interim period. There is no delay, however, in the effective date of an untimely notice of a payment decrease. It may even take effect retroactively, if the actual due date of the decreased payment occurred before the claim holder gave notice of the change.

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

Subdivision (f) is new. It provides a procedure for assessing the status of the mortgage at any point before the trustee files the notice under (g)(1). This optional procedure, which should be used only when necessary and appropriate for carrying out the plan, allows the debtor and the trustee to be informed of any deficiencies in payment and to reconcile records with the claim holder in time to become current before the case is closed. The procedure is initiated by motion of the trustee or debtor. An Official Form has been adopted for this purpose. The claim holder then must respond if it disagrees with facts stated in the motion, again using an Official Form to provide the required information. If the claim holder's response asserts such a disagreement, the court, after notice and a hearing, will determine the status of the mortgage claim. If the claim holder fails to respond or does not dispute the facts set forth in the motion, the court

may enter an order favorable to the moving party based on those facts.

Under subdivision (g), within 45 days after the last plan payment is made to the trustee, the trustee must file an End-of-Case Notice of Disbursements Made. An Official Form has been adopted for this purpose. The notice will state the amount that the trustee has paid to cure any default on the claim and whether the default has been cured. It will also state the amount that the trustee has disbursed on obligations that came due during the case and whether those payments are current as of the date of the notice. If the trustee has disbursed no amounts to the claim holder under either or both categories, the notice should be filed stating $0 for the amount disbursed. The claim holder then must respond within 28 days after service of the notice, again using an Official Form to provide the required information.

Either the trustee or the debtor may file a motion for a determination of final cure and payment. The motion, using the appropriate Official Form, may be filed within 45 days after the claim holder responds to the trustee's notice under (g)(1), or, if the claim holder fails to respond to the notice, within 45 days after the notice was served. If the claim holder disagrees with any facts in the motion, it must respond within 28 days after the motion is served, using the appropriate Official Form. The court will then determine the status of the mortgage. A Director's Form provides guidance on the type of information that should be included in the order.

Subdivision (h) was previously subdivision (i). It has been amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to

provide notice or respond as required by the rule. Stylistic changes have also been made to the subdivision.

TAB 5A2

Comments on Proposed Amendments to Rule 3002.1

2023-0002-0003 – Michael Gieseke. The remedy for a creditor's failure to respond to a motion to determine the status of a mortgage claim—granting the facts set forth in the motion—may not be adequate. In some cases the moving trustee or debtor may not be able to allege that the payments are current. Perhaps an alternative remedy similar to that in FRBP 3002.1(i)—allowing the court to award other appropriate relief, including reasonable expenses and attorney's fees caused by the creditor's failure to respond—would compel compliance and assist such debtors in obtaining the requested information.

2023-0002-0008 – Minnesota State Bar Association. It supports the proposed amendments to Rule 3002.1.

2023-0002-0009 – National Bankruptcy Conference.

(a): Supports the deletion of "installment" and the Committee Note statement that rule applies to reverse mortgages. Should also delete "contractual." This change would make all claims secured by a security interest in the debtor's principal residence that are being paid in a chapter 13 case subject to Rule 3002.1. Mortgage holders and servicers have successfully argued that Rule 3002.1 does not apply in chapter 13 cases in which the mortgage is being paid in any manner other than according to strict "contractual" terms, such as with full payment and short term mortgage cases.

(b): Form 410-S1 should be modified to provide for the new HELOC disclosures. Alternatively, the form instructions should indicate that, notwithstanding Rule 9009(a), the claim holder is permitted to alter the form to make the disclosures.

(e): Under the current rule, courts have held that the procedure set out in (e) based on the filing of a motion in a contested matter is not exclusive and does not preclude the debtor or trustee from seeking a determination related to disputed fees in an adversary proceeding, particularly when other claims seeking recovery of money damages that must be filed as an adversary proceeding are being asserted against the creditor. While the proposed amendments to Rule 3002.1(e) appear to be stylistic, they could be construed as changing the provision from a permissive to mandatory procedure by providing that a motion (and only a motion) "must" be filed, and that the motion must be filed within one year unless the court orders a shorter period. Thus, we suggest that the existing language in Rule 3002.1(e) not be changed. In addition we suggest that the court be authorized to extend the period for determining fees, expenses, or charges beyond a year (". . . the court orders a shorter or longer period.").

(f): In (f)(3) we suggest changing the language in the second sentence as follows: "the court may grant the motion based on those facts and enter an appropriate order." That would make the provision consistent with the first sentence and other provisions in the rule.

(g): Some chapter 13 trustees refuse to file the current notice of final cure. Simply changing the rule to state that the trustee "must" file the End-of-Case Notice is not likely to increase compliance. Thus, we propose that the option for the debtor to file and serve the notice to begin

the end-of-case procedure as set out in the current rule should be retained in Rule 3002.1(g). This will ensure that debtors will have the opportunity for an end-of-case court determination of final cure if the trustee fails to initiate the process. We also suggest that "within" in the first sentence of proposed (g)(4)(A) be changed to "no later than." To be consistent and to avoid any ambiguity, the first sentence of (g)(4)(C) should include at the end the following: "and enter an appropriate order."

(h): Now that the proposed changes to Rule 3002.1 provide for the entry of appropriate court orders at various stages, non-compliance with Rule 3002.1 may include not only the failure to provide information required by the rule but also the failure to comply with orders entered under Rule 3002.1. Thus, we suggest that (h) include sanction provisions similar to FRCP 37(b)(2) for failure to comply with a court order entered under the rule. Suggested change:

> **(h) Claim Holder's Failure to Give Notice, ~~or~~ Respond, or Comply with a Court Order.** If the claim holder fails to provide any information as required by this rule, or to comply with any order entered under this rule, the court may, after notice and a hearing, do one or more of the following:
>
> (1) preclude the holder from presenting the omitted information in any form as evidence in a contested matter or adversary proceeding in the case—unless the court determines that the failure was substantially justified or is harmless;
>
> (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure; and
>
> (3) ~~take any other action authorized by this rule~~ issue further just orders, including:
>
> (A) directing that the matters embraced in the order or other designated facts be taken as established for purposes of a contested matter or adversary proceeding arising in or related to the case;
>
> (B) prohibiting the claim holder from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; or
>
> (C) treating as contempt of court the failure to obey any order.

2023-0002-0010 – Aderant.

(b): In Rule 3002.1(b)(3)(A), triggering the time from the date the untimely notice was "filed and served" is problematic. The notice may not be filed and served simultaneously. To avoid any confusion, we suggest the proposed rule be revised to refer simply to the date of filing of the notice.

To provide consistency with language used throughout the rest of Rule 3002.1, we suggest that Rule 3002.1(b)(3)(B) be revised to state that the effective date is "on the first payment due date after the date of filing of the notice." This will also avoid any confusion as to what is considered the "date of the notice."

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1).

(a): The proposed revisions continue to make the rule applicable only to the debtor's principal place of residence. The Southern District of Florida has a local Rule that makes the provisions of Rule 3002.1 applicable to any real property in which the debtor has an ownership interest. Would the Rules Committee consider expanding the applicability of the Rule? If so, the NACTT Subcommittee suggests that this provision be permissive rather than mandatory as to real property that is not the principal place of residence.

Another issue is that the update to subsection (a) of the rule removes the word "installment." This does not completely clarify what types of transactions are subject to the rule, such as reverse mortgages; statutory liens like tax lien transferees and HOA liens; and total debt plans (a plan in which the entire debt owed on the mortgage is paid through the plan), cramdowns, or nontraditional liens on primary residences. As to reverse mortgages, the Committee Note indicates that the provisions of the rule are applicable to these types of loans. However, members of the subcommittee have pointed out that they do not believe the language of the proposed rule applies to reverse mortgages because, although there are contractual financial obligations in a reverse mortgage, like the obligation of the mortgagor to pay taxes and insurance, those payments are not made to the mortgage claimant and, therefore, proposed Rule 3002.1 would not apply to reverse mortgages.

As to liens that are statutory in nature, because of the definition of "security interest" in § 101(51) of the Bankruptcy Code as a lien created by an agreement, holders of liens that are statutory, like tax lien transferees, HOA and condominium lienholders, and mechanic and materialman lien holders, often assert that they are not required to comply with Rule 3002.1. Yet these claimants routinely assess charges against the debtor, such as attorney fees and inspection fees. These lienholders often do not file an application for payment of fees, expenses, or charges from the estate and simply wait until the conclusion of the case to collect these postpetition charges. If these claim holders were subject to Rule 3002.1, the debtor would be aware of the postpetition charges as they are incurred, could pay those charges through a modified Chapter 13 plan, would have the chance to dispute the charges in the bankruptcy court, and could emerge from the bankruptcy truly current on all payments on their principal residence.

As to total debt claims (and also reverse mortgages), the mortgage claimant may make postpetition payments for taxes and insurance to protect the claimant's position if the debtor does not make these payments. Servicers/attorneys do not have a definitive answer as to whether a Notice of Postpetition Fees, Expenses, and Charges under Rule 3002.1(c) is required for recovery of these post-petition escrow advances, or if another procedure is more appropriate (i.e. a motion for reimbursement, a Rule 2016(a) application, or a motion for relief). Clarity would be appreciated.

(b): Mortgage claimants would appreciate clarification in (b)(3)(B) that a payment decrease is effective on the actual payment due date, even if that date is in the past. There are instances where the payment decrease is retroactively applied, and the debtor should get the benefit of that decrease. Examples are PMI (private mortgage insurance) or MIP (mortgage insurance premium) decreases, which retroactively reduce the payment due to delays in receipt and application of payments for a given month. If the trustee has disbursed funds to a mortgage claimant and the amount that should have been disbursed is later decreased because of a Notice

of Payment Change filed after the disbursement, the trustee should be allowed, but not obligated, to recover the difference or adjust any subsequently made payment by subtracting any overage on the payment from the subsequent payment.

Subdivision (b)(4), like the current rule, states that if a motion to determine a payment change's validity is not filed prior to the effective date of the payment change, the change goes into effect. That is a short period of time to get that motion filed. In reality, debtors file a motion to determine the validity of a payment change much later, since there is no deadline for filing that motion. The motion is often filed after other Notices of Payment Change have been filed, creating confusion and complicating the process. We suggest amending this provision to provide for a three-to-six month deadline for filing a motion to determine the validity of a payment change to add some finality to the process.

Mortgage claimants also request that there be a deadline for filing an objection to the claimant's proof of claim. The suggestion is one year from the date of filing of the proof of claim unless an earlier deadline is set by local rule or general order. If the loan is consensually modified, the suggested objection period to an amended proof of claim would be a year from the date that the amended proof of claim is filed.

(e): Mortgage claimants suggest a shorter time deadline for a party-in-interest to file a motion to determine fees, expenses or charges. A year is a long time, particularly as a case nears conclusion. A shorter time frame, like 60 to 90 days, would be very helpful, would give the bankruptcy court an opportunity to resolve the issues between the debtor and mortgage claimant before the conclusion of the case, and would add some finality to the process. Additionally, there is nothing in the proposed rule that requires the debtor to state how and when the fees, expenses or charges will be paid. Mortgage claimants would appreciate knowing how the debtor intends to make these payments.

(f): Mortgage claimants support allowing the debtor or trustee to file this motion to be informed of any deficiencies and to reconcile payments as needed and appropriate, but would also like (b)(1) to include clear limitations to help curb misuse. They recommend the following:

> (1) Defining the timeframe for when a debtor or trustee may file this motion. Replace the phrase "At any time" with, for example, "At any time between 18-36 months after the date of the order for relief . . .".
> (2) Alternatively, specifying the frequency with which the debtor or trustee may file this motion in a case.
> (3) Specifying potential remedies for the mortgage claimant if the provision is misused or used in a vexatious manner.
> (4) Providing that a pro se debtor must provide an attestation as to the facts set forth in the motion.
> (5) Providing that it is a ground for setting an adverse order aside if the movant has failed to name and serve the correct mortgage claimant/servicer with the Motion to Determine Status, based on the documents filed in the case as of the time the motion is filed and served.

One member of the subcommittee stated that in a direct pay situation, the debtor should be responsible for filing the motion, rather than the trustee.
We suggest that the response deadline be 28 days, rather than 21, to match the response deadline on an End-of-Case Notice of Payments Made [see proposed 3002.1 (g)(3)]. The work required for a response to either motion is substantially the same, and 28 days appears to be a more appropriate response deadline.

(g): Clarify whether the trustee must file an End-of-Case Notice when the claim secured by the principal residence is modified in the plan and not paid per the contract, like in a total debt case. Also clarify if the trustee is required to file the End of Case Notice if the trustee did not make any disbursements to the mortgage claimant because the plan provided that payments to cure any arrearage and ongoing payments were to be disbursed by the debtor.

Subdivision (g)(4) provides that "after service of the response … the debtor or the trustee ***may*** file a motion to determine whether the debtor has cured all defaults and paid all required postpetition amounts on a claim." What if neither the debtor nor the trustee files this motion? For example, if a creditor files a "disagreed" response to the Notice of Payments Made, the proposed rule does not mandate a motion to resolve the disagreement. If the debtor and trustee just allow the case to discharge, what is the controlling status of the account? The rule should clarify.

In (g)(4), the time for filing the Motion to Determine Final Cure is somewhat confusing. It is clear that if the claimant does not file the required response, the deadline for filing the motion to determine final cure must be filed within 45 days after service of the trustee's notice under (g)(1). It is not clear what the deadline is if the claimant files the required response. The provision just states that it can be filed "After the service of the response under (g)(3)" but does not provide an actual deadline. Clarify what the deadline is.

Mortgage claimants request a provision that it is a ground for setting an adverse order aside if the movant has failed to name and serve the correct mortgage claimant/servicer with either (1) the Trustee's End-of-Case Notice of Payments Made or (2) the Motion to Determine Final Cure and Payment of Mortgage Claim, based on the documents filed in the case as of the time the motion is filed and served.

Additionally, 3002.1(g)(3) provides that the mortgage claimant must file a response to the Trustee's End-of-Case Notice as a supplement to the proof of claim. This provision of the Rule is not new, but there has always been confusion over exactly what this means. "Response" indicates it is a document to be filed in the main case, which is where most of us would assume that a response to a notice or motion would be filed. "Supplement to the proof of claim" indicates that the document should be filed in the claims record. It would add clarity to state that the response must be filed in the main case and will be construed as a supplement to the proof of claim.

2023-0002-0012 – Pam Bassel.

(a): Although it is clear from the Committee Note that the rule is supposed to apply to reverse mortgages, it is not clear from the language of the rule itself. Lender representatives argue that although there are contractual financial obligations in reverse mortgage agreements, like paying *ad valorem* taxes and maintaining insurance, these payments are not made to or through the mortgage lender, making Rule 3002.1 inapplicable to reverse mortgages. Another proposed addition to the rule is simply to clarify that application of the rule ceases when the plan term ceases.
The suggested language to clarify these points is:

> (a) **IN GENERAL**. This rule applies in a chapter 13 case to secured claims which are secured by the debtor's principal place of residence when the plan provides that the trustee or the debtor will make payments required by a contract with the claimant, whether the payments are made to the claimant or to some other entity. Unless the court orders otherwise, the notice requirements of this rule cease to apply at the earlier of an order terminating or annulling the automatic stay becoming effective with respect to the residence that secures the claim or the conclusion of the chapter 13 plan term.

Lender representatives have also asked if the rule applies to total debt plans in which the debtor pays the balance owed on the loan before the end of the case, generally in monthly payments through the plan that are not in the same amount or paid on the same date set out in the contract between the debtor and the mortgage claimholder. Additionally, there is no escrow component in the payments made pursuant to a total debt plan. Because of these differences, total debt payments are not contractual payments, and the rule would not be applicable in total debt cases. If that is so, can that be stated in the rule so there is no confusion and no inconsistency in court holdings on that point?

(g): The trustee's End-of-Case Notice of Payments Made requires the trustee to state what amount, if any, the trustee has paid to the mortgage claimant on postpetition contractual payments, to cure a default, or to pay postpetition fees, expenses, and charges. In a total debt case, the trustee will have made payments to the claimant, but those will not be payments of this type. Please clarify if trustees are required to file a Notice of Payments Made when the claim is not paid per the contract, as in a total debt case.

Subdivision (g)(3) provides that the mortgage claimant must file a response to the trustee's Notice of Payments Made as a supplement to the proof of claim. This provision of the rule is not new, but there has always been confusion over exactly what this means. It seems that a response to a notice or motion should be filed in the main case, but a "supplement to the proof of claim" should be filed in the claims record. It would add clarity to state that the response must be filed in the main case and will be construed as a supplement to the proof of claim.

In (g)(4)(A), it is clear that if the claimant does not file the required response, the deadline for filing the motion to determine final cure must be filed within 45 days after service of the trustee's Notice of Payments Made. It is not clear what the deadline is if the claimant files the required response. The provision just states that it can be filed "[a]fter the service of the response under (g)(3,)" but it does not provide an actual deadline. The suggested revision to (g)(4)(A) is:

> Within 45 days after service of the response under (g)(3) or, if no response is filed, within 45 days after service of the trustee's notice under (g)(1), the debtor or trustee may file a motion to determine . . . .

2023-0002-0013 – United States Foreclosure Network and Mortgage Bankers Association.

(a): The proposed revisions continue to make the rule applicable only to the debtor's principal place of residence. We suggest that the rule be made to allow, but not require, notices with respect to real property that is not the principal place of residence. The critical issue is to make clear that a lender or loan servicer that provides Notices of Payment Change or Notices of Fees, Expenses, and Charges regarding property that is not the principal place of residence should not, as has been the case in some districts, be sanctioned for simply providing these notices. Frequently the real property in question is income producing, which income may be relied upon by the debtor to fund the plan, and notices under Rule 3002.1 could be of assistance.

The removal of the word "installment" does not completely clarify what types of transactions are subject to the rule, such as reverse mortgages; statutory liens, like tax lien transferees and HOA liens; total debt plans; cramdown; and nontraditional liens on primary residences. As to reverse mortgages, the Committee Note indicates that the rule is applicable to these types of loans, but we believe that it is not. Although there are contractual financial obligations in a reverse mortgage, like the obligation of the mortgagor to pay taxes and insurance, those payments are not made to the mortgage claimant, and therefore proposed Rule 3002.1 would not apply. As to total debt claims (and also reverse mortgages), the mortgage claimant may make postpetition payments for taxes and insurance to protect the claimant's position if the debtor does not make them. Servicers/attorneys do not have a definitive answer as to whether a Notice of Postpetition Fees, Expenses and Charges under Rule 3002.1(c) is required for recovery of these postpetition escrow advances, or if another procedure is more appropriate (i.e. motion for reimbursement, Rule 2016(a), application, or a motion for relief). Clarity would be appreciated.

