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

MEMORANDUM

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

FROM: Honorable Dennis R. Dow, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 30, 2019

I. Introduction

The Advisory Committee on Bankruptcy Rules met in San Antonio, Texas, on April 4,2019. The draft minutes of that meeting are attached at Tab B.

At the meeting the Advisory Committee gave its final approval to the amendments to three rules that were published for comment last August. The amendments are to Rules 2002 (Notices), 2004 (Examination), and 8012 (Corporate Disclosure Statement). The Advisory Committee also approved without publication technical amendments to Rule 2005 (Apprehension and Removal of Debtor to Compel Attendance for Examination) and Official Form 122A-1 (Chapter 7 Statement of Your Current Monthly Income). Finally, the Advisory Committee voted to seek publication for comment of amendments to Rules 7007.1 (Corporate Ownership Statement) and 9036 (Notice and Service by Electronic Transmission).

Part II of this report presents those action items along with two others that the Advisory Committee voted on at its fall 2018 meeting. At that earlier meeting, the Advisory Committee voted to seek final approval without publication of conforming, technical amendments to Rules 8012, 8013, and 8015 to remove or qualify references to "proof of service" and voted to seek publication of an amendment to Rule 3007 (Objections to Claims).

The action items are organized as follows:

A. Items for Final Approval

(A1) Rules published for comment in August 2018—
- Rule 2002;
- Rule 2004; and
- Rule 8012.

(A2) Approval without publication—
- Rule 2005;
- Rules 8013, 8015, and 8021; and
- Official Form 122A-1.

B. Items for Publication
- Rule 3007;
- Rule 7007.1; and
- Rule 9036.

Part III of this report presents two information items. The first concerns the status of the Bankruptcy Rules restyling project. The second information item discusses the Advisory Committee's recommendation of a new Director's Form for use in applying for the withdrawal of unclaimed funds collected in bankruptcy cases.

II. Action Items

A. Items for Final Approval

(A1) Rules published for comment in August 2018.

The Advisory Committee recommends that the Standing Committee approve and transmit to the Judicial Conference the proposed rule amendments that were published for public comment in August 2018 and are discussed below. Bankruptcy Appendix A includes the rules that are in this group.

Action Item 1. Rule 2002 (Notices). A package of amendments to Rule 2002 was published that would (i) require giving notice of the entry of an order confirming a chapter 13 plan, (ii) limit the need to provide notice to creditors that do not file timely proofs of claim in chapter

12 and chapter 13 cases, and (iii) add a cross-reference in response to the relocation of the provision specifying the deadline for objecting to confirmation of a chapter 13 plan.

Three different subdivisions of the rule are affected.

- *Rule 2002(f)(7)* currently requires the clerk, or someone else designated by the clerk, to give notice to the debtor, all creditors, and indenture trustees of the "entry of an order confirming a chapter 9, 11, or 12 plan." The amendment would include chapter 13 plans within this provision.
- *Rule 2002(h)* provides an exception to the general noticing requirements set forth in Rule 2002(a). Rule 2002(a) generally requires the clerk (or some other party as directed by the court) to give "the debtor, the trustee, all creditors and indenture trustees" at least 21 days' notice of certain matters in bankruptcy cases. But Rule 2002(h) eliminates that requirement in chapter 7 cases with respect to creditors that fail to file a timely proof of claim. The amendment would make this exception also applicable to chapter 12 and 13 cases and would change the time provisions in the subdivision to conform to recent amendments to Rule 3002 setting deadlines for filing proofs of claim.
- *Rule 2002(k)* provides for transmitting notices under specified parts of Rule 2002 to the U.S. trustee, including notices under subdivision (b). Because the deadline for giving notice of the time for filing objections to confirmation of chapter 13 plans was recently moved from subdivision (b) to subdivision (a)(9), which currently is not specified in subdivision (k), the provision would be amended to include a reference to (a)(9) to ensure that the U.S. trustee continues to receive notice of this deadline.

Six sets of comments were submitted on one or more of these proposed amendments. Four of the comments (submitted by Danielle Young, Nancy Whaley, Ellie Bertwell of Aderant CompuLaw, and the National Association of Bankruptcy Trustees) included brief statements of support for the amendments.

Ryan Johnson, the clerk of the Bankruptcy Court for the Northern District of West Virginia, was generally supportive of the amendments, but he raised two additional points about Rule 2002(h). First, he said that in a chapter 13 case, the clerk's noticing responsibilities should extend beyond the 70-day proof-of-claim deadline as stated in Rule 3002(c). The applicable deadline, he said, should include the additional 30 days afforded to a debtor or trustee to file a claim on behalf of a creditor under Rule 3004. He also stated that with respect to notices required by Rule 2002(a)(2) and (a)(3), Rule 2002(h) should require notice to creditors that were entitled to service of the noticed motion even if those entitled to service did not file a proof of claim.

The Bankruptcy Section of the Federal Bar Association, while supporting the other Rule 2002 amendments, questioned the need for including the entry of an order confirming a chapter 13 plan within the notice requirement of Rule 2002(f)(7). It noted that in the Bankruptcy Court for the Western District of Texas, the clerk already is responsible for "publishing the order confirming the plan through its Bankruptcy Noticing Center . . . [, and] [s]ervice is accomplished by first class mail and, where applicable, electronic mail." As a result, the Section argued, "there appears to be little benefit requiring a notice of an order confirming plan that has already been served on parties in interest."

After carefully considering the comments, the Advisory Committee voted unanimously to approve the amendments to Rule 2002 as published.

Action Item 2. Rule 2004 (Examination). Rule 2004 provides for the examination of debtors and other entities regarding a broad range of issues relevant to a bankruptcy case. Under subdivision (c) of the rule, the attendance of a witness and the production of documents may be compelled by means of a subpoena. The Business Law Section of the American Bar Association, on behalf of its Committee on Bankruptcy Court Structure and Insolvency Process, submitted a suggestion that Rule 2004(c) be amended to specifically impose a proportionality limitation on the scope of the production of documents and electronically stored information ("ESI"). The Advisory Committee discussed the suggestion at the fall 2017 and spring 2018 meetings. By a close vote, the Committee decided not to add a proportionality requirement to the rule, but it decided unanimously to propose amendments to Rule 2004(c) to refer specifically to electronically stored information and to harmonize its subpoena provisions with the current provisions of Civil Rule 45, which is made applicable in bankruptcy cases by Bankruptcy Rule 9016.

