COMMENTS FROM THE AUGUST 2024 PUBLICATION OF PROPOSED AMENDMENTS TO FEDERAL RULES & FORMS

To view the proposed amendments for the **bankruptcy rules** that were published for this comment period, please visit the Forms & Rules page of the judiciary's website at https://www.uscourts.gov/ to download the 2024 preliminary draft of proposed amendments.

Comments were submitted through the regulations.gov portal under the following docket number: https://www.regulations.gov/document/USC-RULES-BK-2024-0002-0001.

The comment period started August 15, 2024 and closed February 17, 2025.

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Comment from Kressel, Robert

Posted by the **United States Courts** on Aug 19, 2024

Docket (/docket/USC-RULES-BK-2024-0002)
/ Document (USC-RULES-BK-2024-0002-0001) (/document/USC-RULES-BK-2024-0002-0001) / Comment

Comment

The amendments to Rule 3018(c)(1)(B) and (a)(3) are good ones. However, I wonder why the rule does not allow an individual creditor to file vote or change a vote. I presume this is an oversight. If it was intentional, I suggest it be changed to allow for such voting.

Comment ID
USC-RULES-BK-2024-0002-0003

Tracking Number
lzv-mngv-vumm

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Aug 15, 2024

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Comment from Anonymous

Posted by the **United States Courts** on Oct 15, 2024

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Comment

I appreciate what these rules are attempting to accomplish and would agree that the majority of these changes are necessary to reduce the complexity of bankruptcy proceedings. Rule 1007 and Rule 5009 seem necessary to streamline processes and reduce confusion.

However, I would be concerned for the potential negative ramifications of Rule 9006. Rule 9006 outlines a seemingly strict adherence to deadlines, which could result in penalties for people who need more time in complex situations. I would recommend that the committee considers how it can maintain clear rules for time extensions, while also taking more complex cases into consideration. I would also consider Rule 7043 regarding testimony and the impact it may have on debtors who may be unrepresented or lack appropriate resources. The procedural requirements outlined in this rule may be challenging and result in a disadvantage to someone.
Overall, these amendments seem to be a necessary step to improving bankruptcy procedures. I would encourage the committee to consider the strict timelines and the impact on complex cases.

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Comment ID
USC-RULES-BK-2024-0002-0004

Tracking Number
m24-vrup-jc4w

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Comment from Sadlo, Jacqueline

Posted by the **United States Courts** on Dec 9, 2024

Docket (/docket/USC-RULES-BK-2024-0002)
/ Document (USC-RULES-BK-2024-0002-0001) (/document/USC-RULES-BK-2024-0002-0001) / Comment

Comment

I am submitting this comment based on my experience as a paralegal and user advocate helping disadvantaged individuals through the nonprofit organization Upsolve, which is partially funded by the Legal Services Corporation and the Bill & Melinda Gates Foundation. According to recent reports, Upsolve has provided knowledge and educational assistance to around 1% of all U.S. individual non-business Chapter 7 bankruptcy filers in the past year (thousands of people). I also have personal experience working for creditors, giving me a well-rounded perspective on bankruptcy processes. I have reviewed hundreds of court records and letters from distressed bankruptcy filers on reasons for dismissal.

I strongly support the proposed amendments to Federal Rule of Bankruptcy Procedure 1007 (Lists, Schedules, Statements, and Other Documents; Time to File) for the deletion of subdivision (c)(4), which currently imposes deadlines for filing the certificate of completion for the personal financial management course in Chapter 7, 11, and 13 cases.

I also endorse the proposed amendment to Rule 5009(b) to provide two reminder notices instead of one, as authorized under the same act, ensuring debtors are more effectively reminded to complete and file the required documentation before discharge.

These amendments will significantly benefit:

Pro se filers, who often struggle to navigate the complexities of procedural requirements;
Nonprofit organizations, by reducing the administrative burden associated with providing support to disadvantaged individuals;
The court system, by improving efficiencies and reducing the volume of repeat cases and cases unnecessarily dismissed, closed, and reopened due to missed deadlines and procedural complexities;
The broader economy, by enabling more individuals to achieve the financial relief and fresh start intended by the bankruptcy system, which in turn benefits our communities and our nation's economy.

Give Feedback

I believe the proposed amendments to Rule 1007(c) and Rule 5009(b) are necessary, addressing a critical gap in the current system while aligning with the goals of access to justice, procedural fairness, and economic stability. I urge the relevant committees and policymakers to adopt these amendments.

Comment ID

USC-RULES-BK-2024-0002-0005

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m4e-lhe7-sfrq

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Comment from Andrade , Mia

Posted by the **United States Courts** on Dec 17, 2024

Docket (/docket/USC-RULES-BK-2024-0002)
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Comment

I agree with the proposed amendments to the Federal Rules of Bankruptcy Procedure as it is crucial as it ensures that the legal framework remains responsive and effective in addressing contemporary financial challenges. These amendments can enhance the clarity, efficiency, and fairness of bankruptcy proceedings, providing better protection for both debtors and creditors. By updating these rules, the legal system can adapt to evolving economic conditions and technological advancements, ultimately fostering a more stable and predictable environment for financial recovery and dispute resolution. This proactive approach not only strengthens the integrity of the bankruptcy process but also promotes confidence in the judicial system, which is essential for maintaining public trust and economic stability.

Attachments 1

Untitled document-4

Download (https://downloads.regulations.gov/USC-RULES-BK-2024-0002-0006/attachment_1.pdf)

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Comment ID

USC-RULES-BK-2024-0002-0006

https://www.regulations.gov/commenton/USC-RULES-BK-2024-0002-0001

I agree with the proposed amendments to the Federal Rules of Bankruptcy Procedure as it is crucial as it ensures that the legal framework remains responsive and effective in addressing contemporary financial challenges. These amendments can enhance the clarity, efficiency, and fairness of bankruptcy proceedings, providing better protection for both debtors and creditors. By updating these rules, the legal system can adapt to evolving economic conditions and technological advancements, ultimately fostering a more stable and predictable environment for financial recovery and dispute resolution. This proactive approach not only strengthens the integrity of the bankruptcy process but also promotes confidence in the judicial system, which is essential for maintaining public trust and economic stability.