(b): Subdivision (b)(3)(B) concerns the effective date of a payment decrease and currently provides that the effective date of a payment decrease is the "first payment due date after the date of the notice." We suggest that it provide that a payment decrease is effective on the actual payment due date, even if that date is in the past.

Subdivision (b)(4) has no deadline to file a motion to determine the validity of a payment change. We suggest amending this provision to provide for a three-to-six-month deadline for filing a motion to determine the validity of a payment change to add some finality to the process.

(e): We suggest a shorter time deadline for a party-in-interest to file a motion to determine fees, expenses, or charges. In the average case 60 days from the date the creditor's notice is filed is an adequate period of time for the diligent debtor and debtor's counsel to file the motion, and that would give the bankruptcy court an opportunity to resolve the issues before the conclusion of the case. Additionally, there is nothing in the proposed rule that requires the debtor to state how and when the fees, expenses or charges will be paid. This often results in objections to the notice of final cure that could otherwise be avoided.

(f): This new procedure could be initiated by either the trustee or the debtor at any time during the case until the trustee files a (g)(1) notice at the end of the case. There is no limit on the number of times this procedure can be used. The Committee Note states that this "should be used only when necessary and appropriate," which seems to recognize the potential for misuse or vexatious behavior, but the Note on its own will not prevent potential abuse. We suggest the following changes:

> (1) Define the timeframe for when a debtor or trustee may file this motion. Replace "At any time" with something like "At any time between 18-36 months after the date of the order for relief . . .".
> (2) Alternatively, specify the frequency with which the debtor or the trustee may file this motion in a case, such as no more than twice per case.
> (3) Specify potential remedies for the mortgage claimant if the provision is misused or used in a vexatious manner.
> (4) Provide that a pro se debtor must provide an attestation as to the facts set forth in the motion.
> (5) Provide that it is a ground for setting an adverse order aside if the movant has failed to name and serve the correct mortgage claimant/servicer with the motion, based on the documents filed in the case as of the time the motion is filed and served.

Subdivision (b)(2) requires a response within 21 days. We suggest that, because this review and investigation as to the status of payments is substantially similar to that required by 3002.1(f)(1), the response period here should also be 28 days.

(g): Subdivision (g)(3) states the trustee "must" file the notice, and the creditor "must" file a response, and the pleadings "must" be on the official forms. However, (g)(4)(A) says the debtor or trustee "may" file a motion to determine. What if neither debtor nor the trustee files this motion? Mortgage claimants may be left with uncertainty as to the status of a claim after the case closes. The proposed rule should be amended to provide clarity.

We request a provision that it is a ground for setting an adverse order aside if the movant has failed to name and serve the correct mortgage claimant/servicer with either (1) the Trustee's End-of-Case Notice of Payments Made or (2) the Motion to Determine Final Cure and Payment of Mortgage Claim, based on the documents filed in the case as of the time the motion is filed and served.

Additionally, 3002.1(g)(3) provides that the mortgage claimant must file a response to the Trustee's End-of-Case Notice as a supplement to the proof of claim. "Response" indicates it is a document to be filed in the main case, while "Supplement to the proof of claim" indicates that the document should be filed in the claims record. It would add clarity to state that the response must be filed in the main case and will be construed as a supplement to the proof of claim.

2023-0002-0014 – Mortgage Bankers Assoc.

(f): Under the changes to Rule 3002.1(f), the debtor or trustee may file a Motion to Determine Status at any time after the date of the order for relief until the trustee files the notice under a

Rule 3002.1(g)(1). There is no limit to the number of times either the debtor or trustee may make such a request. Yet, despite being subject to an unlimited number of such motions during the pendency of a single chapter 13 case, the mortgage servicer would be bound to respond to each request if it disagrees with the facts asserted therein. Then, for every disagreement, the parties must attend a hearing for an adjudication on the dispute. This change will needlessly add operational complexity for servicers and significantly increase the amount of attorney's fees for little benefit. In order to avoid misuse, debtors and trustees should be limited to two requests during this timeframe.

Debtors will not be prejudiced by restricting the number of times a motion under 3002.1(f) can be filed. They already have access to much of the information that claim holders must provide in Form 410C13-NR. The Consumer Financial Protection Bureau requires that servicers provide debtors with a modified monthly billing statement for closed-end mortgage that contains much of the information required in Form 410C13-NR.2 Each month, the billing statements are required to provide detailed information regarding post-petition payments (next due date, payment amount, past-due total, etc.) as well as pre-petition payments (amount received since last statement, amount received since the beginning of the bankruptcy case, and the current balance of the arrearage). Then, mortgage servicers are *also* required to file post-petition fee notices that itemize all post-petition fees that it seeks to recover from the mortgagor pursuant to Rule 3002.1(c).Thus, the stated goal of this new provision—"to give the debtor an opportunity to cure any post-petition defaults"—is already served on a routine, monthly basis.

(g): Clarify the Procedures Used to Determine a Final Cure. Rule 3002.1(g)(4) says the debtor or trustee may file a Motion for Final Cure, allowing the court to rule whether the debtor has cured the mortgage default. While 3002.1(g)(4) is clear, the procedural requirements for filing the motion open the door to unfair treatment for the mortgage claim holder. The first requires the trustee to file a Notice of Payments Made, utilizing form 410C13-N. Then the mortgage claim holder must file a response, using form 410C13-NR within 28 days. If the claim holder fails to file a response, the trustee or debtor have 45 days to file the Motion for Final Cure. If the claim holder does file a response, then the trustee or debtor has an unlimited timeframe to file the Motion for Final Cure. This deadline difference in the rule provides an unworkable timeframe for resolving the status of the debt and bringing finality to the proceedings.

To prevent this uncertainty, debtors or trustees should be required to file a motion under 3002.1(g)(4) within 45 days after serving Form 410C13-N, regardless of whether they receive a response from the claim holder. Further, the rule should be expanded to give finality to the mortgage claim process as to all parties involved. Failure of the debtor or trustee to file a Final Cure motion within the 45-day period should be given the same preclusive effects of 3002.1(h) by preventing the introduction of evidence at any future hearing and the granting of appropriate sanctions.

Additionally, the rule should specify that a claim holder does not need to respond to a motion to determine whether the debtor has cured if they agree with the facts asserted. Proposed Rule 3002.1(h) allows the court to take several actions if a claim holder does not provide information required under the rule. The rule should state that a failure to file Form 410C13-M2R or respond

to a motion to determine whether the debtor has cured does not trigger a hearing under Rule 3002.1(h).

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc.

(b): We support the amendment to reduce the need to send monthly Notice of Payment Changes (NPC) for small payments changes associated with HELOCs. However, automating this process will be complex. Moreover, mortgage claim holders often continue to send monthly billing statements for HELOCs with the actual amount due each month to debtors in bankruptcy. These monthly billing statements will become inconsistent with the NPCs under this proposal. This amendment should be clear that claim holders that choose to use the HELOC reconciliation process are permitted to continue to send billing statements with the actual payment due versus having to match the amount identified in the NPC.

With respect to subdivision (b)(3)(B), we request a clarification on how to address an untimely decrease in payment that is retroactive to a prior month.

2023-0002-0016 – N.D. Ga. Chapter 13 Trustees.

(a): We agree with the comment submitted by the National Bankruptcy Conference recommending that the term "contractual" be deleted from Rule 3002.1(a). While the majority of the chapter 13 cases we administer involving mortgages provide for the debtor to make postpetition payments directly to the mortgage lender, we do administer chapter 13 plans that provide for the entire mortgage balance to be paid by the chapter 13 trustee. Because the mortgage debt in these cases is paid according to the terms of the chapter 13 plan rather than under the contractual terms of the mortgage, the use of the term "contractual" in the rule could be interpreted to mean that it does not apply in these circumstances. Such an interpretation would thwart the intent of Rule 3002.1 in providing debtors with finality with regard to the mortgage at the end of a chapter 13 case.

(g): In 3002.1(g)(1) we propose extending the time for chapter 13 trustees to file the End-of-Case Notice of Payments Made from 45 days to 60 days after the debtor completes all payments due to the trustee under a chapter 13 plan. In determining if the debtor has completed all payments due under the plan, the trustee must audit the case, review the payments to all creditors, and ensure that the last payment made to the trustee is in good funds. Also the additional information required by the proposed Official Form 410C13-N imposes additional administrative burdens on trustees, particularly those in direct-pay jurisdictions. An extension of this time requirement would help relieve these administrative burdens on the trustee. While we believe that in the vast majority of cases the notice would be filed within 45 days at our current case load, we believe additional time is necessary for some cases and if/when our caseloads increase, it may become more needed.

TAB 6

TAB 6A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: OFFICIAL FORMS 309A AND 309B

DATE: MARCH 19, 2024

At the fall 2022 Advisory Committee meeting, this Subcommittee recommended and the Advisory Committee approved for publication an amendment to Official Form 309A (Notice of Chapter 7 Bankruptcy Case — No Proof of Claim Deadline) and Official Form 309B (Notice of Chapter 7 Bankruptcy Case —Proof of Claim Deadline Set). The amendment added to the section on deadlines in each form the following reminder to debtors:

Debtor's Deadline to File Financial Management Course Certificate:	**Filing deadline_____**
After filing for bankruptcy, the debtor must take an approved course about personal financial management and file the certificate showing completion of the course with the court.	

This amendment was proposed in response to suggestions from Professor Laura Bartell about ways to reduce the number of bankruptcy cases that are closed without the debtor receiving a discharge due to the failure to show satisfaction of the personal-financial-management-course requirement.

Because the Consumer Subcommittee was still considering related rule amendments, the proposed amendments to Forms 309A and 309B were held back in order to allow any rule and form amendments to be presented to the Standing Committee as a package. At the fall 2023 Advisory Committee meeting, the Consumer Subcommittee presented amendments to Rules 1007(c), 5009(b), and 9006(b) and (c), which were approved for publication. The proposed

amendment to Rule 1007(c) would eliminate the deadlines for filing certificates of completion of a course in personal financial management. In light of that change, this Subcommittee was asked to reconsider the amendment to Forms 309A and 309B. Meanwhile, the related rule amendments were held in abeyance.

The Subcommittee's Deliberations

Because of the proposed elimination of a deadline (other than case closing) for filing the certificate of course completion, the previously proposed amendments to Forms 309A and 309B are no longer germane. Option 1 before the Subcommittee was therefore to recommend that the Advisory Committee withdraw them from consideration.

Option 2 was to recommend that a reminder to debtors about the personal-financial-management-course requirement be placed elsewhere on the relevant 309 forms. There is not an existing section of the forms that would be appropriate for this information, so a new section would need to be added. It could read as follows:

13. Requirement for discharge	After filing for bankruptcy, the debtor must take an approved course about personal financial management and file the certificate showing completion of the course with the court.

Recommendation

The Subcommittee recommends Option 1: that the previously approved amendments to Forms 309A and 309B be withdrawn. Members were doubtful that a reminder in the 309 forms would have much effect on debtors. They thought that the two reminder notices that will be sent to debtors if Rule 5009(b) is amended as proposed will be more effective. Furthermore, it might be difficult to create a new section of the 309 forms without expanding the forms to a third page—something that should be avoided because of mailing costs.

TAB 6B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: COMMENTS ON RULE 3002.1 FORMS

DATE: MARCH 19, 2024

Last August the Standing Committee published for comment six new official forms that were proposed to implement proposed amendments to Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence). Ten sets of comments concerning these forms were submitted.

The Subcommittee carefully considered these comments during its meetings on February 26 and 28. This memo explains the Subcommittee's recommendations for changes to the forms and Committee Note in response to the comments. Following in the agenda book are summaries of all of the comments, with brief discussions, and the six forms and Committee Note as proposed for final approval by the Advisory Committee.

The Motion Forms:

Official Form 410C13-M1(Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim) and Official Form 410C13-M2 (Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of Mortgage Claim)

The Subcommittee recommends that the following changes be made to both of these forms:

- Change "paid" to "disbursed" in Part 2b, d, and e. Chapter 13 trustees act as disbursement agents; they do not "pay" the mortgage.

- Delete "and allowed" before "under" in Part 3a and add "and not disallowed" at the end of that item. As noted by the National Bankruptcy Conference, postpetition fees, expenses, and charges are not "allowed" under Rule 3002.1(c). If no motion is filed under Rule 3002.1(e), there is no court determination that the fees are allowed. Moreover, because the notice of fees is not subject to Rule 3001(f), the fees are not

deemed allowed. If, however, the court did rule on them and disallowed them, they should not be included.

- Delete "contractual" in Part 4 before "obligations." This change conforms to a change to Rule 3002.1(a) being recommended by the Consumer Subcommittee.

- Add a new section 5 in brackets to allow the trustee or debtor to add other relevant information. This change was suggested after the Subcommittee's meetings and has not been discussed or approved by it. The Advisory Committee should consider whether this change should be made in order to accommodate plans that provide for a less conventional treatment of the home mortgage.

- Add lines for address, phone number, and email after the moving party's signature to comply with Rule 9011(a).

In addition to the changes listed above, the Subcommittee recommends the following change to Form 410C13-M2:

- Add "the" before "Mortgage" in the title of the form to be consistent with the other forms.

The Motion Response Forms:

Official Form 410C13-M1R (Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim) and Official Form 410C13-M2R (Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of the Mortgage Claim)

The Subcommittee recommends that the following changes be made to both of these forms:

- Add at the beginning of Part 2: "The total amount received to cure any arrearages as of the date of this response is $_____." This will directly respond to Part 2e of the motion.

- Create separate responses for prepetition and postpetition arrearages to correspond with the breakdown of those amounts in the motion.

- Change the direction to "Check all that apply" since now more than one statement could be asserted.

- Put all three check boxes at the beginning of Part 3, and make that section subpart (a). Move the direction to attach a payoff statement to subpart (b), along with the seven items of information to be supplied. These changes respond to the comments that a payoff

statement and the information requested are needed in situations in which the claim holder says that the debtor is not current, as well as when current.

- Delete "contractual" before "payments" in Part 3(a) for the reason previously stated.

- In Part 4 delete the requirement to use the format of Official Form 410A, Part 5. Mortgage groups commented that this format does not work for distinguishing between prepetition arrears and postpetition defaults.

- In the third bullet point of Part 4, change "assessed to the mortgage" to "that the claim holder asserts are recoverable against the debtor or the debtor's principal residence." This language tracks the language of Rule 3002.1(c) and is clearer.

The Trustee's Notice:

Official Form 410C13-N (Trustee's Notice of Payments Made)

The Subcommittee recommends that the following changes be made to this form:

- In the title, change "Payments" to "Disbursements" to reflect more accurately the trustee's role.

- In Part 2, delete the space for the date of the debtor's completion of payments. Trustees commented that the date is ambiguous and is not needed.

- Change the title of Part 3 from "Amount Needed to Cure Default" to "Arrearages." If the debtor has been making direct payments, the trustee may not be aware of defaults.

- For the same reason, delete the request for "Allowed amount of postpetition arrearage, if any." Also delete the question asking whether the debtor has cured all arrearages.

- In 3b, c, and d, change "paid" to "disbursed" for the reason previously stated.

- In Part 4, delete "contractual" for the reason previously stated.

- Add a check box for "other" to allow for hybrid situations.

- Change the statement in Part 4c to the date of the trustee's last disbursement, rather than when the next mortgage payment is due. Commenters noted that by the time the notice is filed, additional payments may have already come due and might have been paid by the debtor. Add a statement explaining that future payments are the debtor's responsibility.

- In Part 5, delete "Amount of allowed postpetition fees, expenses, and charges." The trustee may not have this information.

- Delete "as of the date of this notice" as unnecessary.

Response to Notice

Official Form 410C13-NR (Response to Trustee's Notice of Payments Made)

The Subcommittee recommends that the following changes be made to this form:

- In the title, change "Payments" to "Disbursements" to be consistent with the proposed change to the title of the notice.
- In the first line, correct the citation. Change to Rule 3002.1(g)(3).
- Change the title of Part 2 to "Arrearages" to correspond with Part 3 of the notice.
- Add at the beginning of Part 2: "The total amount received to cure any arrearages as of the date of this response is $_____." This will capture amounts paid by both the trustee and the debtor.
- In Part 3, delete "contractual" for the reason previously stated.
- Put all three check boxes at the beginning of Part 3, and make that section subpart (a). Move the direction to attach a payoff statement to subpart (b), along with the seven items of information to be supplied. These changes respond to the comments that a payoff statement and the information requested are needed in situations in which the claim holder says that the debtor is not current, as well as when current.
- In Part 4, delete the requirement to use the format of Official Form 410A, Part 5. Mortgage groups commented that this format does not work for distinguishing between prepetition arrears and postpetition defaults.
- In the third bullet point of Part 4, change "assessed to the mortgage" to "that the claim holder asserts are recoverable against the debtor or the debtor's principal residence." This language tracks the language of Rule 3002.1(c) and is clearer.

Committee Note

The Subcommittee recommends that the following changes be made to the Committee Note to conform to the changes proposed to be made to the forms and Rule 3002.1 and in response to comments. Line references are to the Committee Note as published.

- Delete "contractual" throughout the note when referring to postpetition payments.
- On line 11, change the title of the trustee's notice.
- On line 20, change "21 days" to "28 days" to conform to the proposed change to Rule 3001.2(f)(2).

- On line 27, change “or” to “and.”
- On line 30, delete “using the format of Official Form 410A, Part 5.”
- On line 38, add this sentence: “If the trustee did not disburse any funds, the trustee should report in Parts 3 and 4 that she has paid $0.00.”
- On line 39, add “or provide the web address where it can be accessed” to the end of the sentence.
- On line 45, add “It must also provide a payoff statement.”
- On line 48, delete “using the format of Official Form 410A, Part 5.”
- On line 64, change “21 days” to “28 days” to conform to the proposed change to Rule 3001.2(g)(4)(B).
- On line 71, change “or” to “and.”
- On line 74, delete “using the format of Official Form 410A, Part 5.”

COMMENTS ON THE RULE 3002.1 FORMS

General Comments

2023-0002-0007 – Kurt Anderson. The entire form numbering system needs to be revamped to track with the rules numbering. It is confusing for a non-regular practitioner on a specific issue such as this one—despite references in the rules themselves—to try to correlate a 400 series form with a 3000 series rule. I note that my district's local form numbers closely track the related rule numbering.

2023-0002-0008 – Minnesota State Bar Association. We support the proposed new forms.

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1). It would be helpful to have a set of instructions for the forms.

2023-0002-0014 – Mortgage Bankers Assoc. Prepare instructions for the forms.

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Consider better ways to exchange data anticipated by this proposed rule. One suggestion is to leverage the National Data Center for the electronic exchange of information required for determinations of status and final cure. The electronic exchange of information is efficient and cost-effective and allows for automated analysis of data and identification of variances. Also provide line-by-line instructions on what information needs to be provided, and define terms.

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Instructions for the forms, including any necessary definitions, will be written prior to the December 1, 2025, effective date of the forms. Instructions do not need to be approved by the Standing Committee or the Judicial Conference.