Three sets of comments were submitted in response to publication. The Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan commented that proportionality should be a factor that a bankruptcy judge has the discretion to consider in ruling on a request for production of documents and ESI in connection with a Bankruptcy Rule 2004 examination. It argued that in the bankruptcy context, where resources are already limited in many cases, the impact of having to produce all ESI, without consideration of proportionality, could significantly impact the likely success of a case.

The other two comments were supportive of the amendments as proposed. The National Association of Bankruptcy Trustees supported the inclusion of electronic records within the rule and the updating to conform to Rule 45 as promoting clarity of scope. The Federal Bar Association's Bankruptcy Section supported the published changes to Rule 2004(c) and urged caution before imposing a proportionality requirement. It expressed concern that doing so would likely increase litigation.

The Advisory Committee unanimously approved the amendments to Rule 2004(c) as published. It saw no reason to revisit the question of proportionality since that issue had recently been carefully considered and rejected by the Advisory Committee.

Action Item 3. Rule 8012 (Corporate Disclosure Statement). Rule 8012 requires a nongovernmental corporate party to a bankruptcy appeal in the district court or bankruptcy appellate panel to file a statement identifying any parent corporation and any publicly held corporation that owns 10% or more of the party's stock (or file a statement that there is no such corporation). It is modeled on FRAP 26.1. The Appellate Rules Committee proposed amendments to FRAP 26.1 that have been approved by Supreme Court, including one that is specific to bankruptcy appeals.

At the spring 2018 meeting, the Advisory Committee considered and approved for publication amendments to Rule 8012 that track the relevant amendments to FRAP 26.1. These amendments would add a new subdivision (b) to Rule 8012, addressing disclosure about the debtor. This subdivision would require the disclosure of the names of any debtors in the underlying

bankruptcy case that are not revealed by the caption of an appeal and, for any corporate debtors in the underlying bankruptcy case, the disclosure of the information required of corporations under subdivision (a) of the rule. Other amendments tracking FRAP 26.1 would add a provision to subdivision (a) requiring disclosure by corporations seeking to intervene in a bankruptcy appeal and would make stylistic changes to what would become subdivision (c), regarding supplemental disclosure statements.

Three comments were submitted in response to publication. All were supportive.

In light of the conforming nature of the amendments and the lack of any negative comment on them, the Advisory Committee gave them final approval. One member of the Advisory Committee expressed the need for additional amendments to the disclosure statement rules to extend the requirements to a broader range of entities. The Advisory Committee, however, concluded that any such expansion should be undertaken in coordination with the other advisory committees and should not hold up amendments that are designed to conform to amendments to FRAP 26.1 that are expected to go into effect on December 1 of this year.

(A2) Conforming or technical amendments proposed for approval without publication.

The Advisory Committee recommends that the Standing Committee approve and transmit to the Judicial Conference the proposed rule and form amendments that are discussed below. The rules and form as proposed for amendment are in Bankruptcy Appendix A.

Action Item 4. Rule 2005 (Apprehension and Removal of Debtor to Compel Attendance for Examination). Judge Brian Fenimore of the Bankruptcy Court for the Western District of Missouri brought to the attention of Judge Dennis R. Dow that Rule 2005(c) contains references to repealed provisions of the Criminal Code. Rule 2005(c) currently reads as follows:

> (c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18 U.S.C. § 3146(a) and (b).

Sections 3141 through 3151 of the Title 18 were repealed by the Bail Reform Act of 1984, Pub. L. No. 98-473, Title II, § 203(a), 98 Stat. 1979 (1984), and replaced by new provisions dealing with bail. The current version of 18 U.S.C. § 3146 deals not with conditions to assure attendance or appearance, but with penalties for failure to appear. The topic of conditions is addressed by 18 U.S.C. § 3142.

Although much of § 3142 is inapplicable to the subject of Rule 2005(c) (conditions designed to assure attendance for examination or appearance before the court), the easiest technical fix is that suggested by Judge Fenimore, which is simply replacing the reference to "§ 3146(a) and (b)" in Rule 2005(c) with a reference to "§ 3142." The Advisory Committee voted unanimously to seek approval of this amendment without publication.

Action Item 5. Rules 8013 (Motions; Intervention), 8015 (Form and Length of Briefs; Form of Appendices and Other Papers), and 8021 (Costs). The Supreme Court has approved amendments to several Federal Rules of Appellate Procedure that are expected to go into effect in December of this year. The amendment to FRAP 25(d) would eliminate the requirement of proof of service for documents served through the court's electronic-filing system. This amendment parallels the amendment to Bankruptcy Rule 8011(d) that went into effect last December. The other FRAP amendments—to FRAP 5, 21, 26, 32, and 39—would reflect this change by either eliminating or qualifying references to "proof of service" so as not to suggest that such a document is always required. Because the Part VIII Bankruptcy Rules in large part track the language of FRAP counterparts, the Advisory Committee voted to seek approval without publication of conforming changes to three bankruptcy appellate rules.

Rule 8015(g) (Items Excluded from Length), paralleling the amendments to FRAP 32(f), would be amended to eliminate the articles "a" and "the" before the items in a brief excluded in calculating a brief's length. It would also be amended to delete "corporate" before "disclosure statement" to reflect the pending amendment to the title of Rule 8012.

Rule 8021(d) (Bill of Costs; Objections) would be amended to delete the reference to proof of service in order to maintain consistency with FRAP 39(d).