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Comment from National Conference of Bankruptcy Judges

Posted by the **United States Courts** on Jan 17, 2025

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Comment

Attached are the comments of the National Conference of Bankruptcy Judges

Attachments 1

Final letter and comments on Federal Rule Amendments

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USC-RULES-BK-2024-0002-0009

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NCBJ

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January 16, 2025

VIA electronic submission
https://www.regulations.gov/commenton/USC-RULES-BK-2024-0002-0001

Honorable John D. Bates, Chair
Committee on Rules of Practice and Procedure
Judicial Conference of the United States
Washington, D.C. 20544

Dear Judge Bates:

In August 2024 the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States published a Preliminary Draft of proposed amendments to certain Federal Rules of Bankruptcy Procedure (the "Rules") and requested comments on them. As President of the NCBJ, I submit our attached comments on the proposed amendments. Should the Committee have any questions of the NCBJ, please let me know. We appreciate your consideration.

Best Regards,

Janet S. Baer

Honorable Janet S. Baer (ND Il.)
President
National Conference of Bankruptcy Judges

COMMENTS OF THE NATIONAL CONFERENCE OF BANKRUPTCY JUDGES TO PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

In August 2024 the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States published a Preliminary Draft of proposed amendments to certain Federal Rules of Bankruptcy Procedure (the "Rules") and requested comments on them. The proposed amendments to the Rules include amendments to Rules 1007, 3018, 5009, 9006, 9014, 9017, and the addition of a new Rule 7043.[1]

The National Conference of Bankruptcy Judges ("NCBJ") has reviewed the proposed amendments and respectfully submits comments to Rules 1007(h), 3018, 9014, 9017, and new Rule 7043, grouping our comments into three groups for discussion purposes.

Amendment to Rule 1007(h)

The amendment to Rule 1007(h) permits individual bankruptcy courts to require the disclosure of the acquisition of postpetition assets pursuant to 11 U.S.C. §§ 1115, 1207 and 1306.

The genesis of this proposal as we understand it from the materials accompanying the proposed amendments is case law in several circuits that holds that a debtor has an obligation to disclose the acquisition of postpetition assets, and that failure to disclose postpetition lawsuits permits the application of judicial estoppel to those claims. The proposed rule does not set forth a national rule because only a few circuits have found this obligation – instead, it permits individual courts to establish such requirements.

The NCBJ opposes this proposed rule for several reasons. First, the proposed rule is unnecessary. Although the proposed rule does not say how it would be implemented, the most likely avenue for implementation by individual courts would be through the promulgation of a new local rule. However, bankruptcy courts already have the authority under Rule 9029 to implement local rules such as those that would be permitted by the proposed rule.[2]

Second, cases finding an obligation to disclose assets postpetition and ruling that judicial estoppel applies to such nondisclosure generally do not cite to a specific statute or rule requiring

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[1] Also published for comment at the same time were proposed changes to the Federal Rules of Appellate Procedure (the "FRAP") and the Federal Rules of Evidence ("FRE"). Because neither of these sets of changes impact bankruptcy uniquely (if they impact it at all), the NCBJ does not comment on these matters. In addition, the NCBJ offers no comment on the proposal to delete the current deadline for filing the personal financial management certificate in Chapters 7, 11 and 13 by deleting Rule 1007(c)(4). The NCBJ supports the proposed amendment and believes it will be effective to reduce debtor noncompliance with the financial management requirement.

[2] For example, the Middle District of Florida, entered Administrative Order 2023-3 on December 4, 2023, titled *Administrative Order Prescribing Procedures for Chapter 13 Cases Filed on or After December 4, 2023*. Paragraph 30 of that Order, styled *Debtor's Duty to Supplement*, provides that the "Debtor must promptly disclose to the Trustee and file appropriate amendments with the Court reporting all changes to Debtor's financial circumstances, including, but not limited to, inheritances, personal injury claims and settlements, new or additional employment, loss of employment, and reduction or increase to income."

the disclosure. The NCBJ is concerned in that context that, as further explained below, making this change to the Rule may be seen as an implicit endorsement of the cases finding such an obligation.

Third, if the proposed Rule were adopted, its existence may have unintended consequences. For example, in circuits where the disclosure obligation has not been imposed by the circuit court, the existence of this Rule might create or enhance the basis for such a ruling. Conversely, in circuits where such a ruling is in place, the individual courts might be seen to be obligated to adopt a local rule requiring such disclosure.

Fourth, this type of court-by-court rulemaking runs counter to a general preference for uniformity in bankruptcy.

Fifth, it is not clear in the proposed Rule what "supplemental schedule" the debtor would be required to file. There is no national form for such a schedule. Perhaps it means that the debtor should amend its filed schedules to make these disclosures, but that is not clear.[3]

Finally, the proposed Rule does not describe what types of postpetition assets must be disclosed. For example, the amount in the debtor's bank account would change daily. How much of a change would require a filing? Clearly the proposed Rule is intended to require disclosure of the acquisition of material postpetition assets (i.e. personal injury or workers comp claims, lottery winnings, and other major items), but the details as to which assets and at what value would be left to the individual courts and would thus vary across the country.

For all the above reasons, the NCBJ opposes the adoption of the proposed amendment to Rule 1007(h).

Amendment to Rule 3018

The amendment to Rule 3018 permits parties to change a filed vote to reject a plan, or to vote in favor of a plan if they had not previously voted, by making an oral statement on the record or by filing a stipulation, rather than by having to request permission to change their ballot or file a late one. The proposed amendments have two parts of Rule 3018: subsection (a) and subsection (c).

Rule 3018(a), as modified on December 1, 2024,[4] deals with changing a vote (whether an acceptance or rejection) on confirmation of a Chapter 11 plan. Under the present Rule, a creditor or equity security holder may change or withdraw a vote for "cause" shown. The proposed Rule change would eliminate this requirement of "cause" for changing or withdrawing a rejection. The requirement would remain for changing or withdrawing an acceptance.