No action should be taken on Mr. Anderson's and ICE Mortgage's suggestions. With respect to Mr. Anderson's suggestion to renumber the official forms, such an undertaking would require amending all of the restyled rules that refer by number to relevant forms. Because the restyling project was just completed, further widespread revision is not advisable now. Furthermore, there is a rationale for the current numbering system, and the new form references in the rules should be helpful to users.

ICE Mortgage's suggestion for the electronic exchange of information is beyond the scope of the current project of revising Rule 3002.1 and related forms.

Official Form 410C13-M1 (Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim)

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1). This form should require a debtor to sign an oath or affidavit to ensure the accuracy of the information provided and to deter abuse.

023-0002-0013 – United States Foreclosure Network and Mortgage Bankers Association. This form should require a debtor to execute an affidavit or oath.

———

No action needs to be taken in response to these comments. A debtor who files this motion must sign it. Rule 9011 provides that the signature constitutes a certification that, among other things, the motion is not being filed for an improper purpose and that factual contentions have evidentiary support.

Part 2

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Define the following terms: "prepetition arrearage" (Do postpetition arrearages that are reported as supplements to the proof of claim become prepetition arrearages? If not, where are they reported?); "allowed amount of postpetition arrearage" and "total amount of postpetition arrearage" (Do these amounts include all delinquent postpetition payments, including agreed orders related to postpetition amounts due? Do these amounts include approved postpetition fees that remain unpaid?); "total amount of arrearages paid" (Is that the sum of 2.b. and 2.d.?).

———

No change needs to be made to the form. The instructions can clarify if necessary.

Part 3

2023-0002-0009 – National Bankruptcy Conference. Part 3.a. asks the debtor or trustee to state the amount of postpetition fees, expenses, and charges noticed and allowed under Rule 3002.1(c). Postpetition fees, expenses, and charges are not "allowed" under Rule 3002.1(c). If no motion is filed under Rule 3002.1(e), there is no court determination that the fees are allowed. Moreover, because the notice of fees is not subject to Rule 3001(f), the fees are not deemed allowed. Suggested change:

> Delete "and allowed." The instructions for the form might indicate that the amount should not include any fees, expenses, and charges that the court has determined are not required to be paid under Rule 3002.1.

———

The point is well taken. Make the suggested change.

Official Form 410C13-M1R (Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim)

Part 2

2023-0002-0009 – National Bankruptcy Conference. Unlike the motion form (M1), Part 2 of this response form does not require a breakdown of arrearages between prepetition and

postpetition. That breakdown would be helpful and would make this form consistent with Form 410C13-NR (Response to Trustee's Notice of Payments Made).

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Define "any arrearage." (Is this just prepetition arrearages, or does it include delinquent postpetition payments? Should just be prepetition, and postpetition amount should be reported in Part 3).

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Asking separately for prepetition and postpetition arrearages will make the form consistent with the motion form.

Part 3

2023-0002-0009 – National Bankruptcy Conference. Consistent with our suggestion that "contractual" be deleted in Rule 3002.1(a), we suggest that the references to "postpetition contractual payments" be changed to "postpetition payments."

This part would provide more helpful responses if the information were requested in the following three categories: 1) the debtor is current on all postpetition payments (which would be limited to periodic payments for principal, interest and escrow), 2) the debtor is not current on all postpetition payments, and 3) the debtor has fees, expenses and costs due and owing. By including fees, costs and expenses as part of the "postpetition contractual payments," the proposed form fails to distinguish between our designated categories 1 and 3.

The claim holder is required to provide a payoff statement and important account information about the status of the loan only if the debtor is current with postpetition payments. If the claim holder believes the debtor is not current, then it need only provide the date of the postpetition payment that first became due. Access to detailed information about the status of the loan by the trustee and debtor is even more critical when a default is being asserted. Suggested change:

> Request the claim holder to provide a payoff statement and a response to the seven listed data points even if the debtor is not current with postpetition payments.

2023-0002-0013 – United States Foreclosure Network and Mortgage Bankers Association. With respect to the requirement that the responding creditor attach a payoff statement in support of its response, such requirement is somewhat onerous and exceeds the scope of a typical Notice of Final Cure/Motion to Determine inquiry, which is usually limited to the whether the subject loan is current. The recommendation is that the requirement be removed.

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Define "negative escrow amount." When should it be reported here rather than on the line for "balance of the escrow account"?

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The form should conform to the Consumer Subcommittee's decision to delete "contractual." With regard to the checkbox statements, the intent was to have the claim holder state that everything is current (box 1) or, if not, indicate what is in arrears: postpetition periodic payments (box 2) and/or postpetition fees, expenses, charges, etc. (box 3). It does not appear that the NBC's suggested categories are preferable.

The form should require all respondents to provide the information Part 3 and attach a payoff statement, not just those who say that payments are current. This can be achieved by putting the three checkboxes first in Part 3 and then including the statement "The claim holder attaches a payoff statement and provides the following information as of the date of this response . . . ."

Part 4

2023-0002-0009 – National Bankruptcy Conference. The claim holder is required to disclose in a payment history, if applicable, the amounts for "all fees, costs, escrow and expenses assessed to the mortgage." It is not clear what "assessed to the mortgage" means. Change to: "all fees, costs, escrow and expenses assessed to the debtor."

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1). The requirement to use the format of the Official 410A, Part 5 for the payment history should be deleted, or the forms should state that the claim holder may use the Official 410A format but is not required to do so. Questions and confusion may arise, in part, because Part 5 of the 410A is intended to capture a prepetition payment history and does not lend itself to distinguishing between outstanding prepetition arrears from any postpetition delinquency.

2023-0002-0013 – United States Foreclosure Network and Mortgage Bankers Association. Rather than requiring the respondent to use the format of Form 410A, Part 5, this form should just ask for a payment history. The Part 5 format does not distinguish between prepetition arrears and postpetition defaults. Remove the requirement to use that format, or specify that the claim holder "may" use the Official 410A format but is not required to do so.

2023-0002-0014 – Mortgage Bankers Assoc. Either remove the requirement to use the format of Form 410A, Part 5; make using the form optional; or explain how this information can be provided on the form.

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Do not require a specific form or format to report the information requested in this section.

———

The requirement for a specific format for the payment history should be removed. Change "all fees, costs, escrow and expenses assessed to the mortgage" to "all fees, costs, escrow, and expenses that claim holder asserts are recoverable against the debtor or the debtor's principal residence." That's the language of Rule 3002.1(c).

Official Form 410C13-N (Trustee's Notice of Payments Made)

Part 2

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1). Part 2 asks for the date the debtor completed all payments due to the trustee. What date is to be given: the date the debtor submitted the payment to the trustee, the date the trustee received the payment, or the date the trustee was assured that the payment was made with good funds following the expiration of any applicable payment hold? Is the date even needed?

2023-0002-0016 – N.D. Ga. Chapter 13 Trustees. Eliminate the requirement of entering the date of the debtor's last payment to complete the chapter 13 plan. This information may not always be easily discernible, and the inclusion of this date does not seem to serve any function. There is also a contradiction between the form and the committee note with regard to the second sentence of Part 2. While the Official Form states that the trustee may attach a disbursement ledger for the claimant *or* provide the web address where such a ledger may be found, the committee note at lines 38 and 39 states that the ledger must be attached to the form.

Change to "~~On _____~~, The debtor has completed all payments due the trustee under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder is attached or may be accessed here: _____ (web address)." Change lines 38-39 of the Committee Note as follows: "The trustee must also provide her disbursement ledger for all payments she made to the claim holder or provide the web address where it can be accessed."

Part 3

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1). In a non-conduit plan, the trustee may not know whether a postpetition payment default has occurred and therefore may not know if there is a postpetition arrearage, the amount of that arrearage, or whether that arrearage has been cured. This would make it impossible to complete Part 3 accurately.

2023-0002-0012 – Pam Bassel. The trustee may not know about postpetition arrearages if the debtor has been making mortgage payments directly. Suggested change:

c. Total amount of postpetition arrearage to be paid by the trustee as of the date of the notice.

e. Total amount of arrearages paid by the trustee as of the date of the notice.

Has the trustee paid all arrearages known to the trustee?

Yes

No

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Define the following terms: "prepetition arrearage" (Do postpetition arrearages that are reported as supplements to the proof of claim become prepetition arrearages? If not, where are they reported?); "amount of postpetition arrearages" and "total amount of postpetition arrearages" (Do these amounts include all delinquent postpetition payments, including agreed orders related to postpetition amounts

due? Do these amounts include approved postpetition fees that remain unpaid?); and "total amount of arrearages paid" (Is that the sum of 3.b. and 3.d.?).

2023-0002-0016 – N.D. Ga. Chapter 13 Trustees. Lines b, c, d, and e are problematic for trustees with direct-pay mortgage cases. While it is common for postpetition mortgage arrearages to arise in direct-pay cases, how these are addressed can vary greatly. Because of this, a trustee in such a jurisdiction may simply lack the knowledge, without conducting extensive research, to correctly complete this part of the form.

———

The items listed should allow for different practices regarding what the trustee disburses. Also in line b., add "of" before "prepetition." In a direct-pay (non-conduit) plan, the trustee can state $0 if that is the case. The instructions can address any of the uncertainties raised by ICE Mortgage.

Part 4

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1). There could be confusion as to how the trustee is to complete this part of form in the situation in which a postpetition payment default occurs and the debtor modifies the plan to pay the defaulted payments through disbursements by the trustee. Which box should the trustee mark when a portion of the postpetition payments were disbursed directly by the debtor to the mortgage claimant and part of the postpetition payments was disbursed by the trustee? The trustee will also not be in a position to state whether the debtor is current on all of the postpetition contractual payments or when the next mortgage payment is due. With respect to stating when the next mortgage payment is due, there can be confusion because by the time the trustee files the Notice of Payments Made, other ongoing contractual payments will have come due and may have been paid by the debtor following completion of the plan payments. It is unclear what "next" means in that situation. It would be better to ask for the date of the next payment following completion of the plan or the date of the trustee's last payment pursuant to the plan.

2023-0002-0012 – Pam Bassel. Part 4 contains a statement about when the next mortgage payment is due. Even when a conduit trustee has made all the postpetition contractual payments, by the time the trustee files the Notice of Payments Made, other ongoing contractual payments will have come due and may have been paid by the debtor following completion of the plan payments. Suggested change:

> c. The last ongoing mortgage payment made by the trustee was the payment due on _____. All subsequent ongoing mortgage payments must be made directly by the debtor to the mortgage claimant.

2023-0002-0013 – United States Foreclosure Network and Mortgage Bankers Association. An issue with stating when the next mortgage payment is due, even when the trustee has made all the postpetition contractual payments, is that by the time the trustee files the Notice of Payments Made, other ongoing contractual payments will have come due and may have been paid by the debtor following completion of the plan payments. Ask instead for the date the next mortgage payment following the completion of the plan is due.

2023-0002-0014 – Mortgage Bankers Assoc. Part 4 of this form requires the claim holder to state when the next mortgage payment is due. However, by the time a debtor receives this form, it is possible that this next payment date has already passed. The form should specify which of the next possible due dates to use.

2023-0002-0016 – N.D. Ga. Chapter 13 Trustees. As outlined in our comment regarding the rule, we suggest that the term "contractual" be removed from this part of the form. Furthermore, we suggest adding a third and maybe a fourth checkbox. This third checkbox could be used for other scenarios that do not lend themselves to the first two checkboxes. Such a scenario could include total debt claims in which the trustee is paying the entire mortgage debt, but as provided for in the chapter 13 plan rather than the mortgage contract. A third checkbox might be "Trustee paid claim in full," and fourth might be "Other."

———

Change "Next mortgage payment due," and make Pam Bassel's suggested change. Delete "contractual" in response to the Consumer Subcommittee's recommendation to make that change to the rule. Add a third checkbox for "Other" and a space to explain.

Part 5

2023-0002-0009 – National Bankruptcy Conference. Delete "allowed."

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1). In non-conduit jurisdictions, the trustee does not track the allowed amount or payment of postpetition fees, expenses, and charges. While the trustee could insert -0- in the blank next to "Amount of postpetition fees, expense, and charges paid by the trustee as of the date of notice," the trustee will not be able to state the allowed amount of those fees, expenses, and charges.

2023-0002-0012 – Pam Bassel. In direct pay cases, the trustee does not track the allowed amount or payment of post-petition fees, expenses, and charges. Suggested change:

> Delete the line reading, "Amount of allowed postpetition fees, expenses, and charges" or change the language to read, "Amount of allowed postpetition fees, expenses, and charges to be paid by the trustee."

2023-0002-0016 – N.D. Ga. Chapter 13 Trustees. Delete this part of the form for direct pay cases. The first line of this part requires the trustee to list the total amount of allowed postpetition fees, charges, and expenses. However, lenders are already required to file notices of these fees, charges, and expenses under Rule 3002.1(c). Furthermore, it is the practice in our

jurisdiction for the trustee to not automatically pay these post-petition fees, charges, and expenses unless specifically directed to do so by the chapter 13 plan or an order of the court. Requiring the trustee to tally and list them when they are already in the record is burdensome and unnecessary.

———

Just ask for the "Amount of postpetition fees, expenses, and charges disbursed by the trustee."

Official Form 410C13-NR (Response to Trustee's Notice of Payments Made)

Part 2

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Indicate whether "the amount to cure the postpetition arrearage" includes unpaid fees and charges.

———

If this is a problem, the instructions can clarify.

Part 3

2023-0002-0006 – January Bailey. In addition to stating the unpaid principal balance, the claim holder should have to check a box indicating whether this balance matches the amortization schedule from the note or the last loan modification. Sometimes the lender says that the debtor is now current, but it has applied payments differently, and the principal balance remaining does not match what the amortization schedule would have been.

2023-0002-0009 – National Bankruptcy Conference. Consistent with our suggestion that "contractual" be deleted in Rule 3002.1(a), we suggest that the references to "postpetition contractual payments" be changed to "postpetition payments."

This part would provide more helpful responses if the information were requested in the following three categories: 1) the debtor is current on all postpetition payments (which would be limited to periodic payments for principal, interest and escrow), 2) the debtor is not current on all postpetition payments, and 3) the debtor has fees, expenses and costs due and owing. By including fees, costs and expenses as part of the "postpetition contractual payments," the proposed form fails to distinguish between our designated categories 1 and 3.

The claim holder is required to provide a payoff statement and important account information about the status of the loan only if the debtor is current with postpetition payments. If the claim holder believes the debtor is not current, then it need only provide the date of the postpetition payment that first became due. Access to detailed information about the status of the loan by the trustee and debtor is even more critical when a default is being asserted. Suggested change:

> Request the claim holder to provide a payoff statement and a response to the seven listed data points even if the debtor is not current with postpetition payments.

2023-0002-0012 – Pam Bassel. Part 3 should be rearranged slightly. As the form is currently drafted, the respondent must provide the detailed information in the seven lines in Part 3 only if the respondent agrees that the account is current and in good standing. However, the information in those seven lines is also very useful if the respondent asserts that the debtor is not current on all postpetition payments or that the debtor owes fees, charges, expenses, negative escrow amounts, or other costs. Suggested change:

> Move all the check boxes so that they are above the line beginning "Date next postpetition payment from the debtor is due." The respondent can then check the applicable box and include the relevant information.

2023-0002-0013 – United States Foreclosure Network and Mortgage Bankers Association. With respect to the requirement that the responding creditor attach a payoff statement in support of its response, such requirement is somewhat onerous and exceeds the scope of a typical Notice of Final Cure/Motion to Determine inquiry, which is usually limited to the whether the subject loan is current. The recommendation is that this requirement be removed.

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Define "negative escrow amount." When should it be reported here rather than on the line for "balance of the escrow account"?

———

Make the same changes as made to Part 3 of Official Form 410C13-M1R. The information referred to by Ms. Bailey is not needed.

Part 4

2023-0002-0009 – National Bankruptcy Conference. The claim holder is required to disclose in a payment history, if applicable, the amounts for "all fees, costs, escrow and expenses assessed to the mortgage." It is not clear what "assessed to the mortgage" means. Change to: "all fees, costs, escrow and expenses assessed to the debtor."

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1). The requirement to use the format of the Official 410A, Part 5 for the payment history should be deleted, or the forms should state that the claim holder may use the Official 410A format but is not required to do so. Questions and confusion may arise, in part, because Part 5 of the 410A is intended to capture a prepetition payment history and does not lend itself to distinguishing between outstanding prepetition arrears from any postpetition delinquency.

2023-0002-0013 – United States Foreclosure Network and Mortgage Bankers Association. Rather than requiring the respondent to use the format of Form 410A, Part 5, these forms should just ask for a payment history. The Part 5 format does not distinguish between prepetition arrears and postpetition defaults. Suggested change:

Remove the requirement to use the format of the Official 410A or specify that the claim holder "may" use the Official 410A format but is not required to do so.

2023-0002-0014 – Mortgage Bankers Assoc. Either remove the requirement to use the format of Form 410A, Part 5; make using the form optional; or explain how this information can be provided on the form.

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Do not require a specific form or format to report the information requested in this section.

———

Make the same changes as made to Part 4 of Official Form 410C13-M1R.

Official Form 410C13-M2 (Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of Mortgage Claim)

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1). This form should require a debtor to sign an oath or affidavit to ensure the accuracy of the information provided and to deter abuse.

2023-0002-0013 – United States Foreclosure Network and Mortgage Bankers Association. This form should require a debtor to execute an affidavit or oath.

Judge Bates – He noted that, unlike the response form, there is no "the" before "Mortgage Claim" in the title of this form.

———

Add "the" to the title. Do not require an oath or affidavit.

Part 2

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Define the following terms: "prepetition arrearage" (Do postpetition arrearages that are reported as supplements to the proof of claim become prepetition arrearages? If not, where are they reported?); "allowed amount of postpetition arrearage" and "total amount of postpetition arrearage" (Do these amounts include all delinquent postpetition payments, including agreed orders related to postpetition amounts due? Do these amounts include approved postpetition fees that remain unpaid?); "total amount of arrearages paid" (Is that the sum of 2.b. and 2.d.?).

———

No action needs to be taken on the form. The instructions can clarify if necessary.

Part 3

2023-0002-0009 – National Bankruptcy Conference. Part 3.a. asks the debtor or trustee to state the amount of postpetition fees, expenses, and charges noticed and allowed under Rule 3002.1(c). Postpetition fees, expenses, and charges are not "allowed" under Rule 3002.1(c). If no motion is filed under Rule 3002.1(e), there is no court determination that the fees are allowed. Moreover, because the notice of fees is not subject to Rule 3002.1(f), the fees are not deemed allowed. Suggested change:

> Delete "and allowed." The instructions for the form might indicate that the amount should not include any fees, expenses, and charges that the court has determined are not required to be paid under Rule 3002.1.

———

Make the suggested change.