Rule 8013(a)(1) also refers to "proof of service." It states that "[a] request for an order or other relief is made by filing a motion with the district or BAP clerk, with proof of service on the other parties to the appeal." The corresponding FRAP provision (FRAP 27(a)) does not include the last phrase, so no amendment has been proposed to that rule. To take account of situations in which proof of service is not required, Rule 8013(a)(1) would be amended by ending the provision with "clerk," thereby omitting the reference to proof of service. The circumstances under which proof of service would be required would then be governed by Rule 8011(d)(1) (only required for documents served other than through the court's electronic-filing system).

Action Item 6. Official Form 122A-1 (Chapter 7 Statement of Your Current Monthly Income). A senior staff attorney who assists pro se debtors in the Bankruptcy Court for the Central District of California submitted a suggestion regarding one of the means test forms—Official Form 122A-1. He suggested that the instruction not to file Official Form 122A-2 if the debtor's current monthly income multiplied by 12 is less than or equal to the applicable median family income should be repeated on the form. Currently that instruction appears after the signature and date lines, and the staff attorney suggested that it also be added to the end of line 14a. He said that many pro se debtors to whom line 14a applies fail to see the instruction under the signature and date and, as a result, unnecessarily spend time and effort completing Official Form 122A-2 (Chapter 7 Means Test Calculation).

The Advisory Committee agreed that the form should be amended as suggested. The current form was revised as part of the Forms Modernization Project in 2015. One of the main purposes of the project was to make the forms easier to understand, including by pro se parties. Amending line 14a as suggested would make that instruction parallel to the instruction on line 14b. Line 14b says to fill out Form 122A-2 under the described circumstances. The form also includes

a similar statement after the signature and date. Likewise, the equivalent form for chapter 13—Official Form 122C-1 (Chapter 13 Statement of Your Current Monthly and Calculation of Commitment Period)—includes an instruction not to fill out Form 122C-2 both at line 17a and after the signature and date. Adding to line 14a the statement not to fill out and file Form 122A-2 would add clarity to the form.

Because of the technical nature of the proposed amendment, the Advisory Committee requests that it be approved without publication.

B. Items for Publication

The Advisory Committee recommends that the following rule amendments be published for public comment in August 2019. The rules in this group appear in Bankruptcy Appendix B.

Action Item 7. Rule 3007 (Objections to Claims). Rule 3007(a)(2)(A)(ii) requires service of an objection to a claim "on an insured depository institution[] in the manner provided by Rule 7004(h)." An issue has been raised by bankruptcy judges as to whether "insured depository institution" under Rule 7004(h) includes credit unions as well as banks, a question that the Advisory Committee previously decided in the negative, and whether the meaning of "insured depository institution" is the same under Rule 3007(a)(2)(A)(ii) as under Rule 7004(h)

Rule 7004 governs service of a summons and complaint in adversary proceedings, and Rule 9014(b) makes Rule 7004 applicable to service of a motion initiating a contested matter. Rule 7004(b) provides generally for service by first class mail, in addition to the methods of service specified by Civil Rule 4(e)-(j). Rule 7004(b), however, is made subject to an exception set out in subdivision (h). The latter provision states:

> (h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—
>
> > (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
> >
> > (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
> >
> > (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Rule 7004(h) was enacted by Congress as part of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106. Section 114 of that law declared that "Rule 7004 of the Federal Rules of Bankruptcy Procedure is amended" to add the text of new subdivision (h).

At the spring 2018 Advisory Committee meeting, the Committee concluded that Rule 7004(h) is not applicable to credit unions because, being insured by the National Credit Union Administration, credit unions do not fall within section 3 of the Federal Deposit Insurance Act.[1] The Committee also decided not to take further action on Suggestion 17-BK-E, which sought an expansion of Rule 7004(h) to include credit unions.

Because of the limited scope of Rule 7004(h), other rule provisions that require service in the manner provided "by Rule 7004" allow service by first class mail under Rule 7004(b) on credit unions. These rules include Rules 3012(b) (request for a determination of the amount of a secured claim in a chapter 12 or 13 plan), 4003(d) (avoidance of a lien on exempt property in a chapter 12 or 13 plan), 5009(d) (motion for an order declaring a lien satisfied and released), 9011(c)(1) (motion for sanctions), and 9014(b) (motion initiating a contested matter).

The 2017 amendments to Rule 3007 were intended to clarify that objections to claims are generally not required to be served in the manner provided by Rule 7004. Instead, those objections may be served on most claimants by mailing them to the person designated on the proof of claim. But that rule is subject to two exceptions. The one relevant here is set forth in subdivision (a)(2)(A)(ii). It provides that "insured depository institutions" must be served "in the manner provided by Rule 7004(h)." The Advisory Committee added that exception in an effort to comply with the legislative mandate in Rule 7004(h) that such institutions be served by certified mail in contested matters and adversary proceedings.[2]

The Advisory Committee now realizes that the promulgation of Rule 3007(a)(2)(A)(ii) failed to take account of the Bankruptcy Code definition of "insured depository institution."[3] The effect of that definition was not raised during the Advisory Committee's lengthy consideration of the Rule 3007 amendments. The Code definition, which includes credit unions in addition to banks insured by the FDIC, is made applicable to the Bankruptcy Rules by Rule 9001. However, the Committee concluded that the definition does not change the scope of Rule 7004(h), because in the latter provision Congress expressly included a specific and narrower definition of insured depository institution—one defined in section 3 of the Federal Deposit Insurance Act. That specific reference in Rule 7004(h) overrides the more general definition in § 101(35). *See* Radlax

[1] Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c)(2), provides, "The term 'insured depository institution' means any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter." The "Corporation" is the Federal Deposit Insurance Corporation. *Id.* at § 1811(a).

[2] The other exception, not relevant here, is for service on the United States or any of its officers or directors. They must be served according to Rule 7004(b)(4) or (5).

[3] Section 101(35) provides that the "term 'insured depository institution'—(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and (B) includes an insured credit union (except in the case of paragraphs (21B) and (33A) of this subsection)."

Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645 (2012) ("'[I]t is a commonplace of statutory construction that the specific governs the general.'").