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[3] Simply amending the current schedules would not necessarily be appropriate, as the assets being newly disclosed were acquired postpetition. The current schedules list assets owned as of the petition date, and there would need to be some disclosure of when the new assets were acquired incorporated into the amended schedule. Admittedly, existing Rule 1007(h) (proposed to be Rule 1007(h)(1)) has the same infirmity.

[4] Rule 3018(c) was restyled effective December 1, 2024, and now has two (2) subparts.

The proposed changes split Rule 3018(c)(1) into subparts (A) and (B).[5] Subpart (A) contains the existing (c)(1), which provides that an acceptance or rejection has to be in writing and meet other criteria.[6] Proposed new Subpart (B) — which functions as an explicit exception to the requirements of subpart (A)—only applies to acceptances and changes or withdrawals of rejections. It does not apply to rejections or changes or withdrawals of acceptances. Subpart (B) would permit an acceptance or the change or withdrawal of a rejection in a statement that is part of the record, and is made by the attorney or authorized agent of the creditor or equity securityholder.

The materials that accompany the proposed changes do not explain the purpose or genesis of these changes. In the main, the changes would conform the Rule to actual practice, as plans are routinely confirmed in circumstances where parties that rejected the plan by a filed ballot change their vote at the confirmation hearing without filing a motion requesting permission to do so. In that respect, the changes serve a laudatory purpose, subject to some concerns about the precise language discussed below.

Notwithstanding its general support for the changes, the NCBJ recommends some specific wording changes to provide additional clarity to the proposed rule. More particularly, we suggest the language be changed to that provided below:

> "(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 or stipulation made during the confirmation hearing or a written stipulation that has been filed; and
>
> (ii) made or signed by an attorney for—or an authorized agent of—the creditor or equity security holder."

These changes would make it clear that a qualifying statement may be made verbally by the creditor or equity security holder (or counsel thereto). The qualifying statement may also be part of a stipulation (meaning, in effect, an agreement) that is recited orally into the record or filed in writing on the docket in the case. These are stylistic changes, not intended to change the effect of the proposal as we understand it, but instead to provide additional clarity.

Amendments to Rules 9014 and 9017, and new Rule 7043

The amendments to Rules 9014 and 9017, and the addition of a new Rule 7043, facilitate remote evidentiary hearings for contested matters. The proposed changes amend Rule 9014 and Rule 9017 and add a new Rule 7043 to facilitate remote hearings for contested matters by making Federal Rule of Civil Procedure ("Civil Rule") 43 only applicable in adversary

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[5] As of December 1, 2024, Rule 3018(c)(1) contains four subparts, namely subparts (A), (B), (C) and (D). The proposed changes would redesignate these as sub-subparts (i), (ii), (iii), and (iv) to Rule 3018(c)(1)(A).

[6] New Rule 3018(c)(1)(A)(iv)(old Rule 3018 (c)(1)(D)) requires that the written acceptance or rejection "conform to Form 314." In other places in the Rules, conformity to a Form is required to be "substantial" conformity. It is not clear why that is not included in this proposed Rule.

proceedings and permitting remote testimony more easily in contested matters and in main bankruptcy cases.

The proposed changes achieve this result first by adding Rule 7043, which makes Civil Rule 43 applicable in adversary proceedings. Before the changes, this was done in Rule 9017, which made Civil Rule 43 applicable in bankruptcy cases generally. The second set of proposed changes are to Rule 9014 and 9017. Rule 9017 is changed by removing Civil Rule 43 from the list of Civil Rules that apply in a bankruptcy case. Unfortunately, the redlined changes also remove Civil Rule 44, which does not appear to be intended. Finally, Rule 9014(d) is amended by making that subsection a modified version of Civil Rule 43, which it makes applicable to contested matters. That version is different than Civil Rule 43 in that Civil Rule 43 requires (i) good cause, (ii) compelling circumstances, and (iii) appropriate safeguards to permit contemporaneous testimony from another location. Revised Rule 9014(d) deletes "compelling circumstances" and only requires good cause and appropriate safeguards. To revise Civil Rule 43(c) to address a bankruptcy context, the drafters changed "motion" in Civil Rule 43(c) to "motion in a contested matter". The NCBJ believes that the phrase "motion in a contested matter" is potentially redundant and confusing and suggests a change below. If a change is made, the title to that section of the rule would also need to be conformed.

For the foregoing reasons, the NCBJ recommends that Civil Rule 44 not be deleted from Rule 9017, and that the phrase "motion in a contested matter" (and the later reference to "motion" in proposed Rule 43(c)) be changed to "motion or contested matter."

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Comment from National Association of Consumer Bankruptcy Attorneys

Posted by the **United States Courts** on Jan 28, 2025

Docket (/docket/USC-RULES-BK-2024-0002)
/ Document (USC-RULES-BK-2024-0002-0001) (/document/USC-RULES-BK-2024-0002-0001) / Comment

Comment

The National Association of Consumer Bankruptcy Attorneys (NACBA) appreciates the opportunity to comment on the proposed amendment to Federal Rule of Bankruptcy Procedure 1007(h). For the following reasons, NACBA does not believe the amendment should be adopted.

According to the discussion of the amendment by the Advisory Committee that occurred before it was proposed, the amendment is intended to help bring to the attention of debtors and their counsel the importance of disclosing assets acquired postpetition since failure to do so could end up hurting those debtors. NACBA submits that there are better ways of accomplishing this goal than by adopting a rule that could be read to suggest that nondisclosure of assets acquired postpetition is improper. At this point, in light of the developing case law, competent debtors' attorneys are aware of the conflicting cases regarding a duty to disclose such assets and guide their clients accordingly. Moreover, the very few pro se debtors who manage to obtain confirmation of a plan would probably not be aware of a local rule and would not be helped by it.