Official Form 410C13-M2R (Response to [Trustee's/Debtor's] Motion to Determine Final Cure and Payment of the Mortgage Claim)

Part 2

2023-0002-0009 – National Bankruptcy Conference. Unlike the motion form (410C13-M2), Part 2 of this response form does not require a breakdown of arrearages between prepetition and postpetition. That breakdown would be helpful and would make this form consistent with Form 410C13-NR (Response to Trustee's Notice of Payments Made).

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Define "any arrearage." (Is this just prepetition arrearages, or does it include delinquent postpetition payments? Should just be prepetition, and postpetition amount should be reported in Part 3).

———

Make the same changes as made to Part 2 of Official Form 410C13-M1R.

Part 3

2023-0002-0009 – National Bankruptcy Conference. Consistent with our suggestion that "contractual" be deleted in Rule 3002.1(a), we suggest that the references to "postpetition contractual payments" be changed to "postpetition payments."

This part would provide more helpful responses if the information were requested in the following three categories: 1) the debtor is current on all postpetition payments (which would be limited to periodic payments for principal, interest and escrow), 2) the debtor is not current on all postpetition payments, and 3) the debtor has fees, expenses and costs due and owing. By

including fees, costs and expenses as part of the "postpetition contractual payments," the proposed form fails to distinguish between our designated categories 1 and 3.

The claim holder is required to provide a payoff statement and important account information about the status of the loan only if the debtor is current with postpetition payments. If the claim holder believes the debtor is not current, then it need only provide the date of the postpetition payment that first became due. Access to detailed information about the status of the loan by the trustee and debtor is even more critical when a default is being asserted. Suggested change:

> Request the claim holder to provide a payoff statement and a response to the seven listed data points even if the debtor is not current with postpetition payments.

2023-0002-0013 – United States Foreclosure Network and Mortgage Bankers Association. With respect to the requirement that the responding creditor attach a payoff statement in support of its response, such requirement is somewhat onerous and exceeds the scope of a typical Notice of Final Cure/Motion to Determine inquiry, which is usually limited to the whether the subject loan is current. The recommendation is that the requirement be removed.

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Define "negative escrow amount." When should it be reported here rather than on the line for "balance of the escrow account"?

Make the same changes as made to Part 3 of Official Form 410C13-M1R.

Part 4

2023-0002-0009 – National Bankruptcy Conference. The claim holder is required to disclose in a payment history, if applicable, the amounts for "all fees, costs, escrow and expenses assessed to the mortgage." It is not clear what "assessed to the mortgage" means. Change to: "all fees, costs, escrow and expenses assessed to the debtor."

2023-0002-0011 – NACTT Mortgage Committee (Subcommittee on Rule 3002.1). The requirement to use the format of the Official 410A, Part 5 for the payment history should be deleted, or the forms should state that the claim holder may use the Official 410A format but is not required to do so. Questions and confusion may arise, in part, because Part 5 of the 410A is intended to capture a prepetition payment history and does not lend itself to distinguishing between outstanding prepetition arrears from any postpetition delinquency.

2023-0002-0013 – United States Foreclosure Network and Mortgage Bankers Association. Rather than requiring the respondent to use the format of Form 410A, Part 5, this form should just ask for a payment history. The Part 5 format does not distinguish between prepetition arrears and postpetition defaults. Remove the requirement to use that format, or specify that the claim holder "may" use the Official 410A format but is not required to do so.

2023-0002-0014 – Mortgage Bankers Assoc. Either remove the requirement to use the format of Form 410A, Part 5; make using the form optional; or explain how this information can be provided on the form.

2023-0002-0015 – ICE Mortgage Technology Holdings, Inc. Do not require a specific form or format to report the information requested in this section.

———

Make the same changes as made to Part 4 of Official Form 410C13-M1R.

United States Bankruptcy Court

_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim

The [trustee/debtor] states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

2. As of the date of this motion, [I have/the trustee has] disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: $ _____

b. Total amount of the prepetition arrearage disbursed, if known: $ _____

c. Allowed amount of postpetition arrearage, if any: $ _____

d. Total amount of postpetition arrearage disbursed, if known: $ _____

e. Total amount of arrearages disbursed: $ _____

3. As of the date of this motion, [I have/the trustee has] disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges noticed under Rule 3002.1(c) and not disallowed: $ _____

b. Amount of postpetition fees, expenses, and charges disbursed: $ _____

4. As of the date of this motion, [I have/the trustee has] made the following payments on the postpetition obligations: $ _____

[5. If needed, add other information relevant to the motion.]

6. I ask the court for an order under Rule 3002.1(f)(3) determining the status of the mortgage claim addressed by this motion and whether the payments required by the plan to be made as of the date of this motion have been made.

Signed: _____ Date: ____/____/_____

(Trustee/Debtor)

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

United States Bankruptcy Court
_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim

_____ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

2. Arrearages

The total amount received to cure any arrearages as of the date of this response is

$_____.

Check all that apply:

- ❑ As of the date of this response, the debtor has paid in full the amount required to cure any arrearage on this mortgage claim.
- ❑ As of the date of this response, the debtor has not paid in full the amount required to cure any prepetition arrearage on this mortgage claim. The total prepetition arrearage amount remaining unpaid as of the date of this response is:

  $ _____.
- ❑ As of the date of this response, the debtor has not paid in full the amount required to cure any postpetition arrearage on the mortgage claim. The total postpetition arrearage amount remaining unpaid on the date of this response is:

  $ _____.

3. Postpetition Payments

(a) Check all that apply:

- ❑ The debtor is current on all postpetition payments, including all fees, charges, expenses, escrow, and costs.
- ❑ The debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/_____.
- ❑ The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The total amount remaining unpaid as of the date of this response is $_____.

(b) The claim holder attaches a payoff statement and provides the following information as of the date of this response:

i. Date last payment was received on the mortgage: ____/_____/_____

ii. Date next postpetition payment from the debtor is due: ____/_____/_____

iii. Amount of the next postpetition payment that is due: $_____

iv. Unpaid principal balance of the loan: $_____

v. Additional amounts due for any deferred or accrued interest: $_____

vi. Balance of the escrow account: $_____

vii. Balance of unapplied funds or funds held in a suspense account: $_____

4. Itemized Payment History

Include if applicable:

Because the claim holder asserts that the arrearages have not been paid in full or states that the debtor is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;

- all fees, costs, escrow, and expenses that the claim holder asserts are recoverable against the debtor or the debtor's principal residence; and
- all amounts the claim holder contends remain unpaid.

_____ Date ____/_____/_____
Signature

Print _____ Title _____
Name

Company _____

If different from the notice address listed on the proof of claim to which this response applies:

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

The person completing this response must sign it. Check the appropriate box:

- ❑ I am the claim holder.
- ❑ I am the claim holder's authorized agent.

Fill in this information to identify the case:
Debtor 1 _____
Debtor 2 (Spouse, if filing) _____
United States Bankruptcy Court for the: _____ District of _____ (State)
Case number _____

Official Form 410C13-N

Trustee's Notice of Disbursements Made

12/25

The trustee must file this notice in a chapter 13 case within 45 days after the debtor completes all payments due to the trustee. Rule 3002.1(g)(1).

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Statement of Completion

The debtor has completed all payments due the trustee under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder is attached or may be accessed here: _____ (web address).

Part 3: Arrearages

	Amount
a. Allowed amount of prepetition arrearage, if any:	$ _____
b. Total amount of prepetition arrearage disbursed by the trustee:	$ _____
c. Total amount of postpetition arrearage disbursed by the trustee, if any:	$ _____
d. Total amount of arrearages disbursed by the trustee:	$ _____

Part 4: Postpetition Payments

Check one:

❑ Postpetition payments are made by the debtor.

❑ Postpetition payments are paid through the trustee.

❑ Other: _____

If the trustee has made postpetition payments, complete a-c below; otherwise leave blank.

a. Total amount of postpetition payments made by the trustee as of date of notice: $ _____

b. Is the debtor current on postpetition payments as of date of notice?

❑ Yes

❑ No

c. The last ongoing mortgage payment disbursed by the trustee was the payment due on _____. All subsequent ongoing mortgage payments must be made directly by the debtor to the mortgage claimant.

Part 5: Postpetition Fees, Expenses, and Charges

Amount of postpetition fees, expenses, and charges disbursed by the trustee: $ _____

Part 6: A Response Is Required by Bankruptcy Rule 3002.1(g)(3)

Within 28 days after service of this notice, the holder of the claim must file a response using Official Form 410C13-NR.

✘ _____ Date ____/_____/_____
Signature

Trustee _____
First Name Middle Name Last Name

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

Fill in this information to identify the case:
Debtor 1 _____
Debtor 2 (Spouse, if filing) _____
United States Bankruptcy Court for the: _____ District of _____ (State)
Case number _____

Official Form 410C13-NR

Response to Trustee's Notice of Disbursements Made

12/25

The claim holder must respond to the Trustee's Notice of Payments Made within 28 days after it was served. Rule 3002.1(g)(3).

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Arrearages

The total amount received to cure any arrearages as of the date of this response: $_____.

Check all that apply:

- ❑ The amount required to cure any prepetition arrearage has been paid in full.
- ❑ The amount required to cure the prepetition arrearage has not been paid in full. Amount of prepetition arrearage remaining unpaid as of the date of this notice: $ _____.
- ❑ The amount required to cure any postpetition arrearage has been paid in full.
- ❑ The amount required to cure the postpetition arrearage has not been paid in full. Amount of postpetition arrearage remaining unpaid as of the date of this notice: $ _____.

Part 3: Postpetition Payments

(a) *Check all that apply:*

- ❑ The debtor is current on all postpetition payments, including all fees, charges, expenses, escrow, and costs.
- ❑ The debtor is not current on all postpetition payments. The claim holder asserts that the debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/_____.
- ❑ The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The claim holder asserts that the total amount remaining unpaid as of the date of this response is $_____.

(b) The claim holder attaches a payoff statement and provides the following information as of the date of this response:

i. Date last payment was received on the mortgage: ____/_____/_____

ii. Date next postpetition payment from the debtor is due: ____/_____/_____

iii. Amount of the next postpetition payment that is due: $_____

iv. Unpaid principal balance of the loan: $_____

v. Additional amounts due for any deferred or accrued interest: $_____

vi. Balance of the escrow account: $_____

vii. Balance of unapplied funds or funds held in a suspense account: $_____

Part 4 Itemized Payment History

If the claim holder disagrees that the prepetition arrearage has been paid in full, states that the debtor is not current on all postpetition payments, or states that fees, charges, expenses, escrow, and costs are due and owing, it must attach an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses that the claim holder asserts are recoverable against the debtor or the debtor's principal residence; and
- all amounts the claim holder contends remain unpaid.

Part 5: Sign Here

The person completing this response must sign it. Check the appropriate box:

- ❑ I am the claim holder.
- ❑ I am the claim holder's authorized agent.

I declare under penalty of perjury that the information provided in this response is true and correct to the best of my knowledge, information, and reasonable belief.

✘ _____ Date ____/_____/_____
Signature

_____
First Name Middle Name Last Name

_____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

United States Bankruptcy Court

_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of the Mortgage Claim

The [trustee/debtor] states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

2. As of the date of this motion, [I have/the trustee has] disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: $ _____

b. Total amount of the prepetition arrearage disbursed, if known: $ _____

c. Allowed amount of postpetition arrearage, if any: $ _____

d. Total amount of postpetition arrearage disbursed, if known: $ _____

e. Total amount of arrearages disbursed $ _____

3. As of the date of this motion, [I have/the trustee has] disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges noticed under Rule 3002.1(c) and not disallowed: $ _____

b. Amount of postpetition fees, expenses, and charges disbursed: $ _____

4. As of the date of this motion, [I have/the trustee has] made the following payments on the postpetition obligations: $ _____

[5. If needed, add other information relevant to the motion.]

6. I ask the court for an order under Rule 3002.1(g)(4) determining whether the debtor has cured all arrearages, if any, and paid all postpetition amounts required by the plan to be made as of the date of this motion.

Signed: _____
(Trustee/Debtor)

Date: ____/____/_____

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

United States Bankruptcy Court
_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Response to [Trustee's/Debtor's] Motion to Determine Final Cure and Payment of the Mortgage Claim

_____ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

2. Arrearages

The total amount received to cure any arrearages as of the date of this response is

$_____.

Check all that apply:

- ❑ As of the date of this response, the debtor has paid in full the amount required to cure any arrearage on this mortgage claim.
- ❑ As of the date of this response, the debtor has not paid in full the amount required to cure any prepetition arrearage on this mortgage claim. The total prepetition arrearage amount remaining unpaid as of the date of this response is:

  $ _____.
- ❑ As of the date of this response, the debtor has not paid in full the amount required to cure any postpetition arrearage on this mortgage claim. The total postpetition arrearage amount remaining unpaid as of the date of this response is:

  $ _____.

3. Postpetition Payments

(a) Check all that apply:

- ❑ The debtor is current on all postpetition payments, including all fees, charges, expenses, escrow, and costs.
- ❑ The debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/_____.
- ❑ The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The total amount remaining unpaid as of the date of this response is $_____.

(b) The claim holder attaches a payoff statement and provides the following information as of the date of this response:

i. Date last payment was received on the mortgage: ___/___/____

ii. Date next postpetition payment from the debtor is due: ___/___/____

iii. Amount of the next postpetition payment that is due: $_____

iv. Unpaid principal balance of the loan: $_____

v. Additional amounts due for any deferred or accrued interest: $_____

vi. Balance of the escrow account: $_____

vii. Balance of unapplied funds or funds held in a suspense account: $_____

4. Itemized Payment History

Include if applicable:

Because the claim holder disagrees that the arrearages have been paid in full or states that the debtor is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;

- all fees, costs, escrow, and expenses that the claim holder asserts are recoverable against the debtor or the debtor's principal residence; and
- all amounts the claim holder contends remain unpaid.

_____ Date ____/_____/_____
Signature

Print _____ Title _____
Name

Company _____

If different from the notice address listed on the proof of claim to which this response applies:

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

The person completing this response must sign it. Check the appropriate box:

- ❑ I am the claim holder.
- ❑ I am the claim holder's authorized agent.

Committee Note

Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R are new. They are adopted to implement new and revised provisions of Rule 3002.1 that prescribe procedures for determining the status of a home mortgage claim in a chapter 13 case.

Official Forms 410C13-M1 and 410C13-M1R implement Rule 3002.1(f). Form 410C13-M1 is used if either the trustee or the debtor moves to determine the status of a home mortgage at any time during a chapter 13 case prior to the trustee's Notice of Disbursements Made. If the trustee files the motion, she must disclose the payments she has made to the holder of the mortgage claim so far in the case. If the debtor, rather than the trustee, has been making the postpetition payments, the trustee should state in part 4 that she has paid $0.00. If the debtor files the motion, he should provide information about any payments he has made and any payments made by the trustee of which the debtor has knowledge.

Within 28 days after service of the trustee's or debtor's motion, the holder of the mortgage claim must file a response, using Official Form 410C13-M1R, if it disputes any facts set forth in the motion. *See* Rule 3002.1(f)(2). The claim holder must indicate whether the debtor has paid the full amount required to cure any arrearage and whether the debtor is current on all postpetition payments. The claim holder must provide a payoff statement, and, if the claim holder says that the debtor is not current on all payments, it must attach an itemized payment history for the postpetition period.

Official Form 410C13-N is to be used by a trustee to provide the notice required by Rule 3002.1(g)(1) to be filed at the end of the case. This notice must be filed within 45 days after the debtor completes all payments due to the trustee, and it requires the trustee to report on the amounts the trustee paid to cure any arrearage, for postpetition mortgage obligations, and for postpetition fees, expenses, and charges. If the trustee did not disburse any funds, the trustee should report in Parts 3 and 4 that she has paid $0.00. The trustee must also provide her disbursement ledger for all payments she made to the claim holder or provide the web address where it can be accessed.

Within 28 days after service of the trustee's notice, the holder of the mortgage claim must file a response using Official Form 410C13-NR. *See* Rule 3002.1(g)(3). The claim holder must indicate whether the debtor has paid the full amount required to cure any arrearage and whether the debtor is current on all postpetition payments. It must also provide a payoff statement. If the claim holder says that the debtor is not current on all payments, it must attach an itemized payment history for the postpetition period. The response, which is not subject to Rule 3001(f), must be filed as a supplement to the claim holder's proof of claim.

Official Forms 410C13-M2 and 410C13-M2R implement Rule 3002.1(g)(4). Form 410C13-M2 is used if either the trustee or the debtor moves at the end of the case to determine whether the debtor has cured all arrearages and paid all required postpetition amounts. If the trustee files the motion, she must disclose the payments she has made to the holder of the mortgage claim. If the debtor, rather than the trustee, has been making the postpetition payments, the

trustee should state in part 4 that she has paid $0.00. If the debtor files the motion, he should provide information about any payments he has made and any payments made by the trustee of which the debtor has knowledge.

Within 28 days after service of the trustee's or debtor's motion, the holder of the mortgage claim must file a response, using Official Form 410C13-M2R, if it disputes any facts set forth in the motion. *See* Rule 3002.1(g)(4)(B). The claim holder must indicate whether the debtor has paid the full amount required to cure any arrearage and whether the debtor is current on all postpetition payments. The claim holder must provide a payoff statement, and, if the claim holder says that the debtor is not current on all payments, it must attach an itemized payment history for the postpetition period.

TAB 6C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: TECHNICAL AMENDMENTS TO FORMS FOR RESTYLED RULES

DATE: FEB. 29, 2024

The amendments to the Federal Rules of Bankruptcy Procedure to reflect the restyling project are scheduled to become effective on Dec. 1, 2024. Because certain of the Official Forms and Director's Forms and their instructions explicitly quote or refer to Bankruptcy Rules that have been restyled, conforming changes need to be made to those forms and instructions. Mock-ups of the revised forms and instructions are attached. Amendments are proposed to:

- Official Form 410 (Proof of Claim): and to
- the instructions to Official Forms 309A-I (Notice of Case), 312 (Order and Notice for Hearing on Disclosure Statement), 313 (Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan), 314 (Ballot for Accepting or Rejecting Plan), 315 (Order Confirming Plan), 318 (Discharge of Debtor in a Chapter 7 Case), and 420A (Notice of Motion or Objection); and to
- Director's Forms 1040 (Adversary Proceeding Cover Sheet) and 2630 (Bill of Costs); and to
- the instructions for Directors Forms 2070 (Certificate of Retention of Debtor in Possession), 2100A/B (Transfer of Claim Other Than For Security and Notice of Transfer of Claim Other Than for Security), 2300A (Order Confirming Chapter 12 Plan) and 2500E (Summons to Debtor in Involuntary Case).

The Subcommittee recommends that the Advisory Committee give final approval to the revisions to those forms and instructions. No publication is required.

NOTICE OF BANKRUPTCY CASE

General Information

Official Form 309 is used to give notice to creditors, equity security holders, and other interested parties of the filing of the bankruptcy case, the time, date, and location of the meeting of creditors, the time for filing various documents in the case, instructions for filing proofs of claim, and other information concerning the case.