The existence of a Code definition of insured depository institution does, however, affect the scope of Rule 3007(a)(2)(A)(ii). That provision does not say that service according to Rule 7004 is required; instead, it specifically requires service according to Rule 7004(h). And it applies to an "insured depository institution" without providing any special definition of that term. Accordingly, the § 101(35) definition applies, and credit unions are brought within the requirement that Rule 7004(h) service be made. That means that only under this one rule are credit unions required to receive service by certified mail.

At the spring meeting, the Advisory Committee considered whether Rule 3007(a)(2)(A)(ii) should be left as it is, thus requiring heightened service on credit unions in this one instance, or be revised so as to apply only to banks insured by the FDIC. The Committee voted unanimously to revise Rule 3007(a)(2)(A)(ii) to eliminate the inclusion of credit unions. The underlying intent of the Advisory Committee in proposing the amendments to Rule 3007 was to clarify that Rule 7004 service is generally not required for objections to claims. The exception in subdivision (a)(2)(A)(ii) was included based on the belief that it was required by the congressionally imposed requirement of Rule 7004(h); there was no intent, however, to expand the scope of that heightened service requirement. The Advisory Committee therefore requests that an amendment to Rule 3007(a)(2)(A)(ii) be published that limits its applicability to an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act.

Action Item 8. Rule 7007.1 (Corporate Ownership Statement). Continuing the advisory committees' efforts to conform the various disclosure-statement rules to the amendments made to FRAP 26.1, which are expected to go into effect in December, the Advisory Committee proposes for publication conforming amendments to Rule 7007.1. As is discussed under Action Item 3, the Standing Committee has published similar amendments to Rule 8012—the bankruptcy appellate disclosure-statement rule—and final approval of those amendments is being sought at this meeting. Rule 7007.1 requires corporate-ownership disclosure in the bankruptcy court and is proposed for amendment to parallel the relevant amendments to Civil Rule 7.1 that are being proposed. Like that rule, amended Rule 7007.1 would be made applicable to nongovernmental corporations seeking to intervene and would no longer require the submission of two copies of the statement.

Action Item 9. Rule 9036 (Notice and Service by Electronic Transmission). As we reported at the January Standing Committee meeting, the Advisory Committee has been considering possible rule and form amendments to increase the use of electronic notice and service in the bankruptcy courts. Part of the impetus for this project was a suggestion by the Committee on Court Administration and Case Management ("CACM") that Rule 9036 be amended to provide for mandatory electronic service on "high volume notice recipients," a category that would initially be composed of entities that each receive more than 100 court-generated paper notices from one or more courts in a calendar month. Judge Wm. Terrell Hodges, CACM chair, explained that the suggestion built upon a 2015 suggestion submitted by the Bankruptcy Judges Advisory Group, the Bankruptcy Clerks Advisory Group, and the Bankruptcy Noticing Working Group. The Advisory Committee had voted not to act on that suggestion for mandatory electronic service on high volume

notice recipients because it concluded that § 342(e) and (f) of the Bankruptcy Code allow a chapter 7 or 13 creditor to insist upon receipt of notices at a particular physical address. Judge Hodges explained that the current suggestion takes account of that concern by making the mandatory electronic noticing program "subject to the right to file a notice of address pursuant to § 342(e) or (f) of the Code." CACM strongly urged the adoption of the high-volume-notice-recipient program in order to achieve judicial savings of $3 million or more a year.

Members of a subcommittee worked with a member of the Bankruptcy Noticing Working Group, AO staff, and the chair of the CACM subcommittee that developed the suggestion in drafting the proposed amendments to Rule 9036. Those discussions were helpful in clarifying current noticing practices and understanding how those practices would be affected by proposed suggestions for expanding electronic noticing. Based on those discussions, the amendments to Rule 9036 were drafted to address electronic noticing and service by courts separately from noticing and service by parties. Doing so takes into account that courts have access to addresses registered with the Bankruptcy Noticing Center ("BNC"), while parties do not. The subcommittee also concluded that CACM's proposed draft of amendments regarding the high-volume-notice-recipient program contained more detail than is needed in a procedural rule. Instead, the subcommittee proposed rule amendments that leave details about the operation of the program up to the AO and the BNC. As drafted, Rule 9036 would just recognize the existence of such a program and provide for service and noticing on its participants.

The Standing Committee in August 2017 published for public comment proposed amendments to Rule 2002(g) (Addressing Notices) that allowed notices to be sent to email addresses designated on filed proofs of claims and proofs of interest. Also published was a proposed amendment to Official Form 410 (Proof of Claim) that added a check box for opting into email service and noticing. It instructed the creditor to check the box "if you would like to receive all notices and papers by email rather than regular mail." Based on its careful consideration of the comments and the logistics of implementing the proposed email opt-in procedure, the Advisory Committee decided to hold the amendments to Rule 2002(g) and Official Form 410 in abeyance.

At the spring meeting this year, the Advisory Committee discussed and approved the proposed amendments to Rule 9036 for publication. If the proposed amendments are published this summer, the amended rule would be on track to take effect on December 1, 2021. That is a date by which implementation of an opt-in system for electronic service and noticing—at an email address indicated on a proof of claim—also ought to be feasible. The amendments to Rule 2002(g)(1) and Official Form 410 that were published in 2017 could take effect then. They do not require further publication, although they may require some minor revisions in response to the earlier comments that were submitted.

III. Information Items

Information Item 1. Bankruptcy Rules Restyling. Restyling the bankruptcy rules is a large project, which will take a number of years to complete. The three style consultants began working on Parts I and II of the rules. They provided an initial draft of Part I to the reporters in mid-May, and the reporters have given the consultants comments on that draft. When the consultants respond to those comments and produce another draft, the Restyling Subcommittee

will consider it. The consultants will also be producing an initial draft of Part II soon, which will be handled in the same way. The current schedule contemplates that the first group of rules will be ready for publication in August 2020.

Meanwhile the Bankruptcy Rules Committee has been soliciting advice on best practices for restyling from the Civil Rules Committee, and it commissioned a report from Abigail Willie, a Supreme Court Fellow, on issues that restyling might present.