NACBA agrees with those courts and authorities that have found no broad duty to disclose acquisition of postpetition assets. There is no statutory authority or authority in the current rules for such a duty, except for assets that become property of the estate under Code section 541(a)(5). The cases holding otherwise, which were usually argued for debtors by nonbankruptcy attorneys, are wrongly decided and the Bankruptcy Rules should not suggest otherwise. While section 1306 (and similar chapter 11 and chapter 12 provisions) make such assets property of the bankruptcy estate, those provisions were enacted primarily to give that property the protections of the automatic stay and to give the trustee authority to administer the debtor's postpetition income. Indeed, when section 1306 was enacted in 1978, only the debtor could move to modify a plan, so it could not have been intended to give creditors or the trustee the right to claim such

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property when the plan did not so provide.

Later amendments to the Code provide mechanisms for disclosure of certain postpetition information, but notably do not provide for disclosure of postpetition asset acquisition. Section 521(f)(4) and (g) provides for disclosure, upon request of a creditor or trustee, of income, expenditures and tax returns. If Congress had wanted disclosure of postpetition asset acquisition beyond income, it would have required it. That it did not shows a recognition that there is no way to delimit such a requirement; if postpetition asset acquisitions were required to be disclosed, there would need to be a disclosure every time a debtor bought something or received a gift.

Adoption of the rule would further exacerbate the lack of uniformity in chapter 13 practice that undermines the Constitutional mandate of uniform bankruptcy laws. The rule would invite more courts to adopt local rules requiring disclosure of assets acquired postpetition, and those local rules would vary widely, as they already do, with respect to what must be disclosed. Will there be varying dollar limits? Will debtors have to guess, at their peril, what amount is “meaningful” or “significant”? Will debtors need to value an unliquidated personal injury claim? The rule would create more problems than it attempts to solve. In fact, adoption of the rule would not solve any problems. It would only serve to worsen the position of innocent debtors, such as pro se debtors, who can now argue that, if disclosure was required, their failure to disclose was inadvertent.

Finally, adoption of the rule would also make it more difficult for debtors to argue, in courts that have not required disclosure of postpetition asset acquisition, that such disclosure is not required. A court could rightly ask why, if it is not required, the Supreme Court promulgated a rule concerning such disclosure.

If the Advisory Committee chooses to weigh in on this still-developing legal issue, NACBA respectfully suggests that it should propose a rule that resolves the issue as Congress did and clarify that, except for property specified in Code section 541(a)(5), no disclosure of postpetition asset acquisition is required.

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Comment from Hiller, Adam

Posted by the **United States Courts** on Feb 3, 2025

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Comment

With regard to the proposed newly added FRBP 9014(d)(2), the term "affidavits" should be replaced with "affidavits or declarations" because the practice in many jurisdictions is to use unsworn declarations pursuant to 28 U.S. Code § 1746 instead of affidavits.

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Comment from Matthews, Benjamin

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Comment

This rule seems to bring additional confusion regarding the disclosure of assets acquired after filing. It will make it more difficult to properly advise clients. The rule in present form should not be adopted.

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Comment from Brignola, Erin K.

Posted by the **United States Courts** on Feb 3, 2025

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Comment

Thank you for your time in advance. I agree with the comments by NACBA and by NCBJ. While I am a 35 year veteran of consumer Debtor bankruptcy representation and have committed my practice to serve all personal individuals through pro bono and legal service plans and those capable of retention without assistance, All debtors are the same. They don't understand how other actions in their lives relate to the Bankruptcy Court process. In general even after their attorney advises to update always, (as I do have them sign retention agreements, affidavits, and ask questions when they finally inquire about paying off, or hiring another and getting money etc.), for these rules 1007 to put in place a punishment, would be quite prejudicial and converse to a fresh start, when they have no intent to violate any orders or statutory requirements. They are just trying to pay what they know to pay and move on to completion of the plan, without embarrassment and with fresh perspective on restoring normalcy and debt relief in their lives. The timing of their realization of say a personal injury award, comes at all different times, be it immediately, when they need a car and must modify the plan and get post-petition financing, or later when their attorney who has been working for them for 3 years now, finally says—I am going to settle the case, and provide a check, and hears that they are in Bankruptcy chapter 13. Some personal injury attorneys themselves have no idea what it means for a chapter 13 debtor to acknowledge they have a pending plan in place, and the personal injury attorney must be educated. Requiring a post-petition schedule, expansive in its applications beyond the 180 days to all claims, because the estate includes income—wages to pay the plan—and to punish them if they did not amend and exempt until much later, is really harmful and expansive without recourse and without all jurisdictions interpreting the code and rules in a similar manner. In defense of Debtors in consumer chapter 13 cases, I would not vote to approve these amendments to 1007. Respectfully,

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Posted by the **United States Courts** on Feb 13, 2025

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Comment

Re proposed changes to FRBP 3018. Though the motivations of the proposed changes for voting for a Ch. 11 plan are understandable, the proposed language itself creates an issue by improperly conflating a plan vote with the filing or withdrawal of an objection. There is a legally significant difference between objecting to a proposed plan and voting no; equally so, there is a legal distinction between withdrawing an objection (or declining to object) and voting yes. There are many reasons why I, as a creditor's attorney, may choose not to object to the plan but not vote a ballot in favor of the plan. One important reason is that the timing of the discharge is directly tied to confirmation under 1191. While the creditor may not oppose the proposed plan treatment and is willing to accept some sort of payments, there are currently massive issues with the SubV discharge. We have been burned by debtors who obtain consensual confirmation and immediate discharge but then default on the plan--sometimes with no payment at all and, perhaps, an intent to never complete the plan. Even with default language the creditors are left in a precarious position of dealing with this default that the debtor did not earn. In some, not all, cases, it makes good economic and legal sense to make the debtor earn their discharge. Withdrawing an objection but not voting for a plan to move to 1191(b) confirmation is an important strategic move. The proposed (c)(1)(B) conflates an acceptance with a withdrawal of an objection and those are not the same. To allow oral acceptance and changes is not necessarily objectionable in and of itself, but this proposed wording will cause problems for creditors when Congress has already spoken about filing ballots.

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The proposed amendment to Rule 1007(h)(2) should not be adopted. It requires a debtor to file an amended schedule when acquiring post-petition property as described in 1306. However, 1306 is all property, including wages. A person's property and wages are fluid and constantly changing. This rule, in it's present form, could require disclosure of any small raise, tax refund, or acquisition of nominal property, such as furniture, etc. It's not practical.