Official Form 309 consists of several variations, numbered 309A through 309I, created to meet the specialized notice requirements for cases filed under chapters 7, 11, 12, and 13 of the Bankruptcy Code. The form to be used is determined by the chapter under which the bankruptcy petition was filed, the type of debtor (Individual or Joint Debtor, or Corporation or Partnership Debtor) and whether a proof of claim deadline is included. The versions of Official Form 309 are listed below:

309A (For Individuals or Joint Debtors), Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline
309B (For Individuals or Joint Debtors), Notice of Chapter 7 Bankruptcy Case –Proof of Claim Deadline Set
309C (For Corporations of Partnerships), Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline
309D (For Corporations of Partnerships), Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set
309E1 (For Individuals or Joint Debtors), Notice of Chapter 11 Bankruptcy Case
309E2 (For Individuals or Joint Debtors under Subchapter V), Notice of Chapter 11 Bankruptcy Case
309F1 (For Corporations of Partnerships), Notice of Chapter 11 Bankruptcy Case
309F2 (For Corporations of Partnerships under Subchapter V), Notice of Chapter 11 Bankruptcy Case
309G (For Individuals or Joint Debtors), Notice of Chapter 12 Bankruptcy Case
309H (For Corporations of Partnerships), Notice of Chapter 12 Bankruptcy Case
309I Notice of Chapter 13 Bankruptcy Case

Generally, the clerk will complete this form and mail (or transmit electronically) a copy to the creditors and other entities whose names and addresses appear on the mailing list or matrix filed by the debtor. Sometimes, the court delegates the noticing function to a chapter 13 trustee or, in a large chapter 11 case, to the debtor or a private notice provider.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by … the

national instructions for a particular form." ~~"[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."~~

Courts, or, in the event that the noticing function has been delegated, the individual or entity providing notice, may modify this form by adding additional information and by updating changed, broken, or incorrect internet links.

ORDER AND NOTICE FOR HEARING ON DISCLOSURE STATEMENT

General Information

Official Form 312 is used in chapter 9 municipality cases and chapter 11 reorganization cases to provide certain parties in interest with an order and notice of a hearing to consider the approval of the disclosure statement. The disclosure statement is a document that contains information concerning the assets, liabilities, and business affairs of the debtor sufficient to enable a creditor holding a claim or interest to make an informed judgment about the plan of reorganization. 11 U.S.C. § 1125.

This form, while legally sufficient, is often simply the starting point for drafting a longer notice containing additional provisions applicable to a particular case. Although issued in the name of the court, the Order and Notice for Hearing on Disclosure Statement normally will be drafted by the attorney for the debtor or other plan proponent. It must be approved by the court before to being sent to creditors and other parties in interest.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by … the national instructions for a particular form." ~~"[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."~~

Alterations may be made to this form.

ORDER APPROVING DISCLOSURE STATEMENT AND FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN, COMBINED WITH NOTICE THEREOF

General Information

Official Form 313 is used in chapter 11 reorganization cases to provide certain parties in interest with notice of the court's approval of the disclosure statement, their opportunity to file acceptances or rejections of the plan, and an order and notice of a hearing to consider the approval of the plan of reorganization.

This form, while legally sufficient for its purpose, is often simply a starting point for the drafting of a longer notice containing additional provisions applicable to the particular case. Although issued in the name of the court, the Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof normally will be drafted by the attorney for the debtor or other plan proponent. It must be approved by the court before being sent to creditors and other parties in interest.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by … the national instructions for a particular form."~~"[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."~~

Alterations may be made to this form.

Ballot for Accepting or Rejecting Plan of Reorganization

General Information

Official Form 314 is used as a ballot for accepting or rejecting the plan(s) of reorganization. The ballot is to be used by general creditors (including secured, priority unsecured, and nonpriority unsecured creditors), bondholders, debenture holders, other debt security holders, and equity security holders who are entitled to vote on the plan(s).

Directions

Directions or blanks for the proponent (the person who filed the disclosure statement and plan of reorganization) to complete the text of the ballot are enclosed in brackets on the Official Form. Only the applicable language from the alternatives shown on the Official Form should be included in the ballot, but the ballot may be modified to the particular requirements of the case. The form is designed to be customized by the proponent so that each class of creditor, debt security holder, or equity security holder under the plan will receive a ballot that only applies to that class. Holders of claims or equity security interests in more than one class may receive, and are entitled to vote, more than one ballot.

If more than one plan of reorganization is to be voted upon, the form of the ballot should be adapted to permit holders of claims or equity interests (a) to accept or reject each plan being proposed, and (b) to indicate preferences among the competing plans. *See* 11 U.S.C. § 1129(c).

The portion of the text labeled "Acceptance or Rejection of the Plan" includes three versions of a statement to be completed by persons entitled to vote on the plan. One version is for holders of secured, priority, or unsecured nonpriority claims. The second version is for holders of bonds, debentures, or other debt securities. The third version is for holders of equity interests. The proponent should include only the applicable language for the person receiving the ballot.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]he Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by … the national instructions for a particular form." ~~"[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."~~

Alterations may be made to this form.

ORDER CONFIRMING PLAN

General Information

Official Form 315 is used in chapter 11 cases to confirm a plan of reorganization. This form, while legally sufficient for its purpose is often simply a starting point for the drafting of a longer order containing additional provisions applicable to the particular case. Although issued in the name of the court, the Order Confirming Plan normally will be drafted by the attorney for the debtor or other plan proponent. The additional provisions in a proposed confirmation order are subject to objection and may be the focus of extensive negotiation among the parties in interest. All provisions in the order also are further subject to approval by the judge.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]he Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by … the national instructions for a particular form." ~~"[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."~~

Alterations may be made to this form.

DISCHARGE OF THE DEBTOR – CHAPTER 7

General Information

The discharge is a court order that grants a discharge of debts to the person named as the debtor. Official Form 318 covers only an individual or joint debtor(s) in a chapter 7 case. There are other procedural forms issued by the Director of the Administrative Office of the United States Courts for use in cases filed in chapter 12 and chapter 13 cases.

The effect of a discharge order is to free the debtor of any personal liability for most debts that arose before the bankruptcy case was filed. It is not a dismissal of the case, and it does not determine how much money, if any, the trustee will pay to creditors. The clerk will prepare the order of discharge in the case.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by … the national instructions for a particular form."~~"[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."~~

Alterations may be made to this form.

NOTICE OF MOTION OR OBJECTION

General Information

Official Form 420A, Notice of Motion or Objection, is intended to provide uniform, plain English explanations to parties regarding what they must do to respond in certain contested matters which occur frequently in bankruptcy cases. Previously, some courts have given such explanations better than others. The form is intended to make bankruptcy proceedings more fair, equitable, and efficient by aiding parties, who sometimes do not have counsel, in understanding the applicable rules.

The form is not intended to dictate the specific procedures to be used by different bankruptcy courts. The form contains optional language that can be used or adapted, depending on local procedures.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by … the national instructions for a particular form."~~"[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."~~

Alterations may be made to this form in accordance with applicable local court rules.

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)
PLAINTIFFS	**DEFENDANTS**
ATTORNEYS (Firm Name, Address, and Telephone No.)	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor □ Other □ Trustee	**PARTY** (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor □ Other □ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1a) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2b) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3c) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4d) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5e) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(f6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(f6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(g7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(h8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(i9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(j10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

□ Check if this case involves a substantive issue of state law	□ Check if this is asserted to be a class action under FRCP 23
□ Check if a jury trial is demanded in complaint	Demand $

Other Relief Sought

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR	BANKRUPTCY CASE NO.	
DISTRICT IN WHICH CASE IS PENDING	DIVISION OFFICE	NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF)	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

United States Bankruptcy Court

_____ District Of _____

In re	_____, Debtor	Case No. _____
	_____, Plaintiff	Chapter ____
v.	_____, Defendant	Adv. Proc. No. _____

BILL OF COSTS

Judgment was entered in the above entitled action on _____ (date) against _____ .

The clerk of the bankruptcy court is requested to tax the following as costs:

Fees of the clerk	$ _____
Fees for service of summons and complaint	$ _____
Fees of the court reporter for any and all part of the transcript necessarily obtained for use in the case	$ _____
Fees and disbursements for printing	$ _____
Fees for witnesses (*Itemized on reverse*)	$ _____
Fees for exemplifications and copies of papers necessarily obtained for use in this case	$ _____
Docket fees under 28 U.S.C. § 1923	$ _____
Costs incident to taking of depositions	$ _____
Costs as shown on Mandate of appellate court	$ _____
Other costs [*Itemized on reverse*]	$ _____
TOTAL	$ _____

DECLARATION

I, attorney for _____ (name of party) declare under penalties of perjury that the foregoing costs are correct and were necessarily incurred in this action, that the services for which fees have been charged were actually and necessarily performed, and that a copy of this Bill of Costs was mailed this day with postage fully prepaid to:

Name of Judgment Debtor _____

Address _____

_____

_____

_____

Date _____ Signature of Attorney _____

COSTS ARE TAXED IN THE FOLLOWING AMOUNT AND INCLUDED IN THE JUDGMENT: $ _____

Clerk of the Bankruptcy Court _____

Date _____ By Deputy Clerk: _____

Witness Fees (computation, cf. 28 U.S.C. § 1821 for statutory fees)

Name and Residence	Attendance		Subsistence				Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
____	____	$ ______	____	$ ______	______	$ ______	$ ____________
						TOTAL	$ ____________

NOTICE

Section 1924, Title 28, U.S. Code provides:

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

Section 1920 of Title 28 reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Bankruptcy Procedure contain the following provisions:

Rule 7054(b)(1)

"(1) ***Costs Other Than Attorney's Fees.*** The court may allow costs to the prevailing party, unless a federal statute or these rules provide otherwise. Costs against the United States, its officers, and its agencies may be imposed only to the extent permitted by law. The clerk, on 14 days' notice, may tax costs, and the court, on motion served within the next 7 days, may review the clerk's action.~~Costs *Other Than Attorney's Fees*. The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court.~~"

Rule 9006(f)

"**Additional Time After Certain Service.** When a party may or must act within a specified time after being served and service is made by mail or under Fed. R. Civ. P. 5(b)(2)(D) (leaving with the clerk) or (F) (other means consented to), 3 days are added after the period would otherwise expire under (a)~~ADDITIONAL TIME AFTER SERVICE BY MAIL OR UNDER RULE 5(b)(2)(D), (E), OR (F) F.R.Civ.P. When there is a right or requirement to act or undertake some proceedings within a prescribed period after service and that service is by mail or under Rule 5(b)(2)(D), (E), or (F) F.R.Civ.P., three days are added after the prescribed period would otherwise expire under Rule 9006(a)~~."

Rule 7058

This rule incorporates Rule 58 F.R.Civ.P. Rule 58(e) provides, in part, "Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees."

CERTIFICATE OF RETENTION OF DEBTOR IN POSSESSION

This form may be used in chapter 11 cases. Unless a trustee is appointed, the debtor is automatically continued in possession pursuant to section 1101(1) of the Bankruptcy Code– (11 U.S.C. § 1101(1)).

When evidence of debtor in possession status is required, this certificate may be used in accordance with Fed. R. Bankr. P. 2011.

Applicable Law and Rules

1. Section 1101(1) of the Code states:

> "debtor in possession" means debtor, except when a person that has qualified under section 322 of [the Bankruptcy Code] is serving as trustee in this case.

2. Fed. R. Bankr. P. 2011(a) provides:

> **The Clerk's Certification.** Whenever evidence is required to prove that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify. The certification constitutes conclusive evidence of that fact~~Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact~~.

Fee

There is a charge of $12 for certification.[1] Bankruptcy Court Miscellaneous Fee Schedule, Item 2. This amount must be paid in cash or by check or money order made payable to "Clerk, U.S. Bankruptcy Court." PLEASE DO NOT SEND CASH THROUGH THE MAIL. In addition, many bankruptcy courts accept credit cards for payment of court fees by attorneys and law firms.

General Information for the Clerk

This form is to be used when the chapter 11 debtor requests that it be certified as a debtor in possession. Section 1101 of the Bankruptcy Code and Fed. R. Bankr. P. 2011 permit the clerk to make the certification ONLY if no trustee has been appointed and ONLY in a chapter 11 case.

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[1] The $12 fee is current as of December 1, 2023. Check uscourts.gov or the Miscellaneous Fee Schedule, which is published as an appendix after section 1930 of the Judicial Code (28 U.S.C. § 1930), for the current fee.

TRANSFER OF CLAIM OTHER THAN FOR SECURITY AND NOTICE

Instructions Caption

1. Identify the Judicial District in which the bankruptcy case was filed by filling in the blanks. Example: "Eastern" [DISTRICT OF] "California."

2. "In re": Insert the name of the debtor and the case number as they appear in the Notice of Chapter Bankruptcy Case, Meeting of Creditors & Deadlines" sent to creditors at the beginning of the bankruptcy case.

3. "Name of Transferee": Insert the name of the entity that purchased or otherwise acquired the claim. This should be same entity that files the notice and that signs or whose agent signs the notice.

4. "Name and Address where notices to transferee should be sent": Insert the name and address of the entity that has acquired the claim and is filing the notice. This is the address the court and parties in interest will use when they send notices and other documents in the case. Include a telephone number and the last four digits of any account number assigned by the transferee to the debt that is the basis for the claim.

5. "Name and Address where transferee payments should be sent (if different from above)": If payments on the claim should be sent to an address different from the one to which notices will be sent, the transferee should provide the payment address in this section of the form. Include a telephone number and the last four digits of any account number assigned by the transferee to the debt that is the basis for the claim.

6. "Name of Transferor": Insert the name of the creditor that sold or otherwise relinquished the claim.

7. "Court Claim # (if known):" If the transferee filing the notice knows the claim number assigned by the court to the claim purchased or otherwise acquired by the transferee, insert that number here. The transferee may review the claims register in the case to obtain the claim number.

8. "Amount of Claim:" Insert the amount of the claim filed with the court by the transferor. The transferee may review the claims register to ascertain the amount.

9. "Date Claim Filed:" Insert the date the claim was filed with the court by the

transferor. The transferee may review the claims register to ascertain the date.

10. "Phone:" Insert the phone number (if known) of the creditor that sold or otherwise relinquished the claim. Include the last four digits (if known) of the any account number used by the transferor to identify the debt that is the basis for the claim.

11. Signature and Date: The transferee filing the notice, if the transferee is an individual, or the transferee's agent, if the transferee is not an individual, must sign the notice under penalty of perjury. If an agent signs, the agent should type or print the agent's name and title or other authority, in addition to signing. The individual signing the notice also should date it. Rule 5005(a)(2) generally requires electronic filing and service for represented entities and permits electronic filing and service for unrepresented individuals by court order or local rule. Rule 5005(C) provides that "[a] filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature." Consult the court in which the notice is to be filed for specific requirements.

12. The transferee should not complete or file Form 2100B. The clerk will complete the Form 2100B notice and it will be mailed by the Bankruptcy Noticing Center.

General Information for the Clerk

Whenever a claim is transferred under terms specified in Rule 3001(e)(2), that is, other than for security and after a proof of claim has been filed, the purchaser/transferee must file evidence of the transfer. Rule 3001(e)(2)(B) also requires the clerk "immediately" to give notice of the alleged transfer to the seller/transferor. The notice must state further that any objection must be filed within ~~20~~ 21 days of the date the notice is mailed. Form 2100A is designed to serve as evidence of the transfer and Form 2100B is designed to serve as the notice the clerk sends to the alleged transferor of the claim.

The transferee completes Form 2100A and signs it under penalty of perjury. The court's CM/ECF computer system will assemble the information needed to prepare the Form 2100B notice from the docket entry for Form 2100A and information in the case records in the clerk's office. The notice will be mailed by the Bankruptcy Noticing Center to the alleged transferor or, if the alleged transferor has agreed to receive notices electronically, it will be transmitted electronically.

ORDER CONFIRMING CHAPTER 12 PLAN

Applicable Law and Rules

Section 1221 of the Bankruptcy Code (11 U.S.C. § 1221) requires each debtor to file a plan within 90 days after the filing of the original petition. The court may extend this deadline "if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable."

Instructions

General

Many courts have developed their own form order for the confirmation of a chapter 12 plan. Before submitting a proposed confirmation order on Form 2300A, an attorney should inquire whether the court uses the form. Furthermore, the local rules or practice may require the standing trustee to prepare the confirmation order.

Caption

1. Identify the judicial district in which the bankruptcy case was filed. Example: Eastern District of California.

2. "In re": Insert the name of the debtor as it appears in the bankruptcy petition.

3. "Case No.": Insert the bankruptcy case number assigned at the time of filing.

Line 1, first paragraph

Insert in first blank the date of filing of the plan. Insert in the second blank the date of filing of any modification.

Numbered section 1

Select the appropriate check boxes.

Line 2: insert the amount of each payment.

Line 3: insert the day of the month payment is due, or specify the alternative payment schedule, if any, in the blank on Line 4.

Line 5: insert the length of the plan, in months, specify on Line 6 the total percent of dividend to be paid to creditors holding allowed unsecured claims, or fill in the blank on Line 8 with any other event which will terminate the plan.

Line 9: insert the name and address of the standing trustee.

Numbered section 2

Insert in the first blank the total amount paid and to be paid to the attorney for the debtor.

In the second blank indicate the balance to be paid to the attorney for the debtor through the plan, if any.

Numbered section 3

Set forth any additional provisions ordered by the court at the confirmation hearing. An order directing an entity from which the debtor receives income to make all or part of the plan payments may be set forth in this section or as a separate order.

General Information for the Clerk

Form 2300A seeks a middle ground between two forms of confirmation orders used in the courts. The first is a "short form" order which merely recites that the court finds the plan to be in compliance with 11 U.S.C. § 1225 and decrees the plan to be confirmed. The second is a "long form" order which sets forth specific findings on each § 1225 requirement, as well as detailing the provisions of the confirmed plan. Form 2300A does not specifically list the findings required by § 1225 and summarizes the terms of the plan.

Clerks should review this form with the judges to determine whether the form should be adopted in their district.

Clerks also may wish to establish a policy fixing the party to be charged with the responsibility for submitting this form to the court for signature: the trustee, the debtor, or the clerk. There are arguments to be made in favor of each of these policies, and each is in use somewhere in the country.

An order directing an entity from which the debtor receives income to pay all or part of the income directly to the trustee may be included in the confirmation order or it may be prepared as a separate order. If such a provision is included in the confirmation order, the caption of the order should be revised to reflect it.

Bankruptcy Rule 2002(f)(17)(H) requires that the clerk, or some other person as directed by the court, give notice of the confirmation of a chapter 12 plan. Many courts delegate this function to the debtor or the chapter 12 trustee. The rule does not specify a time for the notice – but it should be given in a timely manner.