Because many Article III judges and others do not understand bankruptcy practice and language, Judge Marcia Krieger, chair of the Restyling Subcommittee, has developed a video program to help provide non-experts a primer on bankruptcy law. This will be shared with the Standing Committee and the style consultants.

Information Item 2. Director's Form 1340 (Application for Unpaid Funds). The Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee") submitted a suggestion, 19-BK-B, that the Advisory Committee adopt a Director's Form containing a standard application for withdrawal of unclaimed funds, together with instructions and a proposed order either granting or denying the application. The proposed form was developed by an Unclaimed Funds Task Force established by the Bankruptcy Committee, comprising district and bankruptcy judges, clerks of court, and liaisons from the Bankruptcy Administrators program and the Executive Office for U.S. Trustees.

The Guide to Judiciary Policy, Vol. 13, Ch. 10, provides guidance to the courts on the appropriate documentation required to support a request for withdrawal of unclaimed funds. Although courts comply with the requirements of the Guide, each district tends to adopt its own form and instructions for such withdrawals. The lack of uniformity between districts increases costs, and creates a disincentive to creditors who operate in multiple jurisdictions to seeking withdrawal of unclaimed funds.

The Advisory Committee concluded that standard documentation would be appropriate and asked the AO to post a new Director's Form 1340 for the application for the payment of unclaimed funds, with the instructions and forms of orders.

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APPENDIX A

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

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

* * * * *

(f) OTHER NOTICES. Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of:

* * * * *

(7) entry of an order confirming a chapter 9, 11, ~~or~~12, or 13 plan;

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

* * * * *

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. ~~In a chapter 7 case, after 90 days following the first date set for the meeting of creditors under § 341 of the Code,~~

(1) *Voluntary Case.* In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, after 70 days following the order for relief under that chapter or the date of the order converting the case to chapter 12 or chapter 13, the court may direct that all notices required by subdivision (a) of this rule be mailed only to:

- the debtor,
- the trustee,
- all indenture trustees,
- creditors that hold claims for which proofs of claim have been filed, and
- creditors, if any, that are still permitted to file

claims because an extension was granted under Rule 3002(c)(1) or (c)(2).

(2) *Involuntary Case.* In an involuntary chapter 7 case, after 90 days following the order for relief under that chapter, the court may direct that all notices required by subdivision (a) of this rule be mailed only to:

- the debtor,
- the trustee,
- all indenture trustees,
- creditors that hold claims for which proofs of claim have been filed, and
- creditors, if any, that are still permitted to file claims ~~by reason of~~because an extension was granted ~~pursuant to~~under Rule 3002(c)(1) or (c)(2).

(3) *Insufficient Assets.* In a case where notice of

insufficient assets to pay a dividend has been given to creditors ~~pursuant to~~under subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims ~~pursuant to~~under Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

* * * * *

(k) NOTICES TO UNITED STATES TRUSTEES. Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (a)(9), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and notice of hearings on all applications for

compensation or reimbursement of expenses.

* * * * *

Committee Note

Subdivision (f) is amended to add cases under chapter 13 of the Bankruptcy Code to paragraph (7).

Subdivision (h) is amended to add cases under chapters 12 and 13 of the Bankruptcy Code and to conform the time periods in the subdivision to the respective deadlines for filing proofs of claim under Rule 3002(c).

Subdivision (k) is amended to add a reference to subdivision (a)(9) of this rule. This change corresponds to the relocation of the deadline for objecting to confirmation of a chapter 13 plan from subdivision (b) to subdivision (a)(9). The rule thereby continues to require transmittal of notice of that deadline to the United States trustee.

Changes Made After Publication and Comment

- No changes were made.

Summary of Public Comment

Ryan Johnson (Clerk, Bankr. N.D.W. Va.) (BK-2018-0002-0004) – Generally supports amendment to Rule 2002(h). It makes sound business sense and will reduce administrative costs. In a Chapter 13 case, however, the

clerk's noticing responsibilities under Fed. R. Bankr. P. 2002(a) and proposed Fed. R. Bankr. P. 2002(h) should extend beyond the 70-day proof of claim deadline as stated in Fed. R. Bankr. P. 3002(c). The applicable deadline should include the additional 30 days afforded to a debtor or trustee to file a claim on behalf of a creditor under Fed. R. Bankr. P. 3004. With regard to Rule 2002(a)(2), the proposed use, sale, or lease of property other than in the ordinary course of business, and Rule 2002(a)(3), the hearing on the approval of a compromise or settlement of a controversy, the list of entities in proposed Rule 2002(h) should include creditors that were entitled to service of the noticed motion even if those entitled to service did not file a proof of claim.

Danielle Young (BK-2018-0002-0005) – Proposed amendment to Rule 2002(f) is a great idea. Adding a Chapter 13 order would allow a more streamlined process for not only creditors but also for the courts. Also supports amendment to Rule 2002(h) and doesn't oppose the amendment to Rule 2002 (k).

Nancy Whaley (BK-2018-0002-0007) – Supports amendments to Rule 2002. Serving documents on non-participating parties serves no purpose and is extremely costly to all parties, especially the debtor. Strongly urges the passing of this amendment.

Ellie Bertwell, Aderant CompuLaw (BK-2018-0002-0009) – Supports the amendment to Rule 2002(k).

National Association of Bankruptcy Trustees (BK-2018-0002-0010) – Supports the amendment to Rule 2002(h) for the sake of economy and efficiency.

Federal Bar Association's Bankruptcy Section (BK-2018-0002-0011) –Questions whether there is a need to

include chapter 13 plans in Rule 2002(f)(7). In W.D. Tex. the clerk already is responsible for "publishing the order confirming the plan through its Bankruptcy Noticing Center ("BNC"). Service is accomplished by first class mail and, where applicable, electronic mail. As such, there appears to be little benefit requiring a notice of an order confirming plan that has already been served on parties in interest." Section supports the amendment to Rule 2002(h) as a cost-saving matter.