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Comment from National Bankruptcy Conference

Posted by the **United States Courts** on Feb 18, 2025

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Comment

Comments of the National Bankruptcy Conference

Attachments 1

NBC Comments Rule 1007 Feb 2025

Download (https://downloads.regulations.gov/USC-RULES-BK-2024-0002-0016/attachment_1.pdf)

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USC-RULES-BK-2024-0002-0016

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

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Submitted Electronically

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

Re: Proposed Amendments to the Federal Rules of Bankruptcy Procedure
Docket No. USC-RULES-BK-2024-0002-0001

Members of the Advisory Committee:

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

The following comments address the proposed amendments to Bankruptcy Rule 1007(h).

A. Proposed Bankruptcy Rule 1007(h) authorizes a disclosure requirement not found in the Bankruptcy Code and that may be inconsistent with the Code.

Proposed Bankruptcy Rule 1007(h) states that a court may require the debtor to file a supplemental schedule to list property or income that becomes property of the estate under sections 1115, 1207, or 1306. The Bankruptcy Code imposes extensive and detailed disclosure requirements on debtors. Congress did not, however, mandate that debtors file the supplemental schedules that a court could require under proposed Rule 1007(h) or even suggest that the schedules would be necessary or appropriate.

Section 521(a) of the Bankruptcy Code includes an extensive list of information a debtor must disclose when filing a bankruptcy petition. Bankruptcy Rule 1007(c) implements this by requiring that the schedules and other documents listed in section 521(a) be filed within 14 days after the commencement of the case.

Current Rules 1007(h) and 1019(5)(C)(i) and (iii) are the only rules that deal with property acquired postpetition. They apply in limited circumstances and require the filing of a supplemental schedule for property acquired by the debtor as provided under section 541(a)(5), and for certain property acquired before conversion to a chapter 7 case.

Other provisions of section 521 require, or authorize a court to require, the postpetition disclosure of tax information. Section 521(e)(2)(A) requires the debtor to provide the trustee with a tax return or transcript for the most recent tax year at least seven days before the meeting of creditors. Section 521(f)(1)-(3) imposes a similar requirement for tax

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years ending during the pendency of the bankruptcy case, if requested by the court, the United States trustee, or a party in interest.

The Code also requires disclosures related to the debtor's postpetition income and expenditures in a chapter 13 case. Section 521(a)(1)(B)(vi) requires "a statement disclosing any *reasonably anticipated increase in income or expenditures* over the 12-month period following [the petition]." Section 521(f)(4) authorizes a court (or the United States trustee or a party in interest) to request that the debtor file annually after the plan is confirmed a statement of income and expenditures. This Code provision specifies the information that must be disclosed in the statement, if requested, the time period covered by the disclosure, and careful restrictions on access to this information.

By contrast, no provision in the Code requires, or authorizes a court to require, the debtor to file a supplemental schedule of property acquired postpetition. There is simply no statutory basis for proposed Rule 1007(h). And in view of the detailed requirements for disclosure of postpetition matters described above, the omission of any requirement for a supplemental property schedule shows that Congress intended that one not be required. To the extent that proposed Rule 1007(h) authorizes the disclosure of postpetition income, it lacks the specificity and disclosure protections that Congress provided in section 521. Because proposed Rule 1007(h) refers simply to income that becomes property of the estate under section 1306, it authorizes a court to impose income disclosures that would be inconsistent with section 521 and potentially more burdensome than Congress intended.

We urge the Rules Committee to withdraw proposed Rule 1007(h) because it does not implement a requirement imposed by the Code and it would authorize a court to regulate bankruptcy practice in a manner that is not consistent with the Code while arguably imposing an impermissibly substantive requirement in contravention of 28 U.S.C. § 2075.

B. Proposed Bankruptcy Rule 1007(h) should be withdrawn pending further development of controlling law.

The opinions of the three Courts of Appeal that have addressed postpetition disclosure requirements, decided in the context of the judicial estoppel doctrine, are confusing and inconsistent. The unifying theme of the opinions is that they fail to identify an appropriate statutory basis for a general duty of the debtor to disclose the postpetition acquisition of assets and changes in income.

For example, the Eighth Circuit in *Jones v. Bob Evans Farms, Inc.*, 811 F.3d 1030, 1033 (8th Cir. 2016), noted that a chapter 13 debtor has an obligation to amend the "bankruptcy schedules to reflect a post petition cause of action," relying upon an earlier decision in *E.E.O.C. v. CRST Van Expedited, Inc.*, 679 F.3d 657 (8th Cir. 2012). However, the undisclosed causes of action in *E.E.O.C. v. CRST* appear to have accrued prepetition (and two of the three consolidated cases were chapter 7). Neither opinion discusses any statutory authority for the obligation.

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Similarly, the Fifth Circuit in *In re Flugence*, 738 F.3d 126, 129 (5th Cir. 2013), found that chapter 13 debtors "have a continuing obligation to disclose post-petition causes of action," citing *In re Coastal Plains, Inc.*, 179 F.3d 197 (5th Cir. 1999). The *Coastal Plains* opinion did not involve a chapter 13 debtor, appears to involve prepetition causes of action, and refers uncontroversially to the requirement in section 521(a)(1) to schedule all assets, including contingent and unliquidated claims. The *Flugence* court also referred to *Kane v. Nat'l Union Fire Ins. Co.*, 535 F.3d 380 (5th Cir. 2008), another judicial estoppel opinion in which a chapter 7 debtor failed to disclose a prepetition auto accident claim.