SUMMONS TO DEBTOR IN INVOLUNTARY CASE

Purpose of the Form

Bankruptcy cases can arise in two ways: An individual or business or municipality may file a voluntary petition, or creditors may file an involuntary petition against an individual or business.

The first step in commencing an involuntary bankruptcy proceeding is the filing of a petition by a creditor or creditors, using Official Form 105 or 205. The summons is the notice which accompanies the petition, advising of the names of the debtor and the attorney for the petitioning creditor(s), the court in which the proceeding was filed, and the time limits for responding to the petition.

Applicable Law and Rules

1. The primary statutory provisions for an involuntary bankruptcy proceeding are found in Section 303 of the Bankruptcy Code (11 U.S.C. § 303). These provisions are complex, and there are substantial penalties for filing an improper involuntary petition. Section 303 should therefore be read in its entirety prior to the filing of an involuntary petition.

2. Section 303(a) limits an involuntary petition to chapters 7 and 11. It further provides that the involuntary debtor may not be a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation.

3. Section 303(b) provides that each of the petitioning creditors must hold claims against the debtor which are not contingent as to liability and which are not the subject of a bona fide dispute. Although there are several complex criteria, the two basic ones are: 1) if the debtor has fewer than 12 creditors, only one creditor need file the involuntary petition, whereas if the debtor has 12 or more creditors, at least three of the creditors must join in the petition; and 2) the claims of the petitioning creditor or creditors must total at least $18,600.[1]

4. ~~Fed. Bankr. P.~~Rule 1010(a) states:

> **In General.** After an involuntary petition has been filed, the clerk must promptly issue a summons for service on the debtor. The summons must be served with a copy of the petition in the manner that Rule 7004(a) and (b) provide for service of a summons and complaint. If service cannot be so made, the court may order service by mail to the debtor's last known address, and by at least one publication as the court orders. Service may be made anywhere. Rule 7004(e) and Fed. R. Civ. P. 4(l) govern service under this rule~~On the filing of an involuntary petition . . . the~~

[1] The amount is subject to adjustment in 4/01/25, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

~~clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor . . . . The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b) If service cannot be so made, the court may order that the summons and petition to be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(l) [of the Federal Rules of Civil Procedure] apply when service is made or attempted under this rule~~.

5. ~~Fed. R. Bankr. P.~~Rule 7004(a) adopts portions of ~~Fed. R. Civ. P.~~Civil Rule 4 and sets forth other provisions for the issuance and service of a summons. These rules are detailed and complex, and should be read in their entirety.

6. Civil Rule 4(a) specifies the information that the plaintiff's attorney (or the plaintiff) must provide on the summons form. Civil Rule 4(b)~~,~~ provides that the clerk shall issue the summons to the petitioning creditor or its attorney. It is then the responsibility of the petitioning creditor (i.e., the "plaintiff") or the attorney to serve the summons on the debtor. On a summons to a debtor in an involuntary case, the petitioning creditor's attorney (or petitioning creditor) must fulfill the responsibilities of the plaintiff's attorney (or the plaintiff) described in Civil Rule 4.

7. A copy of the petition must be served with the summons. Civil Rule 4(b).

8. It is a good idea to submit several copies of the summons to the court with the petition, so that each copy may be signed by the court: one for the court records, one for service on the debtor, one for each of petitioning creditor's records (or the creditor's attorney's records), and one to be returned to the court after the certificate of service has been completed.

9. The summons and petition may be served in a variety of ways which are set forth in Rules 1010, 7004, and Civil Rule 4. When the debtor is an individual, other than an infant or incompetent person, the easiest method is for the summons and petition to be mailed by first class mail postage prepaid to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession. Rule 7004(b)(1).

10. If service is made by personal service, by residence service, or pursuant to state law, the service must be made by someone who is not a party, and who is at least 18 years of age. Rule 7004(a).

11. The summons and petition must be served 7 days after the summons is issued. Service is complete upon mailing, not upon delivery by the Postal Service. If more than 7 days pass before service is completed, a new summons will be issued for service. Rule 7004(e) and ~~Fed. R. Bankr. P.~~Rule 9006(e).

12. If the summons and petition are not served within 90 days of the filing of the complaint, the court may dismiss the action. Civil Rule 4(m).

13. On the back of the summons is a certificate of service of the summons. After service has been made, this certificate should be completed, and filed with the court.

14. Rule 1011 grants the debtor 21 days from the service of the summons to reply to the petition. Under the provisions of Section 303(h), if the debtor fails to timely reply to the involuntary petition, the court will enter an order for relief under the appropriate chapter of the Bankruptcy Code. See Form B 2530. If the debtor timely files an answer, the court will conduct a trial and will only enter the order for relief if the debtor is not generally paying its undisputed debts as they become due, or if within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession. ~~Fed. R. Bankr. P.~~Rule 1018 sets forth the procedures to be followed in the event of a contested involuntary petition.

15. Section 303(i) authorizes the court to order creditors that file improper involuntary petitions to pay the costs and attorney's fees of the debtor. If the court finds that the involuntary petition was brought in bad faith, it can also order the petitioning creditors to pay for all damages proximately caused by the filing, and may assess punitive damages.

Instructions

Caption

1. Identify the Judicial District in which the bankruptcy case was filed. Example: "Eastern District of California."

2. "In re": Insert the name of the debtor as it appears in the bankruptcy petition including all names, including trade names, used by the debtor within the last eight years.

3. "Case No.": Insert the bankruptcy case number assigned by the court at the time of filing.

4. "Chapter No.": Insert the chapter of the Bankruptcy Code under which the case was filed.

Address of Clerk:

Be sure to indicate the proper address for the clerk's office.

Name and Address of Petitioner's Attorney:

The complete mailing address of the attorney for the petitioning creditor must be set forth in the space provided, including zip code. If the street address is different, that must also be stated, including room number. If the petitioning creditor is not represented by an attorney, the petitioning creditor's mailing and street address should be placed in the space.

Certificate of Service

1. Line 1 (name) is to be completed with the full name of the person who served the summons and petition.

2. Line 1 (date) is to be completed with the month, day and year service was perfected.

3. Describe the mode of service and the address at which the debtor was served in the space provided.

   If personal service was made, also include the name of the person to whom the summons and petition were given. If residence service was made, also include the name of the adult to whom the summons and petition were given. If service was made by publication, also describe the steps take to perfect service. If service was made pursuant to state law, also include the name of state under whose laws the summons and petition were served and a brief description of the method of service, including the name of the person served.

4. Date: Insert on this line the month, day and year the certificate is signed.

5. Signature: The person who completed service of the summons and petition must sign. This must be an ORIGINAL signature.

6. In the space directly the Signature line, print or type the name and business address of the person who signed the certificate.

General Information for the Clerk

~~Fed. R. Bankr. P.~~Rule 1010 requires a summons to be issued every time an involuntary petition is filed. The procedure is the same as in an adversary proceeding except that the petitioning creditor stands in for the "plaintiff" and debtor for the "defendant".

~~Fed. R. Bankr. P.~~Rule 7004 incorporates by reference Civil Rule 4(b) ~~of the Federal Rules of Civil Procedure,~~ which in combination with Rule 1010, provide that the clerk is to issue the summons to the petitioning creditor or the petitioning creditor's attorney upon or after the filing of the petition. If requested, more than one copy can be issued. In the instructions to the public, it is

recommended that the petitioning creditor seek the issuance of several copies of the summons: one for the court to file with the original petition; one for service on the debtor; one for each petitioning creditor's records (or the creditor's attorney's records), and one to be returned to the court after the certificate of service has been completed. The attorney representing the petitioning creditor or creditors is responsible for serving the summons and involuntary petition, not the clerk.

There is no charge for the issuance of a summons, beyond the fee for commencing the involuntary proceeding.

The petitioning creditor should have filled in the attorney's address in the appropriate space on the form. As the debtor may choose to serve an answer by mail or in person, the space should contain both the street and mailing address of the attorney, if the addresses are different. If the petitioning creditor is not represented by an attorney, the address of each petitioning creditor should be supplied.

The clerk may wish to fill in the space marked "Address of Clerk" before providing the form to the petitioning creditors.

As is set out in detail in the instructions to the public, there are a series of deadlines for actions to be taken in the involuntary proceeding. The most important of these are:

1. If the summons is not served within 7 days, a new summons must be issued. Rule 7004(e).

2. If no summons is served within 90 days, the court is authorized by Civil Rule 4(m) to dismiss the proceeding on its own motion, after notice to the plaintiff.

3. If the defendant does not answer or make a motion pursuant to ~~Fed. R. Bankr. P.~~Rule 1011 within 21 days, or such time as court may fix, section 303(h) provides that the court shall enter an order for relief.

4. If the debtor timely files an answer or a motion pursuant to Rule 1011, section 303(h) requires that a trial be held to determine whether an order for relief is warranted. ~~Bankruptcy~~ Rule 1013(a) provides: ~~that "the court shall determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter any other appropriate order."~~

   (a) Hearing and Disposition. When a petition in an involuntary case is contested, the court must:

   (1) rule on the issues presented at the earliest practicable time; and

   (2) promptly issue an order for relief, dismiss the petition, or issue any other appropriate order.

TAB 6D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 22-BK-C FORMS SUBCOMMITTEE FORM 410 – UNIFORM CLAIM IDENTIFIER

DATE: MAR. 20, 2024

We published a proposed amendment to Official Form 410 based on a suggestion from Dana C. McWay, Chair of the Administrative Office of the U.S. Courts' Unclaimed Funds Expert Panel, that Part 1, Box 3 be modified to change the line referring to the uniform claim identifier so that it is no longer limited to use in chapter 13. The published amendment implemented that suggestion, but went further than the suggestion, eliminating the entire phrase "for electronic payments in chapter 13." This would allow the UCI to be used for paper checks as well as electronic payments without regard to chapter.

The last line of Box 3 of Form 410 would be modified to read as follows:

Uniform claim identifier (if you use one):

— —

Advisory Committee Note

The last line of Part 1, Box 3, is amended to permit use of the uniform claim identifier for non-electronic payments in cases filed under all chapters of the Code, not merely electronic payments in chapter 13 cases.

A copy of the mock-up of the amended form (including restyling changes) is attached.

The only comment on the published amendment was a submission from the Minnesota State Bar Association's Assembly supporting it (and the other published proposed amendments to the Bankruptcy Rules, Appellate Rules, and Civil Rules).

The Subcommittee recommends that the Advisory Committee give final approval to the amendments to Form 410.

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

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

Case number _____

Official Form 410

Proof of Claim

12/24

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

   _____
   Name of the current creditor (the person or entity to be paid for this claim)

   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

   ❑ No
   ❑ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
_____ Name	_____ Name
_____ Number Street	_____ Number Street
_____ City State ZIP Code	_____ City State ZIP Code
Contact phone _____	Contact phone _____
Contact email _____	Contact email _____

Uniform claim identifier ~~for electronic payments in chapter 13~~ (if you use one):

__ __

4. **Does this claim amend one already filed?**

   ❑ No
   ❑ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

   ❑ No
   ❑ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ❑ No
   - ❑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $_____. **Does this amount include interest or other charges?**
   - ❑ No
   - ❑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

   Limit disclosing information that is entitled to privacy, such as health care information.

   _____

9. **Is all or part of the claim secured?**
   - ❑ No
   - ❑ Yes. The claim is secured by a lien on property.

     Nature of property:
     - ❑ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
     - ❑ Motor vehicle
     - ❑ Other. Describe: _____

     Basis for perfection: _____

     Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

     Value of property: $_____

     Amount of the claim that is secured: $_____

     Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

     Amount necessary to cure any default as of the date of the petition: $_____

     Annual Interest Rate (when case was filed)_____%
     - ❑ Fixed
     - ❑ Variable

10. **Is this claim based on a lease?**
    - ❑ No
    - ❑ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ❑ No
    - ❑ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- ❑ No
- ❑ Yes. *Check one:*

	Amount entitled to priority
❑ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
❑ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
❑ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
❑ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
❑ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
❑ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(32) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ❑ I am the creditor.
- ❑ I am the creditor's attorney or authorized agent.
- ❑ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ❑ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
MM / DD / YYYY

_____
Signature

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

_____
City State ZIP Code

Contact phone _____ Email _____

Committee Note

The last line of Part 1, Box 3, is amended to permit use of the uniform claim identifier for all payments in cases filed under all chapters of the Code, not merely electronic payments in chapter 13 cases. In addition, a conforming amendment is made to the second paragraph of the margin note in Part 3 to conform to the Restyled Rules; the reference to Rule 5005(a)(2) is changed to Rule 5005(a)(3).

Official Form 410

Instructions for Proof of Claim

United States Bankruptcy Court 12/24

These instructions and definitions generally explain the law. In certain circumstances, such as bankruptcy cases that debtors do not file voluntarily, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy process and privacy regulations.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both.
18 U.S.C. §§ 152, 157 and 3571.

How to fill out this form

- **Fill in all of the information about the claim as of the date the case was filed.**
- **Fill in the caption at the top of the form.**
- **If the claim has been acquired from someone else, then state the identity of the last party** who owned the claim or was the holder of the claim and who transferred it to you before the initial claim was filed.
- **Attach any supporting documents to this form.** Attach redacted copies of any documents that show that the debt exists, a lien secures the debt, or both. (See the definition of *redaction* on the next page.)

  Also attach redacted copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added. Federal Rule of Bankruptcy Procedure (called "Bankruptcy Rule") 3001(c) and (d).
- **Do not attach original documents because attachments may be destroyed after scanning.**
- **If the claim is based on delivering health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the claim and in the attached documents.**
- **A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual's tax identification number, or financial account number, and only the year of any person's date of birth.** See Bankruptcy Rule 9037.
- **For a minor child, fill in only the child's initials and the full name and address of the child's parent or guardian.** For example, write *A.B., a minor child* (*John Doe, parent, 123 Main St., City, State*). See Bankruptcy Rule 9037.

Confirmation that the claim has been filed

To receive confirmation that the claim has been filed, either enclose a stamped self-addressed envelope and a copy of this form or go to the court's PACER system (www.pacer.psc.uscourts.gov) to view the filed form.

Understand the terms used in this form

Administrative expense: Generally, an expense that arises after a bankruptcy case is filed in connection with operating, liquidating, or distributing the bankruptcy estate. 11 U.S.C. § 503.

Claim: A creditor's right to receive payment for a debt that the debtor owed on the date the debtor filed for bankruptcy. 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Creditor: A person, corporation, or other entity to whom a debtor owes a debt that was incurred on or before the date the debtor filed for bankruptcy. 11 U.S.C. §101 (10).

Debtor: A person, corporation, or other entity who is in bankruptcy. Use the debtor's name and case number as shown in the bankruptcy notice you received. 11 U.S.C. § 101 (13).

Evidence of perfection: Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded, such as a mortgage, lien, certificate of title, or financing statement.

Information that is entitled to privacy: A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if the trustee or someone else in interest objects to the claim.

Priority claim: A claim within a category of unsecured claims that is entitled to priority under 11 U.S.C. §507(a). These claims are paid from the available money or property in a bankruptcy case before other unsecured claims are paid. Common priority unsecured claims include alimony, child support, taxes, and certain unpaid wages.

Proof of claim: A form that shows the amount of debt the debtor owed to a creditor on the date of the bankruptcy filing. The form must be filed in the district where the case is pending.

Redaction of information: Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out information entitled to **privacy** on the *Proof of Claim* form and any attached documents.

Secured claim under 11 U.S.C. §506(a): A claim backed by a lien on particular property of the debtor. A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien. Any amount owed to a creditor that is more than the value of the property normally may be an unsecured claim. But exceptions exist; for example, see 11 U.S.C. § 1322(b) and the final sentence of 1325(a).

Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment may be a lien.

Setoff: Occurs when a creditor pays itself with money belonging to the debtor that it is holding, or by canceling a debt it owes to the debtor.

Uniform claim identifier: An optional 24-character identifier that some creditors use to facilitate ~~electronic~~ payment.

Unsecured claim: A claim that does not meet the requirements of a secured claim. A claim may be unsecured in part to the extent that the amount of the claim is more than the value of the property on which a creditor has a lien.

Offers to purchase a claim

Certain entities purchase claims for an amount that is less than the face value of the claims. These entities may contact creditors offering to purchase their claims. Some written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, or the debtor. A creditor has no obligation to sell its claim. However, if a creditor decides to sell its claim, any transfer of that claim is subject to Bankruptcy Rule 3001(e), any provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.) that apply, and any orders of the bankruptcy court that apply.

Do not file these instructions with your form.

TAB 7

TAB 7A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: TECHNOLOGY, PRIVACY, AND PUBLIC ACCESS SUBCOMMITTEE

SUBJECT: 23-BK-D and 23-BK-J– PROPOSAL TO AMEND RULE 2002(o) AND 22-BK-I– PROPOSAL TO REDACT ENTIRE SSN FROM COURT FILINGS AND CREDITOR DISTRIBUTIONS

DATE: MARCH 17, 2024

Senator Ron Wyden of Oregon sent a letter to The Chief Justice of the United States in August 2022, in which he suggested that federal court filings should be "scrubbed of personal information before they are publicly available." Portions of this letter, suggesting that the Rules Committees reconsider a proposal to redact the entire social security number ("SSN") from court filings, have been filed as a suggestion with each of the Rules Committees.

We have also received a suggestion from the Clerk of Court for the Bankruptcy Court for the District of Minnesota, in which clerks of court for eight other bankruptcy courts in the Eighth Circuit joined, suggesting that Rule 2002(n) (which will be Rule 2002(o) after the restyled rules become effective) be amended to eliminate the requirement that the caption of every notice given under Rule 2002 comply with Rule 1005. The Bankruptcy Clerks Advisory Group submitted a second suggestion supporting that of the Clerk of Court for the Minnesota Bankruptcy Court and her colleagues.

As reported at the last Advisory Committee meeting, the Subcommittee wishes to consider whether creditors actually need the last four numbers of the redacted SSN on all court filings where it is not statutorily required.[1] On February 12, 2024, an ad hoc group consisting of Judge Connelly, Judge Oetken, Jenny Doling, Nancy Whaley, Dave Hubbert, Ken Gardner, and Carly Griffin met with the reporters and Scott Myers to discuss how to survey the appropriate groups to address questions bearing on the suggestions.

It was decided that Nancy Whaley would propose a list of creditors to be surveyed on whether they had any need for redacted social security numbers on any of the forms that now include them that are sent after the notice of § 341 meeting (which includes the full social security number and would continue to do so). She has developed such a list including debtor attorneys, chapter 12/13 trustees, creditor attorneys, chapter 7 trustees, various tax authorities and representatives of the National Association of Attorneys General. She then worked with Jenny Doling to develop questions that can be relayed to those on the list, asking them to check a

[1] As previously discussed with the Advisory Committee, § 342(c)(1) statutorily requires that the truncated SSN be included on all notices "required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court." In addition, § 110 requires disclosure of the complete social security number of a bankruptcy petition preparer (BPP) on documents such as the petition and schedules prepared by the BBP.

box to indicate whether they think the redacted SSN can be eliminated or not for each form. (There is a consensus in the ad hoc group that the notice of discharge should retain the redacted social security number for the benefit of debtors.) The questions are attached as Exhibit A. Carly Griffin is working with Nancy to send the questions out.