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Rule 2004. Examination

* * * * *

(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS OR ELECTRONICALLY STORED INFORMATION. The attendance of an entity for examination and for the production of documents or electronically stored information, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court ~~for the district in which the examination is to be held~~where the case is pending if the attorney is admitted to practice in that court ~~or in the court in which the case is pending~~.

* * * * *

Committee Note

Subdivision (c) is amended in two respects. First, the provision now refers expressly to the production of electronically stored information, in addition to the production of documents. This change is an acknowledgment of the form in which information now commonly exists and the type of production that is frequently sought in connection with an examination under Rule 2004.

Second, subdivision (c) is amended to bring its subpoena provision into conformity with the current version of F.R. Civ. P. 45, which Rule 9016 makes applicable in bankruptcy cases. Under Rule 45, a subpoena always issues from the court where the action is pending, even for a deposition in another district, and an attorney admitted to practice in the issuing court may issue and sign it. In light of this procedure, a subpoena for a Rule 2004 examination is now properly issued from the court where the bankruptcy case is pending and by an attorney authorized to practice in that court, even if the examination is to occur in another district.

Changes Made After Publication and Comment

- No changes were made.

Summary of Public Comment

The Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan (BK-2018-0002-0008) – Proportionality should be a factor that a

bankruptcy judge has the discretion to consider in ruling on a request for production of documents and ESI in connection with a Bankruptcy Rule 2004 examination. In the bankruptcy context, where resources are already limited in many cases, the impact of having to produce all ESI, without consideration of proportionality, could significantly impact the likely success of a case. If proportionality is not added as a delineated and specific discretionary consideration to be utilized by the courts in evaluating a request for an examination under Bankruptcy Rule 2004, a court may mistakenly believe that it does not have the authority or the right to consider proportionality as part of addressing a request for examination under Bankruptcy Rule 2004.

The National Association of Bankruptcy Trustees (BK-2018-0002-0010) – The NABT supports the amendment for the sake of clarity of scope to include electronic records and uniformity with Rule 45.

Federal Bar Association's Bankruptcy Section (BK-2018-0002-0011) – Supports the published changes to Rule 2004(c). It urges caution before imposing a proportionality requirement; doing so would likely increase litigation. The parties can adopt an ESI protocol without having the rule impose a proportionality standard.

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Rule 8012. ~~Corporate~~ Disclosure Statement

(a) ~~WHO MUST FILE~~ NONGOVERNMENTAL CORPORATIONS. Any nongovernmental ~~corporate party~~corporation that is a party to a proceeding ~~appearing~~ in the district court or BAP must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.

(b) DISCLOSURE ABOUT THE DEBTOR. The debtor, the trustee, or, if neither is a party, the appellant must file a statement that:

(1) identifies each debtor not named in the caption; and

(2) for each debtor that is a corporation, discloses

the information required by Rule 8012(a).

~~(b)~~(c) TIME TO FILE; SUPPLEMENTAL FILING. ~~A party must file the~~A Rule 8012 statement must:

(1) be filed with ~~its~~the principal brief or upon filing a motion, response, petition, or answer in the district court or BAP, whichever occurs first, unless a local rule requires earlier filing~~.~~;

(2) ~~Even if the statement has already been filed, the party's principal brief must~~be included ~~include a statement~~before the table of contents in the principal brief~~.~~; and

(3) ~~A party must supplement its statement~~be supplemented whenever the ~~required~~information required by Rule 8012 changes.

Committee Note

The rule is amended to conform to recent amendments to Fed. R. App. P. 26.1. Subdivision (a) is amended to encompass nongovernmental corporations that seek to intervene on appeal.

New subdivision (b) requires disclosure of the name of all of the debtors in the bankruptcy case. The names of the debtors are not always included in the caption of appeals. It also requires, for corporate debtors, disclosure of the same information required to be disclosed under subdivision (a).

Subdivision (c), previously subdivision (b), now applies to all the disclosure requirements in Rule 8012.

Changes Made After Publication and Comment

- No changes were made.

Summary of Public Comment

Ellie Bertwell, Aderant CompuLaw (BK-2018-0002-0009). Agrees that provisions of the Bankruptcy Rules generally should be consistent with the other Federal Rules. The revisions to Bankruptcy Rule 8012 would make this rule consistent with the pending amendment of Appellate Rule 26.1.

The National Association of Bankruptcy Trustees (BK-2018-0002-0010). Supports the amendment for the sake of uniformity with FRAP 26.1.

Bankruptcy Section of the Federal Bar Association (BK-2018-0002-0011). Supports the proposed amendment to Rule 8012 to conform it to FRAP 26.1.

Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination.

* * * * *

(c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18~~,~~ U.S.C.~~,~~ § ~~3146(a) and (b)~~ 3142.

Committee Note

The rule is amended to replace the reference to 18 U.S.C. § 3146(a) and (b) with a reference to 18 U.S.C. § 3142. Sections 3141 through 3151 of Title 18 were repealed by the Bail Reform Act of 1984, Pub. L. No. 98-473, Title II, § 203(a), 98 Stat. 1979 (1984), and replaced by new provisions dealing with bail. The current version of 18 U.S.C. § 3146 deals not with conditions to assure attendance or appearance, but with penalties for failure to appear. The topic of conditions is in 18 U.S.C. § 3142.

Because this amendment is made merely to conform to a change in the citation of the statute referred to, final approval is sought without publication.

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Rule 8013. Motions; Intervention

(a) CONTENTS OF A MOTION; RESPONSE; REPLY.

(1) *Request for Relief.* A request for an order or other relief is made by filing a motion with the district or BAP clerk~~, with proof of service on the other parties to the appeal~~.

* * * * *

Committee Note

Subdivision (a)(1) is amended to delete the reference to proof of service. This change reflects the recent amendment to Rule 8011(d) that eliminated the requirement of proof of service when filing and service are completed using a court's electronic-filing system.

Because this amendment is made merely to conform to a change in the requirement for proof of service, final approval is sought without publication.