In finding that chapter 13 debtors have a continuing disclosure obligation, the Eleventh Circuit in *Robinson v. Tysons Food, Inc*., 595 F.3d 1269 (11th Cir. 2010), refers simply to Code sections 521(a)(1) and 541(a)(7), and several earlier judicial estoppel opinions. One of those opinions, *In re Waldron*, 536 F.3d 1239, 1245 (11th Cir. 2008), infers a continuing duty to disclose from the general right to amend schedules in Rule 1009, but also acknowledges that the duty is not grounded in the Code or Rules:

> We do not hold that a debtor has a free-standing duty to disclose the acquisition of any property interest after the confirmation of his plan under Chapter 13. Neither the Bankruptcy Code nor the Bankruptcy Rules mention such a duty, cf. Fed. R. Bankr. P. 1007(h) (requiring a debtor to supplement his schedule regarding interests acquired after petition under section 541(a)(5) of the Code), and our precedents in *Burnes*, *De Leon*, and *Ajaka* do not address that issue. But the bankruptcy court has the discretion, under Rule 1009, to require a debtor to amend his schedule of assets to disclose a new property interest acquired after the confirmation of the debtor's plan. *Waldron*, 536 F.3d 1239, 1246 (11th Cir. 2008). *See also In re* Calixto, 648 B.R. 119, 127 (Bankr. S.D. Fla. 2023) ("Eleventh Circuit has concluded that 'Rule 1009 is a proper vehicle' to disclose a post-petition litigation claim that became property of a chapter 13 debtor's estate under section 1306(a)(1)," citing *Waldron*).

These opinions, representing only three Circuit Courts of Appeal, fail to identify textual support in the Code for proposed Rule 1007(h).

Many courts in other circuits do not agree that a debtor has an affirmative duty to amend schedules for property arising or acquired after confirmation that becomes part of the estate under section 1306(a). *See, e.g.*, *In re Poe*, 2022 WL 3639415 (Bankr. N.D. Ohio Aug. 3, 2022) (debtors are not required to self-report increased postconfirmation income or new assets, noting that there is no provision in the Bankruptcy Code or Rules requiring such reporting in a Chapter 13 case); *In re Williams*, 2022 WL 2445423 (Bankr. E.D. Okla. July 5, 2022) (chapter 13 debtors were not required to disclose postconfirmation changes in income unless requested by the chapter 13 trustee); *In re Boyd*, 618 B.R. 133, 156 (Bankr. D.S.C. 2020) ("While the duty to disclose a substantial or significant asset that became part of the estate post-confirmation may be a desirable policy, it was simply not required in this case under the Bankruptcy Code, the Bankruptcy Rules or an order or

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local rule of this Court."); *In re Denge*s, 2020 Bankr. LEXIS 1155 at *9 (Bankr. D.N.J. Apr. 21, 2020) ("While debtors have a duty of disclosure at the commencement of a case, there is no statutory or procedural rule directing disclosure of assets obtained postpetition except certain property acquired 180 days after filing by operation of section 541(a)(5), i.e. an inheritance, a property settlement agreement or a life insurance benefit."); *In re Grice*, 319 B.R. 141, 144 (Bankr. E.D. Mich. 2004) ("Although [§ 521] does not on its face impose a duty to continue to update information from time to time post-confirmation as the Debtor's circumstances may change, the Trustee urges the Court to read such a requirement into § 521.... However, § 521 of the Bankruptcy Code does not impose this requirement nor did the Debtor's plan.").

Moreover, Congress has not given clear direction as to the underlying substantive rights of the debtor and other parties concerning postpetition assets and income in chapter 13 cases. Thus, courts are not surprisingly divided on the treatment of postconfirmation events, driven in part by section 1329's lack of any explicit standard by which a court should assess a proposed plan modification. We include as an attachment to these comments summaries of opinions that reflect these divergent views.

Under such circumstances, the Rules Committee typically does not adopt a rule of practice and procedure imposing a requirement until controlling law, as set out in opinions of the Supreme Court or majority of courts, has become settled. Thus, proposed Bankruptcy Rule 1007(h) should be withdrawn pending further development of the controlling law.

C. Proposed Bankruptcy Rule 1007(h) is vague and fails to provide guidance to courts and the parties.

At bottom, proposed Bankruptcy Rule 1007(h) simply acknowledges that a court has authority to take certain action. Unlike other rules governing practice and procedure, it does not specify how, when, and under what circumstances a court may require a debtor to file a supplemental schedule of postpetition estate property. This vagueness will result in uncertainty and inconsistent practices concerning its application, which undermines the bedrock goal of uniformity in our nation's bankruptcy laws.

For example, it is not clear if the proposed rule authorizes a court to impose the requirement only in a particular case or through a standing or general order that would apply to all individual chapter 11, 12, and 13 debtors. If the potential requirement applies only in an individual case, the proposed rule does not state how or when the requirement is triggered, unlike Rule 1009(a) for example, which authorizes a court to order a debtor to amend a schedule upon motion of a party in interest, after notice and a hearing.

If imposed through a standing or general order, proposed Rule 1007(h) does not give courts guidance on how to draft such orders, which will lead to a lack of uniformity in bankruptcy practice. Because standing orders may be entered by individual judges, there may be significant variation even within the same district. (Although we do not advocate it, for all the same reasons we have issues with the proposed Rule, if the proposed Rule is

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really intended to authorize a standing or general order, uniformity would be enhanced if the proposed Rule itself imposed the requirement.)

For example, a general order adopted by the Bankruptcy Court for the Northern District of Texas states that a chapter 13 debtor must "notify the Trustee of any material increase in the Debtor's personal or household income and of the acquisition of any property of the estate with a value exceeding the Trustee's guidelines, the sale of any property post-petition, and/or of the receipt of any life, auto, or home owner's insurance proceeds in an amount that exceeds the Trustee's guidelines." *See* Standing Order Concerning All Chapter 13 Cases in the Bankruptcy Court for the Northern District of Texas. General Order 2023-04, ¶ 19, June 21, 2023. The General Order does not define a "material increase" and delegates to the chapter 13 trustee the authority to set guidelines for when postpetition property exceeding a certain value must be disclosed to the trustee. In districts with several standing trustees, there could be significant variation in the guidelines (and the trustee guidelines would not be subject to the notice and comment requirement that applies to the adoption of local rules).

