

**ADVISORY COMMITTEE
ON
BANKRUPTCY RULES**

**Washington, DC
September 26, 2019**

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

September 26, 2019

Washington, DC

Discussion Agenda

1. Greetings and introductions (Judge Dow).
 - Tab 1** Committee Roster
Subcommittee Liaisons
Chart Tracking Proposed Rules Amendments
Pending Legislation Chart
2. Approval of minutes of the April 4, 2019 meeting in San Antonio, TX (Judge Dow).
 - Tab 2** Draft minutes
3. Oral reports on meeting of other committees:
 - A. Standing Committee – June 25, 2019 (Judge Dow, Professors Gibson and Bartell).
 - Tab 3A1** Draft minutes of the Standing Committee meeting
 - Tab 3A2** September 2019 Report of the Standing Committee to the Judicial Conference
 - B. Advisory Committee on Appellate Rules – April 5, 2019 (Judge Pepper).
 - C. Advisory Committee on Civil Rules – April 3, 2019 (Judge Goldgar).
 - D. Bankruptcy Committee – June 13-14, 2019 (Judge Bernstein, Judge Gorman).
4. Report of the Privacy, Public Access and Appeals Subcommittee (Judge Ambro).
 - A. Recommendation to conform Bankruptcy Rule 8023 to proposed changes to Federal Rules of Appellate Procedure 42(b) (Professor Bartell).
 - Tab 4A** August 24, 2019 memo by Professor Bartell
 - B. Consider Suggestion 19-BK-G from Sai to amend Rule 9006 with a new subsection (h) requiring court calculation and notice of deadlines (Professor Gibson).
 - Tab 4B** August 29, 2019 memo, by Professor Gibson

5. Report of the Business Subcommittee (Judge Bernstein).
 - A. Recommended amendments to Rule 5005 concerning notices sent to the United States trustee (Professor Bartell).

Tab 5A August 24, 2019 memo by Professor Bartell
 - B. Recommended Rule and Form amendments needed to implement the Small Business Reorganization Act of 2019 (Professor Gibson).

Tab 5B August 30, 2019 memo by Professor Gibson
September 2, 2019 supplemental memo by Professor Gibson
Draft Forms
6. Report of the Consumer Subcommittee (Judge Goldgar).
 - A. Consideration of suggestions 18-BK-G and 18-BK-H for amendments to Rule 3002.1 (Professor Gibson).

Tab 6A August 28, 2019 memo by Professor Gibson
 - B. Consideration of suggestion 19-BK-F to amend Rule 3002(c)(6)(A) to expand the situations in which a creditor who doesn't get actual or constructive notice in reasonable time to file a proof of claim can seek an extension of the time to file.

Tab 6B August 24, 2019 memo by Professor Bartell
7. Report of the Forms Subcommittee (Judge Hoffman).
 - A. Recommend amendments to Official Forms 122A-1, 122B, and 122C-1 lines 9 & 10 to implement the recently enacted Haven Act of 2019. (Professor Bartell).

Tab 7A August 25, 2019 memo by Professor Bartell
JCUS Report, March 2016, excerpt
Official Forms 122A-1, 122B, and 122C-1 and Committee Note.
8. Report of the Restyling Subcommittee (Judge Krieger; Professor Bartell).

Tab 8A August 25, 2019 memo by Professor Bartell

Information Items

9. Consideration of conforming amendments to Rule 8003 and Official Form 417A.

Tab 9A August 28, 2019 memo from the Forms and the Privacy, Public Access and Appeals Subcommittees (Professor Gibson)

10. Extension of the National Guard and Reservists Act of 2008.

Tab 10A August 28, 2019 memo from the Consumer and Forms
Subcommittees by Professor Gibson

11. Future meetings:

The spring 2020 meeting will be in West Palm Beach, Florida on April 2, 2020.

The fall 2020 meeting will be held in Washington, D.C.

12. New Business.

13. Adjourn.

Proposed Consent Agenda

The Chair and Reporters have proposed the following items for study and consideration prior to the Advisory Committee's meeting. **Absent any objection, all recommendations will be approved by acclamation at the meeting.** Any of these matters may be moved to the Discussion Agenda if a member or liaison feels that discussion or debate is required prior to Committee action. Requests to move an item to the Discussion Agenda must be brought to attention of the Chair by noon, Eastern Time, on **Thursday, September 19, 2019.**

1. Recommendation of no action regarding suggestion 19-BK-D to amend Rule 7004(h).

Consent Tab 1 June 13, 2019 memo by Professor Bartell

2. Forms Subcommittee.

- A. Recommendation of no action regarding suggestion 19-BK-C to amend Official Form 309 to list addresses for the debtor for the prior three years.