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

* * * * *

(g) ITEMS EXCLUDED FROM LENGTH. In computing any length limit, headings, footnotes, and quotations count toward the limit, but the following items do not:

- ~~the~~ cover page;
- ~~a corporate~~ disclosure statement under Rule 8012;
- ~~a~~ table of contents;
- ~~a~~ table of citations;
- ~~a~~ statement regarding oral argument;
- ~~an~~ addendum containing statutes, rules, or regulations;
- certificates of counsel;
- ~~the~~ signature block;
- ~~the~~ proof of service; and

• any item specifically excluded by these rules or by local rule.

* * * * *

Committee Note

The amendment to subdivision (g) is made to reflect recent amendments to Rule 8011(d) that eliminated the requirement of proof of service when filing and service are completed using a court's electronic-filing system. Because each item listed in Rule 8015(g) will not always be required, the initial article is deleted. The word "corporate" is deleted before "disclosure statement" to reflect a concurrent change in the title of Rule 8012.

Because this amendment is made merely to conform to a change in the requirement for proof of service and the title of another rule, final approval is sought without publication.

Rule 8021. Costs

* * * * *

(d) BILL OF COSTS; OBJECTIONS. A party who wants costs taxed must, within 14 days after entry of judgment on appeal, file with the bankruptcy clerk~~, with proof of service,~~ and serve an itemized and verified bill of costs, unless the bankruptcy court extends the time.

Committee Note

Subdivision (d) is amended to delete the reference to proof of service. This change reflects the recent amendment to Rule 8011(d) that eliminated the requirement of proof of service when filing and service are completed using a court's electronic-filing system.

Because this amendment is made merely to conform to a change in the requirement for proof of service, final approval is sought without publication.

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Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number (If known) _____

Check one box only as directed in this form and in Form 122A-1Supp:

- ❑ 1. There is no presumption of abuse.
- ❑ 2. The calculation to determine if a presumption of abuse applies will be made under *Chapter 7 Means Test Calculation* (Official Form 122A–2).
- ❑ 3. The Means Test does not apply now because of qualified military service but it could apply later.

❑ Check if this is an amended filing

Official Form 122A–1

Chapter 7 Statement of Your Current Monthly Income

12/19

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known). If you believe that you are exempted from a presumption of abuse because you do not have primarily consumer debts or because of qualifying military service, complete and file *Statement of Exemption from Presumption of Abuse Under § 707(b)(2)* (Official Form 122A-1Supp) with this form.

Part 1: Calculate Your Current Monthly Income

1. **What is your marital and filing status?** Check one only.
   - ❑ **Not married.** Fill out Column A, lines 2-11.
   - ❑ **Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.
   - ❑ **Married and your spouse is NOT filing with you. You and your spouse are:**
     - ❑ **Living in the same household and are not legally separated.** Fill out both Columns A and B, lines 2-11.
     - ❑ **Living separately or are legally separated**. Fill out Column A, lines 2-11; do not fill out Column B. By checking this box, you declare under penalty of perjury that you and your spouse are legally separated under nonbankruptcy law that applies or that you and your spouse are living apart for reasons that do not include evading the Means Test requirements. 11 U.S.C. § 707(b)(7)(B).

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write $0 in the space.

				Column A **Debtor 1**	*Column B* **Debtor 2 or non-filing spouse**
2.	**Your gross wages, salary, tips, bonuses, overtime, and commissions** (before all payroll deductions).			$_____	$_____
3.	**Alimony and maintenance payments.** Do not include payments from a spouse if Column B is filled in.			$_____	$_____
4.	**All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Include regular contributions from a spouse only if Column B is not filled in. Do not include payments you listed on line 3.			$_____	$_____
5.	**Net income from operating a business, profession, or farm**	**Debtor 1**	**Debtor 2**		
	Gross receipts (before all deductions)	$_____	$_____		
	Ordinary and necessary operating expenses	– $_____	– $_____		
	Net monthly income from a business, profession, or farm	$_____	$_____	**Copy here** ➔ $_____	$_____
6.	**Net income from rental and other real property**	**Debtor 1**	**Debtor 2**		
	Gross receipts (before all deductions)	$_____	$_____		
	Ordinary and necessary operating expenses	– $_____	– $_____		
	Net monthly income from rental or other real property	$_____	$_____	**Copy here** ➔ $_____	$_____
7.	**Interest, dividends, and royalties**			$_____	$_____

	Column A **Debtor 1**	*Column B* **Debtor 2 or non-filing spouse**
8. **Unemployment compensation** Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ➔	$_____	$_____
For you	$_____	
For your spouse	$_____	
9. **Pension or retirement income.** Do not include any amount received that was a benefit under the Social Security Act.	$_____	$_____
10. **Income from all other sources not listed above.** Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism. If necessary, list other sources on a separate page and put the total below.		
_____	$_____	$_____
_____	$_____	$_____
Total amounts from separate pages, if any.	+ $_____	+ $_____
11. **Calculate your total current monthly income.** Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	$_____ +	$_____ = $_____ **Total current monthly income**

Part 2: Determine Whether the Means Test Applies to You

12. **Calculate your current monthly income for the year.** Follow these steps:

12a. Copy your total current monthly income from line 11. **Copy line 11 here** ➔ $_____

Multiply by 12 (the number of months in a year). **x** 12

12b. The result is your annual income for this part of the form. 12b. $_____

13. **Calculate the median family income that applies to you.** Follow these steps:

Fill in the state in which you live. _____

Fill in the number of people in your household. _____

Fill in the median family income for your state and size of household. 13. $_____

To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

14. **How do the lines compare?**

14a. ❑ Line 12b is less than or equal to line 13. On the top of page 1, check box 1, *There is no presumption of abuse.* Go to Part 3. Do NOT fill out or file Official Form 122A-2.

14b. ❑ Line 12b is more than line 13. On the top of page 1, check box 2, *The presumption of abuse is determined by Form 122A-2*. Go to Part 3 and fill out Form 122A–*2*.

Part 3: Sign Below

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

✘ _____
Signature of Debtor 1

Date _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

If you checked line 14a, do NOT fill out or file Form 122A–2.