In the meantime, Ken Gardner developed similar questions for the Clerks' Advisory Group. The clerks' questionnaire is attached as Exhibit B. Carly Griffin helped Ken to send this questionnaire out.

Dave Hubbert has promised to find the appropriate person to respond in the Internal Revenue Service.

As of the date of this memo, there have been 18 responses to the clerks' survey. The Subcommittee will analyze the responses at its next meeting and consider further action, if any, on the suggestions.

Exhibit A

SSN Inclusion Survey

With policies routinely implemented to protect PII, many agencies, companies, and other entities have eliminated the collection of an individual's full Social Security Number or other taxpayer identification-number (collectively, SSNs) or other sensitive PII within a system.

This survey, conducted on behalf of the Bankruptcy Rules Committee, is intended to evaluate potential consequences of eliminating the last four digits of the debtor's SSN on those publicly docketed bankruptcy forms that currently include them, and whether creditors and others who currently receive the debtor's full SSN by mail or electronically in the Notice of Bankruptcy Case, can instead receive a version with just the truncated version of the SSN. The survey should take approximately 5 to 10 minutes to complete.

Please submit any response by DATE.

If you have substantive questions about the content of this survey, please contact Nancy Whaley (nwhaley@njwtrustee.com) or Jenny Doling (jd@jdl.law). If you have technical questions or issues with the survey, please contact Carly Giffin (cgiffin@fjc.gov).

Page Break

Please indicate which best describes your industry:

- ○ Judge, Court, Court Staff
- ○ Chapter 7 Trustee
- ○ Chapter 13 Trustee
- ○ Creditor/Attorney in Banking Industry
- ○ Creditor/Attorney in Mortgage Industry
- ○ Creditor/Attorney in Auto Loan Industry
- ○ Creditor/Attorney for Unsecured Creditors
- ○ Collection Agencies, Debt Buyers, Third Party Debt Collection
- ○ Attorney for Debtors
- ○ State Agency Representative

Page Break

With respect to the version of the Notice of Bankruptcy case (Form 309) that is sent to you, is a truncated, rather than full, SSN sufficient?

- ○ Yes
- ○ No

Listed below are the bankruptcy forms that are currently filed with a caption that includes the last four digits of the debtor's SSN, as well as the debtor's name and case number. Given your

answer to the last question, please indicate whether you would agree to elimination of the truncated social security number from each form or need the information on that form.

	Agree to Eliminate	Need Truncated SSN	Not Sure
Docketed versions of Forms 309A-I, Notice of Bankruptcy	○	○	○
Forms 312, 313, 314, 315, 3130S, and 3150S C11 notices and orders	○	○	○
Forms 318 and 3180F-3180WH, Discharge Forms	○	○	○
Forms 417A, 417B Appellate Forms	○	○	○
Forms 420A and 420B Notice of motion or objection, and Notice of objection to Claim	○	○	○
Form 2040 Notice of Need to File Proof of Claim Due to Recover of Assets	○	○	○
Form 2050 Notice to Creditors and Other Parties in Interest	○	○	○
Form 2060 Certificate of Commencement of Case	○	○	○
Form 2070 Certificate of Retention of Debtor in Possession	○	○	○
Form 2300A Order Confirming Chapter 12 Plan	○	○	○
Form 2300B Order Confirming C13 Plan	○	○	○
Form 2310A Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	○	○	○

Form 2310B Order Fixing Time to Object to Proposed Modification of Chapter 13 plan	○	○	○
Form 2530 Order for Relief in an Involuntary Case	○	○	○
Form 2700 Notice of Filing of Final Report of Trustee	○	○	○
Form 2710 Final Decree	○	○	○

Page Break

Please share any thoughts you have on the issues raised in this survey.

_____

_____

_____

_____

_____

Thank you for your input. When you are finished, please hit the "Submit" button below.

Once you hit "Submit," you will no longer be able to edit your responses.

EXHIBIT B

Clerk Survey on SSN Inclusion

The Bankruptcy Rules Committee received a suggestion from our 8th Circuit colleagues to amend Rule 2002(n) to eliminate the requirement that all 2002 notices include the full caption required by Rule 1005. They proposed that the full caption be required only on the Notice of Bankruptcy Case (Official Forms 309A-I) and that the shorter caption in Official Form 416(b) be used for all other notices. Indeed, our colleagues say that this is their current practice. The Bankruptcy Clerks' Advisory Group endorsed the suggestion.

The Bankruptcy Rules Committee is now seeking further input on a few related questions. Your answers to these questions will help the Bankruptcy Rules Committee determine the best way to move forward.

This survey should take approximately 10 to 15 minutes to complete. If you have substantive questions about the content of this survey, please contact Ken Gardner (Kenneth_Gardner@cob.uscourts.gov). If you have technical questions or issues with the survey, please contact Carly Giffin (cgiffin@fjc.gov).

Do you support the suggestion to limit the requirement for a full Rule 1005 caption to the Notice of Bankruptcy Case and allow use of the Official Form 416B caption on all other Rule 2002 notices?

- ○ Yes
- ○ No
- ○ Not sure

Please explain your answer.

_____

_____

_____

_____

_____

Does your court have any other guidance (e.g., local rule, general procedure order, etc.) bearing on captions for Rule 2002 notices?

- ○ Yes
- ○ No
- ○ Not sure

Please explain your answer.

_____

_____

_____

_____

_____

Under § 342(c)(1) any notice provided by the debtor must contain name, address, and last four digits of the taxpayer identification number (i.e. SSN for most individual debtors). A concern with the proposal to use the Official Form 416B caption on most Rule 2002 notices is the court's broad authority under Rule 2002(a) and (b) to delegate notice to someone other than the clerk.

If Rule 2002 noticing were delegated to the debtor, the debtor would be statutorily required to provide most of the information listed in Rule 1005 even if Rule 2002 provides that the clerk would not have to do so. Do you support either of the following possible amendments to Rule 2002(a) and (b) to limit the delegation authority to:

	Yes (1)	No (2)	Not Sure (3)
"…some other person – *other than the debtor* – as the court may direct …" (1)	○	○	○
"…some other person – *other than an **individual** debtor* – as the court may direct …" (2)	○	○	○

The Bankruptcy Rules Committee has also received a suggestion that even truncated SSNs or ITINs should be removed from all forms that currently include them.

Please review the following list of forms. A “yes” answer means you agree to remove the redacted SSN from the form. A “no” answer means you agree to keep the redacted SSN on the form.

	Yes	No	Not Sure
Official Forms 312, 313, 314, 315, 3130S, and 3150S C11 notices and orders (1)	○	○	○
Official Forms 417A, 417B Appellate Forms (2)	○	○	○
Official Forms 420A and 420B Notice of motion or objection, and Notice of objection to Claim (3)	○	○	○
Form 2040 Notice of Need to File Proof of Claim Due to Recover of Assets (4)	○	○	○
Form 2050 Notice to Creditors and Other Parties in Interest (5)	○	○	○
Form 2060 Certificate of Commencement of Case (6)	○	○	○
Form 2070 Certificate of Retention of Debtor in Possession (7)	○	○	○
Form 2300A Order Confirming Chapter 12 Plan (8)	○	○	○
Form 2300B Order Confirming C13 Plan (9)	○	○	○
Form 2310A Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan (10)	○	○	○

Form 2310B Order Fixing Time to Object to Proposed Modification of Chapter 13 plan (11)	○	○	○
Form 2530 Order for Relief in an Involuntary Case (12)	○	○	○
Form 2700 Notice of Filing of Final Report of Trustee (13)	○	○	○
Form 2710 Final Decree (14)	○	○	○

Please share any additional thoughts you have on the issues raised in this survey.

_____

_____

_____

_____

_____

Which district do you represent?

_____

TAB 7B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: TECHNOLOGY, PRIVACY, AND PUBLIC ACCESS SUBCOMMITTEE

SUBJECT: 23-BK-C– RULES 9014 AND 9017 AND PROPOSED RULE 7043 ON REMOTE HEARINGS

DATE: MARCH 6, 2024

The National Bankruptcy Conference (NBC) has submitted proposals to amend Bankruptcy Rules 9014 and 9017 and introduce a new Rule 7043 to facilitate video conference hearings for contested matters in bankruptcy cases.

Currently, Rule 9017 makes applicable to bankruptcy cases the Federal Rules of Evidence[1] and Fed. R. Civ. P. 43 (Taking Testimony), 44 (Proving an Official Record) and 44.1 (Determining Foreign Law). Fed. R. Civ. P. 43(a) provides as follows:

> (a) IN OPEN COURT. At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from the different location.

The NBC proposes to eliminate the incorporation of Fed. R. Civ. P. 43 by reference in Fed. R. Bankr. P. 9017, so that it would no longer be applicable "in a bankruptcy case."[2] With the deletion of the reference to Civil Rule 43, Rule 9017 would read as follows:

> **Rule 9017. Evidence[3]**
>
> The Federal Rules of Evidence and Fed. R. Civ. P. 44, and 44.1 apply in a bankruptcy case.
>
> Advisory Committee Note

[1] Fed. R. Evid. 611(a), one of the Federal Rules of Evidence made applicable to bankruptcy cases under Bankruptcy Rule 9017, states that "[t]he court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment." The NBC views the broad discretion conferred by Fed. R. Evid. 611(a) as setting out a standard that is "inconsistent" with Fed. R. Civ. P. 43(a). In fact, Rule 611 does not directly address remote testimony, while Civil Rule 43(a) does so.

[2] This is the language in the restyled version of Bankruptcy Rule 9017.

[3] This is the restyled version of Rule 9017.

The Rule is amended to delete the reference to Fed. R. Civ. P. 43. Under new Rule 7043, Fed. R. Civ. P. 43 is applicable to adversary proceedings but not to contested matters. Testimony in contested matters is governed by Rule 9014(d).

Instead, the NBC suggests a new Fed. R. Bankr. P. 7043 which would read as follows[4]:

Rule 7043. Taking Testimony

Fed. R. Civ. P. 43 applies in adversary proceedings.

Advisory Committee Note[5]

Rule 7043 is new and, as was formerly true under Rule 9017, makes Fed. R. Civ. P. 43 applicable to adversary proceedings. Unlike under former Rule 9017, Fed. R. Civ. P. 43 is no longer applicable to contested matters under new Rule 7043.

For contested matters, the NBC proposes to amend Fed. R. Bankr. P. 9014(d). That Rule currently reads as follows:[6]

Rule 9014. Contested Matters

***

(d) Taking Testimony on a Disputed Factual Issue. A witness's testimony on a disputed material factual issue must be taken in the same manner as testimony in an adversary proceeding.

The restyled version of the NBC proposal follows:

Rule 9014. Contested Matters

***

(d) Taking Testimony; Interpreter.

(1) ***In Open Court***. A witness's testimony on a disputed material factual issue must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For cause and with

[4] The suggested language of the NBC has been modified to be consistent with the restyled version of the Part VII rules.
[5] The language of the committee note reflects discussions with Professor Cathie Struve before the last Advisory Committee meeting.
[6] This is the restyled version of Rule 9014(d).

appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(2) ***Evidence on a Motion***. When a motion in a contested matter relies on facts outside the record, the court may hear the motion on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(3) ***Interpreter***. Fed. R. Civ. P. 43(d) applies in a contested matter.

* * * * *

Advisory Committee Note[7]

Rule 9014(d) is amended to include language from Fed. R. Civ. P. 43. That rule is no longer generally applicable in a bankruptcy case and the reference to that rule has been removed from Rule 9017. Instead, Rule 9014(d) incorporates most of the language of Fed. R. Civ. P. 43 for contested matters, but eliminates the "compelling circumstances" standard in Fed. R. Civ. P. 43(a) for permitting remote testimony. Consistent with the other restyled bankruptcy rules, the phrase "good cause" used in Fed. R. Civ. P. 43 has been shortened to "cause" in Rule 9014(d)(1). No substantive change is intended. Under new Rule 7043, all of Fed. R. Civ. P. 43—including the "compelling circumstances" standard—continues to apply to adversary proceedings.

At its meeting last fall, the Subcommittee gave its approval to the proposals and agreed to submit them to the Advisory Committee. But at the September meeting of the Advisory Committee, Judge Bates expressed concern about the proposal and whether it represented a first step towards a broader push for remote proceedings in bankruptcy cases. Although members of the Advisory Committee stated that the proposal was a limited one, aimed at addressing a discrete issue that impacted access to justice particularly for pro se litigants and small businesses, Judge Bates suggested that the proposed amendments should not go to the Standing Committee at its January meeting. Instead, he suggested that the Advisory Committee coordinate with the Committee on Court Administration and Case Management (CACM), which is examining the issue of video conferencing more broadly to ensure that these amendments are not viewed as undermining their general approach.

The Advisory Committee agreed to defer consideration of the amendments until its next meeting in April and seek input from CACM before that time.

On January 17, 2024, CACM sent a letter to Judge Connelly stating it and the Bankruptcy Administration Committee have concluded that "the content of the proposed amendments do [sic] not appear to create any conflict with existing Conference policy regarding remote access or remote proceedings." CACM also stated that it "did not identify problems for its continued

[7] The committee note incorporates language discussed at the Advisory Committee meeting relating to the change of language from "good cause" in Fed. R. Civ. P. 43 to "cause" in Fed. R. Bankr. P. 9014(d).

consideration of possible changes to remote access policy" in that CACM's "focus has been on whether to provide non-case participants, such as the public and the media, with additional remote access to court proceedings." The letter concluded, "given the careful, deliberative nature of the rules development process, the timing of the publication of the proposed amendments in 2024 is unlikely to hinder work on this issue."

The Subcommittee has reaffirmed its approval of the proposed amendments and recommends the proposed amendments to the Advisory Committee for submission to the Standing Committee for publication.

TAB 8

TAB 8A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: WORDING CHANGES TO RULE 3018 PROPOSED AMENDMENTS

DATE: MARCH 19, 2024

At the fall meeting, the Advisory Committee approved for publication amendments to Rule 3018(c) in response to a suggestion from the National Bankruptcy Conference. The proposed amendments would authorize a court in a chapter 9 or 11 case to treat as an acceptance of a plan a statement on the record by a creditor's attorney or authorized agent. Conforming amendments were also proposed and approved for Rule 3018(a). As approved by the Advisory Committee, the rule provides in part as follows:

Rule 3018. Chapter 9 or 11—Accepting or Rejecting a Plan.

(a) In General.

* * * * *

(3) ***Changing or Withdrawing an Acceptance or Rejection.*** After notice and a hearing and for cause, the court may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. The court may also do so as provided in (c)(1)(B).

* * * * *

(c) ~~Form~~ Means for Accepting or Rejecting a Plan; Procedure When More Than One Plan Is Filed.

(1) ***~~Form~~ Alternative Means*.**

(A) *In Writing.* Except as provided in (B), ~~An~~ an acceptance or rejection must:

(~~A~~i) be in writing;

(~~B~~ii) identify the plan or plans;

(~~C~~iii) be signed by the creditor or equity security holder—or an authorized agent; and

(~~D~~iv) conform to Form 314.

(B) *As a Statement on the Record.* The court may also permit an acceptance—or the change or withdrawal of a rejection—in a statement that is:

(i) part of the record, including an oral statement at the confirmation hearing or a stipulation; and

(ii) made by an attorney for—or an authorized agent of—the creditor or equity security holder.

(2) ***When More Than One Plan Is Distributed.*** If more than one plan is sent under Rule 3017, a creditor or equity security holder may accept or reject one or more and may indicate preferences among those accepted.

* * * * *

Judge Connelly presented the amendments to the Standing Committee at its January meeting, and they were approved for publication. After the meeting a member of the Standing Committee and the committee's reporter suggested a few wording changes to the amendments. Because publication will not occur until next August and both the Advisory and Standing committees will meet again before then, the decision was made to ask the Advisory Committee—with this Subcommittee's recommendation—to consider these additional changes and, if it approved them, resubmit Rule 3018(a) and (c) to the Standing Committee in June.

Proposed Changes

1. Because new subdivision (c)(1)(B) would allow an acceptance to be made by a written stipulation, as well as by an oral statement on the record, it was suggested that the heading for subdivision (c)(1)(A) (line 15) be changed from "*In Writing*" to "*By Ballot.*" This title would more accurately indicate the difference between subparagraphs (A) and (B).

2. The proposed conforming amendment to subdivision (a) (lines 9-10) says that the court may also "do so" as provided in (c)(1)(B). The language that "do so" refers to includes changing or withdrawing both acceptances and rejections, whereas (c)(1)(B) just allows changing or withdrawing rejections. Therefore, it was suggested that the sentence be changed to read, "The court may also permit the change or withdrawal of a rejection as provided in (c)(1)(B)."

3. If the second change is made, then it was suggested that subdivision (a)(3) be cleaned up to read as follows:

(3) ***Changing or Withdrawing an Acceptance or Rejection.*** After notice and a hearing and for cause, the court may permit a creditor or equity security holder to change or withdraw an acceptance ~~or rejection~~. The court may

~~also~~ permit the change or withdrawal of a rejection as provided in (c)(1)(B).

Because there is no need to address changes or withdrawals of rejections twice, the Subcommittee concluded that this change makes sense.

In sum, the Subcommittee recommends that all three wording changes be made and that the revised draft be resubmitted to the Standing Committee for publication. A draft of the rule with these changes and the Committee Note appear on the following pages.

Rule 3018. Chapter 9 or 11—Accepting or Rejecting a Plan.[1]

(a) In General.

* * * * *

(3) ***Changing or Withdrawing an Acceptance or Rejection.*** After notice and a hearing and for cause, the court may permit a creditor or equity security holder to change or withdraw an acceptance ~~or rejection~~. The court may permit the change or withdrawal of a rejection as provided in (c)(1)(B).

* * * * *

(c) ~~Form~~ Means for Accepting or Rejecting a Plan; Procedure When More Than One Plan Is Filed.

(1) ~~***Form***~~ ***Alternative Means*.**

(A) *By Ballot.* Except as provided in (B), ~~An~~ an acceptance or rejection must:

(~~A~~i) be in writing;

(~~B~~ii) identify the plan or plans;

(~~C~~iii) be signed by the creditor or equity security holder—or an authorized agent; and

(~~D~~iv) conform to Form 314.

---

[1] The changes indicated are to the version of Rule 3018 on track to go into effect December 1, 2024.

(B) *As a Statement on the Record.* The court may also permit an acceptance—or the change or withdrawal of a rejection—in a statement that is:

(i) part of the record, including an oral statement at the confirmation hearing or a stipulation; and

(ii) made by an attorney for—or an authorized agent of—the creditor or equity security holder.