The Bankruptcy Court for the Middle District of North Carolina has required through a paragraph in its form chapter 13 plan that the "Debtor must promptly report to the Trustee and must amend the petition schedules to reflect any significant increases in income and any substantial acquisitions of property such as inheritance, gift of real or personal property, or lottery winnings." *See* Bankruptcy Court for the Middle District of North Carolina, Chapter 13 Plan, ¶ 8.1.h, Dec. 20, 2024. Debtors and their attorneys are apparently left to decide what is "significant" and "substantial" and take the risk that a judge could disagree and impose some form of sanction if they guess wrong.

An Administrative Order of the Bankruptcy Court for the Middle District of Florida states that a chapter 13 debtor "must promptly disclose to the Trustee and file appropriate amendments with the Court reporting all changes to Debtor's financial circumstances, including, but not limited to, inheritances, personal injury claims and settlements, new or additional employment, loss of employment, and reduction or increase to income." *See* Administrative Order Prescribing Procedures for Chapter 13 Cases Filed on or after December 4, 2023, Paragraph 30, Administrative Order FLMB-2023-3. Under this order, the duty to file amended schedules is triggered by "all changes to Debtor's financial circumstances." Debtors often experience changes in their financial circumstances during a chapter 13 case. While local practice may have set some parameters on the scope of this administrative order, on its face it presents significant compliance challenges for debtors and their attorneys. *See In re Boyd*, 618 B.R. 133, 150–51 (Bankr. D.S.C. 2020) ("Since property of the estate includes every type of property and earnings a debtor acquires post-petition, it would be problematic to specify what level of assets would require reporting and when. Would every new refrigerator, every traded car, every dollar change in income, every new expense be required to be disclosed? When would such disclosure be required? Such an approach would not only be impractical but would virtually inundate the court with filings and impair the efficiency of the chapter 13 process.").

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We note that this concern about how courts might implement proposed Rule 1007(h) was considered by the Committee. The suggestion for amending Rule 1007(h) that was made in the memorandum of the Subcommittee on Consumer Issues to the full Advisory Committee, dated August, 21, 2023, recommended that the rule amendment be accompanied by a Committee note stating: "Because those statutory provisions are broad in their coverage, an order requiring such supplementation should specify the types of property to be disclosed or the degree of impact on the estate, such as 'significant' or 'material.'" While this sentence was deleted from the version submitted for publication, it highlights the extraordinary challenges courts will face in implementing this controversial proposed rule on a local level without any guidance from the Advisory Committee.

The Rules Committee has suggested that the rule has been proposed to help debtors avoid losing the right to pursue causes of action as a result of the judicial estoppel doctrine. We are concerned that the adoption of local rules without clear standards, encouraged by proposed Rule 1007(h), will exacerbate that problem. Given the uncertainty in valuing contingent claims, debtors subject to such local rules who in good faith believe that their claims were not "significant," "substantial," or "material" will almost certainly be confronted with a judicial estoppel defense that their nondisclosure was improper.
Due to the significant lack of clarity regarding how proposed Rule 1007(h) is to be implemented on the ground, the rule may actually do more harm than good and lead to confusion and discord among bankruptcy courts or even among individual judges on the same court.

D. Unlike Bankruptcy Rule 4002(b)(5), proposed Rule 1007(h) lacks appropriate safeguards.

Section 521(f)(1)-(3) requires a debtor to provide a tax return or transcript for tax years ending during the bankruptcy case, if requested by the court, the United States trustee, or a party in interest. The tax return requirements are subject to procedures established by the Director of the Administrative Office of the United States Courts to safeguard the confidentiality of tax information, including restrictions on creditor access to the information.

These procedures are set forth in a Director's Guidance at section 830 of the Guide to Judiciary Policy. They include redaction requirements for tax information provided under section 521 and do not permit tax returns filed with the court to be accessible to the public. The procedures also require that a motion be filed with the court and that a "demonstrated need" for the tax information be shown, including inability to get needed information in any other manner, before a United States trustee, trustee, or party in interest, including a creditor, can obtain tax information under section 521(f).

Bankruptcy Rule 4002(b)(5) provides that information provided to the trustee or a creditor is subject to the procedures promulgated by the Director of the Administrative Office for safeguarding the confidentiality of tax information.

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Proposed Rule 1007(h) authorizes courts to require the filing of supplemental schedules that might include highly sensitive and confidential information related, for example, to personal injury claims. We are concerned that debtors might be required to make such disclosures even when the disclosure will not result in a plan modification or have any impact on the outcome of the case. Proposed Rule 1007(h) should not be adopted without the addition of appropriate safeguards, in addition to the cumbersome procedures of seeking to file documents under seal, to protect confidential information.

For all these reasons, the National Bankruptcy Conference recommends the proposed Rule 1007(h) withdrawn. Please contact us if the National Bankruptcy Conference can be of further assistance.

Sincerely,

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

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Attachment

Inconsistent Case Law on Plan Modification

In the last decade, the volume of case law on plan modification has greatly expanded, fed in part by appreciation in home values. As the case law on that subject has multiplied, it has only further fragmented. A sampling of the divergent body of judicial opinions follows.

A. Courts Granting Motions to Modify Plans Based on the Debtors' Acquisition of Postconfirmation Assets

In re Madrid, No. 19-42260-MJH, 2023 WL 3563019 (Bankr. W.D. Wash. May 18, 2023). The bankruptcy court granted the chapter 13 trustee's motion to modify a plan to increase distribution to unsecured creditors based on a postconfirmation inheritance, holding that the best-interests-of-creditors test should be applied as of the date of the proposed modification.

In re Drew, 325 B.R. 765 (Bankr. N.D. Ill. 2005). The bankruptcy court granted the chapter 13 trustee's motion to modify a confirmed plan to increase the dividend to unsecured creditors based on the debtors' postconfirmation receipt of the proceeds of a mortgage refinancing, holding that the proceeds were property of the estate.

In re Florida, 268 B.R. 875 (Bankr. M.D. Fla. 2001). The bankruptcy court granted the chapter 13 trustee's motion to modify a confirmed plan to provide for a 100% dividend to unsecured creditors from insurance proceeds paid upon the postconfirmation death of the debtor's husband, holding that the proceeds constituted disposable income.