If you checked line 14b, fill out Form 122A–2 and file it with this form.

Committee Note

The instruction on line 14a is amended to remind a debtor for whom there is no presumption of abuse that Official Form 122A-2 (*Chapter 7 Means Test Calculation*) should not be filled out or filed.

Because this amendment is made merely to repeat an existing instruction, final approval is sought without publication.

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APPENDIX B

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

For Publication for Public Comment

Rule 3007. Objections to Claims

(a) TIME AND MANNER OF SERVICE

* * * * *

(2) *Manner of Service.*

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

* * * * *

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

(ii) if the objection is to a claim of an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, in the manner provided in Rule 7004(h).

* * * * *

Committee Note

Subdivision (a)(2)(A)(ii) is amended to clarify that the special service method required by Rule 7004(h) must be used for service of objections to claims only on insured depository institutions as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813. Rule 7004(h) was enacted by Congress as part of the Bankruptcy Reform Act of 1994. It applies only to insured depository institutions that are insured by the Federal Deposit Insurance Corporation and does not include credit unions, which are instead insured by the National Credit Union Administration. A credit union, therefore, may be served with an objection to a claim according to Rule 3007(a)(2)(A)—by first-class mail sent to the person designated for receipt of notice on the credit union's proof of claim.

Rule 7007.1. ~~Corporate Ownership~~ Disclosure Statement

(a) REQUIRED DISCLOSURE. Any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, ~~or a governmental unit,~~ shall file ~~two copies of~~ a statement that identifies any parent corporation and any publicly held corporation~~, other than a governmental unit, that directly or indirectly~~ that owns 10% or more of ~~any class of the corporation's equity interests,~~ its stock or states that there ~~are no entities to report under this subdivision~~ is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.

(b) TIME FOR FILING; SUPPLEMENTAL FILING. ~~A party shall file the~~ The disclosure statement shall: ~~required under Rule 7007.1(a)~~

(1) be filed with ~~its~~ the corporation's first appearance, pleading, motion, response, or other request addressed to the court~~.~~; and

(2) be supplemented whenever the information required by this rule changes ~~A party shall file a supplemental statement promptly upon any change in circumstances that this rule requires the party to identify or disclose~~.

Committee Note

The rule is amended to conform to recent amendments to Fed. R. Bankr. P. 8012, Fed. R. App. P. 26.1., and Fed. R. Civ. P. 7.1. Subdivision (a) is amended to encompass nongovernmental corporations that seek to intervene. Stylistic changes are made to subdivision (b) to reflect that some statements will be filed by nonparties seeking to intervene.

Rule 9036. Notice and Service ~~Generally~~ by Electronic Transmission[2]

(a) IN GENERAL. This rule applies ~~W~~whenever these rules require or permit sending a notice or serving a paper by mail or other means.~~, the clerk, or some other person as the court or these rules may direct, may send the notice to or serve the paper on~~

(b) NOTICES FROM AND SERVICE BY THE COURT.

(1) *Registered Users.* The clerk may send notice to or serve a registered user by filing the notice or paper ~~it~~ with the court's electronic-filing system.

(2) *All Recipients.* For any recipient, the clerk may send notice or serve a paper ~~Or it may be sent to any person~~ by ~~other~~ electronic means that the ~~person~~ recipient consented to in writing, including by

[2] The changes indicated are to the version of Rule 9036 that will take effect on December 1, 2019, assuming that Congress takes no action to the contrary.

designating an electronic address for receipt of notices under Rule 2002(g)(1). But these exceptions apply:

(A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk shall send the notice to or serve the paper at that address; and

(B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume-paper-notice recipient, the clerk may send the notice to or serve the paper electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f) of the Code.

(c) NOTICES FROM AND SERVICE BY AN ENTITY. An entity may send notice or serve a paper in the

same manner that the clerk does under (b), excluding (b)(2)(A) and (B).

(d) COMPLETING NOTICE OR SERVICE. ~~In either of these events,~~ Electronic ~~service or~~ notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served.

(e) INAPPLICABILITY. This rule does not apply to any ~~pleading or other~~ paper required to be served in accordance with Rule 7004.

Committee Note

The rule is amended to take account of the Administrative Office of the United States Courts' program for providing notice to high-volume-paper-notice recipients. Under this program, when the Bankruptcy Noticing Center ("BNC") has sent by mail more than a designated number of notices in a calendar month (initially set at 100) from bankruptcy courts to an entity, the Director of the Administrative Office will notify the entity that it is a high-volume-paper-notice recipient. As such, this "threshold notice" will inform the entity that it must register an electronic address with the BNC. If, within a time specified in the threshold notice, a notified entity enrolls in Electronic Bankruptcy Noticing with the BNC, it will be sent notices electronically at the address maintained by the BNC upon a

start date determined by the Director. If a notified entity does not timely enroll in Electronic Bankruptcy Noticing, it will be informed that court-generated notices will be sent to an electronic address designated by the Director. Any designation by the Director, however, is subject to the entity's right under § 342(e) and (f) of the Code to designate an address at which it wishes to receive notices in chapter 7 and chapter 13 cases, including at its own electronic address that it registers with the BNC.

The rule is also reorganized to separate methods of electronic noticing and service available to courts from those available to parties. Both courts and parties may serve or provide notice to registered users of the court's electronic-filing system by filing documents with that system. Both courts and parties also may serve and provide notice to any entity by electronic means consented to in writing by the recipient. As a result of a contemporaneous amendment to Rule 2002(g)(1) and Official Form 410, this consent may be indicated by providing an electronic address for the receipt of notices on a proof of claim. Only courts may serve or give notice to an entity at an electronic address registered with the BNC as part of the Electronic Bankruptcy Noticing program, and any such address will supersede for court-generated notices an electronic address specified on a proof of claim.

The title of the rule is revised to more accurately reflect the rule's applicability to methods of electronic noticing and service. Rule 9036 does not preclude noticing and service by physical means otherwise authorized by the court or these rules.