(2) ***When More Than One Plan Is Distributed.*** If more than one plan is sent under Rule 3017, a creditor or equity security holder may accept or reject one or more and may indicate preferences among those accepted.

* * * * *

Committee Note

Subdivision (c) is amended to provide more flexibility in how a creditor or equity security holder may indicate acceptance of a plan in a chapter 9 or chapter 11 case. In addition to allowing acceptance or rejection by written ballot, the rule now authorizes a court to permit a creditor or equity security holder to accept a plan by means of its attorney's or authorized agent's statement on the record, including by stipulation or by oral representation at the confirmation hearing. This change reflects the fact that disputes about a plan's provisions are often

resolved after the voting deadline and, as a result, an entity that previously rejected the plan or failed to vote accepts it by the conclusion of the confirmation hearing. In such circumstances, the court is permitted to treat that change in position as a plan acceptance when the requirements of subdivision (c)(1)(B) are satisfied.

Subdivision (a) is amended to take note of the means in (c)(1)(B) of changing or withdrawing a rejection.

Nothing in the rule is intended to create an obligation to accept or reject a plan.

TAB 8B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: SUGGESTIONS TO AMEND RULE 9031 TO ALLOW THE APPOINTMENT OF MASTERS

DATE: MARCH 19, 2024

Rule 9031 (as restyled) provides: "Fed. R. Civ. P. 53 does not apply in a bankruptcy case." As declared by its title, the effect of this rule is that "Using Masters [Is] Not Authorized" in bankruptcy cases. Since the rule's promulgation in 1983, the Advisory Committee has been asked on several occasions to propose an amendment to it to allow the appointment of masters in certain circumstances, but each time the Advisory Committee has decided not to do so. Now two new suggestions to amend Rule 9031 have been submitted to the Advisory Committee, one by Chief Bankruptcy Judge Michael B. Kaplan of the District of New Jersey (24-BK-A) and the other by the American Bar Association (24-BK-C). The Subcommittee discussed the suggestions during its meeting on February 13 and now seeks input from the Advisory Committee.

History of the Rule

Because this is not the first time such a suggestion has been made, the Advisory Committee needs to be aware of the history of Rule 9031 and the reasons that the Advisory Committee has declined to amend the rule in the past. A summary of those events follows.

1983 – The rule was promulgated. The Advisory Committee Note simply states that "[t]his rule precludes the appointment of masters in cases and proceedings under the Code." The Advisory Committee explained to the Standing Committee that it was intended to prevent the "cronyism" previously ascribed to bankruptcy judges' appointments. Judge Aldisert, chair of the Advisory Committee, also explained that the Committee "felt that bankruptcy judges should be directly involved in cases and should not delegate to masters." Because of the rule's reference to

"cases under the Code" rather than to particular judges or courts, it has been interpreted as applying to all bankruptcy cases to which the Bankruptcy Rules apply, whether before a district or a bankruptcy judge.

1991 – An inquiry was made by the Case Management Subcommittee of the Bankruptcy Administration Committee about the reason for prohibiting special masters in bankruptcy cases. One member of the Advisory Committee explained that the prohibition was intended to prevent the powers of bankruptcy judges from being diluted by a district court's appointment of a special master, rather than referral of a bankruptcy case or proceeding to a bankruptcy judge. Another participant said that the rule was also intended to prevent the referral of bankruptcy appeals to magistrate judges. A Committee member noted that examiners were being appointed to carry out functions of special masters, and the reporter responded that permitting the appointment of special masters would allow examiners to resume their original role. The sense of the Advisory Committee was that further study of the issue was warranted.

1995 – The Advisory Committee rejected a suggestion of the Bankruptcy Administration Committee that the appointment of special masters should be allowed. The Advisory Committee minutes state that the Committee "consensus was that a special master is too reminiscent of the former bankruptcy referee and that adequate alternatives exist in the authority to appoint a trustee and an examiner."

1996 – The Bankruptcy Administration Committee asked the Advisory Committee to reconsider its decision. It also asked the FJC to study the use of special masters in bankruptcy as related to improved case management. The FJC report recommended amending Rule 9031 to allow special masters in "rare and unusually complex cases and proceedings under the Bankruptcy Code." It further noted that a trustee or examiner cannot perform the same duties that a special master might be appointed to perform.

The Advisory Committee voted 8-5 not to amend. The minutes of that meeting record a full discussion of the issue, during which competing views were expressed. Some members expressed the view that the authority to appoint a special master could be a useful tool in appropriate cases and that a rule should be adopted that authorized their use in bankruptcy cases under suitably limited circumstances. Others noted the history of patronage in bankruptcy that the Bankruptcy Code and rules had been designed to avoid and suggested that the prohibition on receivers (under the Code) and special masters (in the Rules) was part of the solution to that problem. It was also questioned whether there was really any need for special masters in bankruptcy cases and whether the Code allows for their compensation out of the estate.

2002 – Bankruptcy Judge David Kennedy wrote the Advisory Committee chair suggesting the need for special masters in complex bankruptcy cases. He suggested that, especially in light of the number of recent bankruptcy filings by large companies that presented complex issues, the time had come to provide this valuable case management tool for appropriate bankruptcy cases and proceedings. The Advisory Committee decided to take no action. The reporter noted that the Committee had previously "expressed concerns about the adjudicatory role of a special master who may make findings of fact and conclusions of law, the constitutionality of a special master's appointment by a non-article III judge, and the standard of

review of a special master's findings of fact and conclusions of law by the bankruptcy judge and on appeal." The Advisory Committee also noted the possibility of the use of a court-appointed expert pursuant to Evidence Rule 706. Questions were raised about the propriety of and authority for compensating a special master out of the estate.

2009 – Bankruptcy Judges Kennedy and Geraldine Mund submitted suggestions that Rule 9031 be amended to allow the appointment of special masters. The Advisory Committee declined to do so. After careful deliberation, it decided again that the case had not been made to change its policy on the matter. Among other things, the Committee was concerned about adding another level of review to the bankruptcy system, which already has several levels of review.

The Current Suggestions

Chief Judge Kaplan suggests that Rule 9031 (as written prior to restyling) be amended as follows:

> **Rule 9031. Masters ~~Not~~ Authorized**
>
> Rule 53 F.R. Civ. P. ~~does not apply~~ applies in cases or proceedings under the Code.

He explains that his suggestion arises out of discussions at a recent conference on the intersection of bankruptcy and MDLs, as well as his experience with his own caseload and his observation of other complex chapter 11 cases. He writes that "bankruptcy judges handling mass tort chapter 11 bankruptcies, together with large financial institution and cryptocurrency filings, have struggled to employ the tools available under the Code and bankruptcy rules to address complex issues such as corporate asset valuations, claim estimations, fraudulent transfer litigation and challenges to prefiling liability management transactions." Chief Judge Kaplan suggests that the "appointment of a special master would relieve the burden on the bankruptcy courts, allowing the chapter 11 case to proceed without being held hostage to litigation/discovery 'overload.'"

The ABA's suggestion involves the amendment of two rules and the addition of another. It has also suggested that the Civil Rules Committee propose an amendment to Civil Rule 53,

changing the terminology from "master" to "court-appointed neutral." It would amend Rule 9031 to read as follows:

> **Rule 9031. Court-Appointed Neutrals Authorized**
>
> In cases and proceedings under, and subject to the Code and Federal Rule of Bankruptcy Procedure 2016 and to the extent needed to facilitate the preservation of the estate, courts may order the appointment of neutrals in the same manner and subject to the same limitations and requirements as are set forth in F.R.Civ.P. Rule 53(a) through (g)(1).

It suggests adding a new Rule 7053, to read as follows:

> **Rule 7053. Court-Appointed Neutrals.**
>
> In adversary proceedings under, and subject to the Code and Federal Rule of Bankruptcy Procedure 2016 and to the extent needed to facilitate the preservation of the estate, courts may order the appointment of neutrals in the same manner and subject to the same limitations and requirements as are set forth in F.R.Civ.P. Rule 53(a) through (g)(1).

Finally, the ABA would amend Rule 9014(c) to include Rule 7053 within the list of Part VII rules generally applicable in contested matters.

This suggestion results from a 2019 resolution approved by the ABA House of Delegates that, among other things, urged that Rule 9031 be amended "to permit courts responsible for cases under the Bankruptcy Code to use special masters in the same way as they are used in other federal cases." ABA Resolution 100. The suggestion states that "[i]n the three and one-half years following the adoption of Resolution 100, the ABA examined approaches to implementing these precepts." Then last August the ABA House of Delegates approved Resolution 516, which basically reiterated Resolution 100 but used the new terminology, court-appointed neutral.

Attached to the Kaplan suggestion is a document in which attorney John Rabiej[1] responds to the main points that then-reporter Prof. Alan Resnick made to the Advisory Committee in

[1] John Rabiej was chief of the Rules Committee Support Office from 1990-2010. He currently is president of the Rabiej Litigation Law Center, which describes itself as "an independent, nonpartisan,

1996 as reasons not to amend Rule 9031 to allow masters. The next sections of this memo summarize the points made in the Resnick memo, the Rabiej response, and the ABA's arguments in support of its suggestion.

Prof. Resnick's Arguments Against Authorizing the Use of Masters in Bankruptcy Cases[2]

1. The "appointment of a special master in a bankruptcy case or proceeding -- either by a district judge or a bankruptcy judge -- would be inconsistent with the spirit, if not the letter, of the statutory scheme governing bankruptcy jurisdiction and related policy concerns."

- In enacting 28 U.S.C. §§ 1334 and 157(a), Congress intended the bankruptcy courts, upon referral, to exercise jurisdiction over most bankruptcy matters. The statutory authorization that bankruptcy judges "hear and determine" core matters does not seem to contemplate further delegation.
- The bankruptcy jurisdictional scheme has an extra judicial layer (bankruptcy court – district court or BAP – court of appeals – Supreme Court) beyond the scheme for district courts (district court – court of appeals – Supreme Court). Allowing a bankruptcy judge to appoint a master would add yet another layer.
- In non-core proceedings, the appointment of a master could lead to the inefficiency of a hearing before the master, followed by a hearing before the bankruptcy judge of the master's proposed findings, with the bankruptcy judge's proposed findings of fact and conclusions of law then being reviewed de novo by the district court.

nonprofit organization . . . [with the] mission . . . to bring the bench and bar together to address timely litigation issues arising in ediscovery matters, class actions, and mass-tort MDLs." *See* https://rabiejcenter.org/.

[2] Prof. Resnick's memo is included in the agenda book for the Advisory Committee's September 1996 meeting, beginning at p. 89. *See* https://www.uscourts.gov/rules-policies/archives/agenda-books/advisory-committee-rules-bankruptcy-procedure-september-1996.

- Congress authorized U.S. trustees to make appointments of officials and professionals compensated by the estate, rather than giving that appointment authority to bankruptcy judges.
- The Code contains specific provisions governing the compensation of officials and professionals paid by the estate. There is no such provision for masters. Why should the estate be required to pay for work that the judge would do without cost to the estate?
- A district judge presiding over a bankruptcy case should also not be allowed to appoint a master. Congress authorized referral to bankruptcy judges, not masters, for trial-level proceedings, and for appeals referral to a master would cause unnecessary expense and delay.

2. There is no "empirical evidence or other indication that there is a demonstrated need for special masters in bankruptcy cases and proceedings." The FJC report did not provide any such evidence.

- The Code provides for the appointment of examiners by U.S. trustees, and they can be used to assist bankruptcy judges in complex cases.
- There is no need to refer claims disputes to masters because the bankruptcy judge can hold mini-trials or use other methods to estimate claims.

Mr. Rabiej's Arguments for Authorizing the Use of Masters in Bankruptcy Cases

1. Fed. R. Civ. P. 53 was amended in 2003 to expand the functions of masters and change the scope of review of a master's findings from "clearly erroneous" to "de novo." These changes meet many of the concerns raised by Prof. Resnick in 1996.

2. "District judges have routinely appointed special masters to serve in multiple roles in complex litigation and mass-tort MDLs, including most importantly facilitating settlements."

They should be allowed to do so as well in mass tort bankruptcy cases in which the reference to the bankruptcy judge is withdrawn.

3. The use of masters has not proven to be inefficient. Judges usually accept the master's report, and masters have facilitated settlements, saved the judge's time for other tasks, and helped the judge understand complex issues.

4. Masters are now able to undertake a wider range of functions than in 1996, when Prof. Resnick considered them to be unnecessary in bankruptcy cases. They could estimate the value of tort claims in a mass-tort bankruptcy or assist a court-appointed expert in doing so.

5. Examiners and trustees have different responsibilities than masters and are not substitutes for them.

6. "There is no longer any good reason to deny bankruptcy courts the same case management resource that district judges have enjoyed to their benefit for decades."

The ABA's Arguments

1. Much has changed since 1983 when Rule 9031 was promulgated. Bankruptcy and district judges now actively manage their cases. "In 2024, bankruptcy judges will administer billions of dollars in dispute in a fair, efficient, and economical manner day after day. Amending Rule 9031 would give them additional tools to do so."

2. Rule 9031 does not achieve its stated goal. Courts have inherent authority to appoint masters, and Civil Rule 53 places limits on that authority. It says that a court may appoint a master "only" to perform certain specified duties. If Rule 53 does not apply in bankruptcy cases, then bankruptcy courts have unlimited authority to appoint masters.

3. The reason for Rule 9031 is unclear. Discussions about the rule at the time of adoption focused on bankruptcy judges, but the rule applies as well to district judges presiding

over bankruptcy cases. To the extent that cronyism was suggested as the reason for the rule, that justification no longer applies. "Comparing today's office of bankruptcy judges with the prior office of referees in bankruptcy 40 years ago does an injustice to today's bankruptcy judges who are bound by the same ethical rules as Article III judges." And why should there be a rule that assumes that appointment of a master will never be appropriate in a bankruptcy case?

4. Rule 9031 does not take into account later amendments to Rule 53, which expanded the types of duties that masters can perform, including now pretrial and posttrial matters. In district courts the use of masters "has become especially common in dealing with multi-district and other mass tort litigation involving numerous parties, complex issues and extensive discovery," but bankruptcy courts are deprived of this tool when they adjudicate mass tort cases. In addition to mass tort bankruptcies, bankruptcy courts could use masters as discovery referees or facilitators, expert advisors, investigators, or fee adjudicators.

5. Other reasons given to support the rule are not persuasive.

- "The goal of amending Rule 9031 is not to require the use of court-appointed neutrals in bankruptcy cases, but instead to enable their use. . . . If utilizing a court-appointed neutral would add cost or complexity, then a court could choose not to appoint one." The ABA's suggested amendments incorporate the concept of preserving the estate to require bankruptcy courts to make sure that the benefits of the use of a master outweigh the costs.
- There is no reason to believe that it would be unconstitutional for bankruptcy judges to appoint masters. Other non-Article III judges are able to do so, including magistrate judges, Court of Federal Claims judges, and judges on the D.C. Superior Court.
- There is a need to allow the appointment of masters in bankruptcy cases. "While bankruptcy courts have the authority to order the appointment of a mediator or panel of

mediators or an examiner to investigate and report, as it stands now, they are unable to order the appointment of discovery referees or facilitators, expert advisors to advise the court, fee adjudicators, claims facilitators, compliance monitors, or other neutrals uniquely positioned to address the specific needs of a situation." Bankruptcy judges have expressed a need for this authority.

Desire for Input from the Advisory Committee

The first issue the Subcommittee discussed was whether the Advisory Committee should revisit the issue of allowing the use of masters in bankruptcy cases. Although the Advisory Committee has declined to amend Rule 9031 on at least 4 occasions, the last time such a suggestion was considered was in 2009, almost 15 years ago. Much has changed during that time, including a greater use of bankruptcy to resolve mass tort litigation and the filing of some especially complex reorganization cases. Moreover, the original reason for the rule—concerns about cronyism in bankruptcy judge appointments—have largely dissipated. A decision to revisit the issue and consider the merits of Chief Judge Kaplan's and the ABA's suggestions, of course, does not necessarily mean that the Advisory Committee will end up agreeing with the suggestions, but the Subcommittee would like the views of the Advisory Committee on whether to proceed in considering the suggestions.

Assuming it gets the Advisory Committee's go-ahead, the Subcommittee recognizes that the history of Rule 9031 and the Advisory Committee's repeated decisions not to amend it counsel for proceeding cautiously in considering the suggestions. The Subcommittee seeks input on whether it should gather empirical evidence to help inform its deliberations. With the FJC's assistance, bankruptcy judges could be surveyed about whether they have desired to use a master in any of their cases and, if so, what role the master might have played and how the court

proceeded without a master. The Subcommittee may also want to seek information from district judges and attorneys.

There are legal issues to consider as well, such as whether the Code authorizes the payment of masters from a bankruptcy estate and the potential inefficiencies of adding another layer of judicial review. The Subcommittee solicits the Advisory Committee's views on what other issues should be explored.

TAB 9

TAB 9A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: PRIVACY, PUBLIC ACCESS, AND APPEALS SUBCOMMITTEE

SUBJECT: 21-BK-M – RULE 8006(g)

DATE: MAR. 5, 2024

On August 15, 2023, the Standing Committee published an amendment to Fed. R. Bankr. P. 8006(g) suggested by Judge A. Benjamin Goldgar to make explicit what the Advisory Committee believed was the existing meaning of the Rule--that any party to an appeal may submit a request to the court of appeals to accept a direct appeal under 28 U.S.C. § 158(d)(2). The form of the amendment was developed in consultation with the Advisory Committee on Appellate Rules which was concurrently preparing an amendment to Appellate Rule 6(c) (Appeal in a Bankruptcy Case – Direct Review by Permission Under 28 U.S.C. § 158(d)(2)) to make sure the rules worked well together. Both amended rules were published at the same time. The amended Rule 8006(g) is attached.

The only comment on the published amendment was a submission from the Minnesota State Bar Association's Assembly supporting it (and the other published proposed amendments to the Bankruptcy Rules, Appellate Rules, and Civil Rules).

The Subcommittee recommends the amended rule to the Advisory Committee for final approval.

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

Rule 8006. Certifying a Direct Appeal to a Court of Appeals[2]

* * * * *

(g) Request After Certification for ~~Leave to Take a Direct Appeal to~~ a Court of Appeals ~~After Certification~~ to Authorize a Direct Appeal. Within 30 days after the certification has become effective under (a), ~~a request for leave to take a direct appeal to a court of appeals must be filed~~ any party to the appeal may ask the court of appeals to authorize a direct appeal by filing a petition with the circuit clerk in accordance with Fed. R. App. P. 6(c).

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

[2] The changes indicated are to the restyled version of Rule 8006, not yet in effect.

Committee Note

Rule 8006(g) is revised to clarify that any party to the appeal may file a request that a court of appeals authorize a direct appeal. There is no obligation to do so if no party wishes the court of appeals to authorize a direct appeal.