In re Barbosa, 236 B.R. 540 (Bankr. D. Mass. 1999), *aff'd*, 243 B.R. 562 (D. Mass 2000), *aff'd*, 235 F.3d 31 (1st Cir. 2000). The bankruptcy court granted the chapter 13 trustee's motion to modify a confirmed plan following the debtors' postconfirmation sale of their real property at an amount substantially greater than the stipulated value of the property at confirmation. The chapter 13 trustee sought to compel the debtors to increase distributions to unsecured creditors. The bankruptcy court approved the modification of the plan to increase payment to unsecured creditors based on the sale of the property, holding that the best-interests-of-creditors test should be applied as of the date of the proposed modification.

In re Euerle, 70 B.R. 72 (Bankr. D.N.H. 1987). The bankruptcy court granted the chapter 13 trustee's motion to modify a confirmed plan to provide for a 100% dividend to unsecured creditors where the debtor received a $300,000 postconfirmation inheritance more than 180 days after the petition date, holding that the inheritance was property of the estate.

In re Koonce, 54 B.R. 643 (Bankr. D.S.C. 1985). The bankruptcy court granted the chapter 13 trustee's motion to modify a confirmed plan to pay a 100% dividend to unsecured creditors after the debtors won a $1.3 million lottery jackpot, holding that the lottery proceeds were property of the estate.

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B. Courts Denying Motions to Modify Plans Based on the Debtors' Acquisition of Postpetition Assets

Black v. Leavitt (In re Black), 609 B.R. 518 (B.A.P. 9th Cir. 2019). The bankruptcy appellate panel reversed the bankruptcy court's grant of the chapter 13 trustee's motion to modify a confirmed plan. The bankruptcy appellate panel held that the sale proceeds of a property did not have to be committed to creditors under the debtor's chapter 13 plan because the property revested in the debtor upon confirmation, meaning that the proceeds were not property of the estate.

Forbes v. Forbes (In re Forbes), 215 B.R. 183 (B.A.P. 8th Cir. 1997). The debtor obtained a settlement of a cause of action that arose postconfirmation, and the debtor's former spouse, who was the creditor of the debtor by virtue of a divorce decree, argued that the settlement proceeds should be used to pay creditors in full. The bankruptcy appellate panel disagreed, holding that the effective date of the plan was the date of the original plan and that the settlement proceeds were properly excluded from the liquidation analysis under the best-interests-of-creditors test.

In re Taylor, 631 B.R. 346 (Bankr. D. Kan. 2021). The bankruptcy court denied the chapter 13 trustee's motion to modify a confirmed plan to pay unsecured claims in full using proceeds from a nonexempt postconfirmation personal injury settlement, holding that postconfirmation assets should not be included in the best-interests-of-creditors test for purposes of approval of a modified chapter 13 plan.

In re McAllister, 510 B.R. 409 (Bankr. N.D. Ga. 2014). The bankruptcy court denied the chapter 13 trustee's motion to modify a confirmed plan to pay unsecured claims in full using the proceeds of a life insurance policy, holding that the proceeds received by the debtor after confirmation of his chapter 13 plan were not property of the estate and that the debtor was not required to use property that was not property of the estate to pay creditors.

C. Courts Granting or Approving Motions to Modify Plans Based on the Debtors' Postconfirmation Increase in Income

Germeraad v. Powers, 826 F.3d 962 (7th Cir. 2016). The bankruptcy court had denied the chapter 13 trustee's motion to modify a confirmed plan to increase payments to unsecured creditors based on an increase in the debtors' income, and the district court affirmed. The court of appeals vacated the district court's judgment, holding that bankruptcy courts may authorize modifications to increase payments to creditors if there has been a change in the debtor's financial circumstances that makes an increase affordable for the debtors.

In re Arnold, 869 F.2d 240 (4th Cir. 1989). The bankruptcy court granted the motion of an unsecured claim holder to increase the debtor's monthly plan payments from $800 to $1,500 after the debtor's income increased from $80,000 to nearly $200,000 per year postconfirmation. The district court and the court of appeals affirmed. The Fourth Circuit emphasized that the debtor's significant increase in income was unanticipated and that "[i]t is grossly unfair for a debtor, who experiences an increase in yearly income of $120,000, to

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refuse to share some of that with creditors who are getting no more than 20 cents on the dollar for their claims under the original chapter 13 plan. Bankruptcy invariably involves the balancing of the interests of both the debtors and the creditors. When a debtor's financial fortunes improve, the creditors should share some of the wealth."

Berkley v. Burchard (In re Berkley), 613 B.R. 547 (B.A.P. 9th Cir. 2020). The bankruptcy court granted the chapter 13 trustee's motion to modify the debtor's plan to increase the dividend to unsecured creditors after the debtor received a significant financial windfall from the sale of stock. The bankruptcy appellate panel affirmed, ruling that "confirmation does not shield increases in the debtor's postconfirmation income from the reach of the chapter 13 trustee or creditors."

Powers v. Savage (In re Powers), 202 B.R. 618 (B.A.P. 9th Cir. 1996). The bankruptcy court granted the motion of the chapter 13 trustee to increase the debtor's plan payments from $140 to $640 per month based on a 48% increase in income postpetition. The bankruptcy appellate panel held that the increase in the debtor's income justified the trustee's motion to modify plan to increase payments to unsecured creditors.

National Bankruptcy Conference

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

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

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

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

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

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Comment

These comments are directed to the proposed change to Rule 1007.

These changes are not necessary and threaten to complicate cases unnecessarily and without sufficient legal basis. The issues are as follows:

1. There is no legal requirement in the Code to provide post petition asset acquisition information, except in specific situations (See, Section 521(f)(4) and (g)) . So any such new rule adds a legal requirement that is not part of the code. Substantive changes such as this, should be part of the Code – not the rules.
2. From a practical perspective – as the attorney it would be impossible to keep track of all items without substantially increasing the cost of compliance to either the attorney or the debtor.
3. We all expect bankruptcy rules to be uniform – this would open the door to extreme regional variations.
4. This proposed rule seems to address something that is not a problem.

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