Consent Tab 2A August 25, 2019 memo by Professor Bartell

TAB 1

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair, Advisory Committee on Bankruptcy Rules	Honorable Dennis Dow United States Bankruptcy Court Charles Evans Whittaker United States Courthouse 400 East Ninth Street, Room 6562 Kansas City, MO 64106
Reporter, Advisory Committee on Bankruptcy Rules	Professor S. Elizabeth Gibson Burton Craige Professor of Law 5073 Van Hecke-Wettach Hall University of North Carolina at Chapel Hill C.B. #3380 Chapel Hill, NC 27599-3380
Associate Reporter, Advisory Committee on Bankruptcy Rules	Professor Laura Bartell Wayne State University Law School 471 W. Palmer Detroit, MI 48202
Members, Advisory Committee on Bankruptcy Rules	Honorable Thomas L. Ambro United States Court of Appeals J. Caleb Boggs Federal Building 844 North King Street, Unit 32 Wilmington, DE 19801-3519 Honorable Stuart M. Bernstein United States Bankruptcy Court Alexander Hamilton Custom House One Bowling Green, Room 729 New York, NY 10004-1408 Honorable A. Benjamin Goldgar United States Bankruptcy Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street, Room 638 Chicago, IL 60604 Jeffery J. Hartley, Esq. Helmsing Leach Post Office Box 2767 Mobile, AL 36652

<p>Members, Advisory Committee on Bankruptcy Rules (cont'd)</p>	<p>Honorable Melvin S. Hoffman United States Bankruptcy Court John W. McCormack Post Office and Court House 5 Post Office Square, Room 1150 Boston, MA 02109-3945</p> <p>Honorable David A. Hubbert Acting Assistant Attorney General, Tax Division (ex officio) United States Department of Justice 950 Pennsylvania Avenue N.W., Room 4141 Washington, DC 20530</p> <p>Honorable Marcia S. Krieger Chief Judge United States District Court Alfred A. Arraj United States Courthouse 901 19th Street, Room A941 Denver, CO 80294</p> <p>Thomas M. Mayer, Esq. Kramer Levin Naftalis & Frankel LLP 1177 Avenue of the Americas New York, NY 10036</p> <p>Debra L. Miller, Esq. Chapter 13 Bankruptcy Trustee P. O. Box 11550 South Bend, IN 46634</p> <p>Honorable Pamela Pepper United States District Court United States Courthouse and Federal Building 517 East Wisconsin Avenue, Room 271 Milwaukee, WI 53202</p> <p>Jeremy L. Retherford, Esq. Balch & Bingham LLP 1901 Sixth Avenue North, Suite 1500 Birmingham, AL 35203-4642</p> <p>Professor David A. Skeel University of Pennsylvania Law School 3501 Sansom Street Philadelphia, PA 19104</p>
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<p>Members, Advisory Committee on Bankruptcy Rules (cont'd)</p>	<p>Honorable Amul R. Thapar United States Court of Appeals United States Courthouse 35 West Fifth Street, Room 473 Covington, KY 41011</p> <p>Honorable George H. Wu United States District Court U.S. Courthouse 350 West 1st Street STE 4311, Room 9151 Los Angeles, CA 90012-4565</p>
<p>Clerk of Court Representative, Advisory Committee on Bankruptcy Rules</p>	<p>Kenneth S. Gardner Clerk, United States Bankruptcy Court United States Custom House 721 19th Street, Room 116 Denver, CO 80202-2508</p>
<p>Consultants, Advisory Committee on Bankruptcy Rules</p>	<p>Patricia S. Ketchum, Esq. 113 Richdale Avenue #35 Cambridge, MA 02140</p> <p>James H. Wannamaker, Esq. 780 Samantha Drive Palm Harbor, FL 34683</p>
<p>Liaison Member, Advisory Committee on Bankruptcy Rules</p>	<p>Honorable William J. Kayatta, Jr. (Standing) United States Court of Appeals Edward T. Gignoux Federal Courthouse 156 Federal Street, Suite 6740 Portland, ME 04101-4152</p>
<p>Liaison Member, U. S. Department of Justice, Executive Office for U. S. Trustees</p>	<p>Ramona D. Elliott, Esq. Deputy Director/General Counsel Executive Office for U.S. Trustees 20 Massachusetts Avenue, N.W., Suite 8100 Washington, DC 20530</p>
<p>Liaison Member, Committee on the Administration of the Bankruptcy System</p>	<p>Honorable Mary P. Gorman Chief Judge United States Bankruptcy Court Paul Findley Federal Building and United States Courthouse 600 East Monroe Street, Room 235 Springfield, IL 62701</p>

Secretary, Standing Committee and Rules Committee Chief Counsel	Rebecca A. Womeldorf Secretary, Committee on Rules of Practice & Procedure and Rules Committee Chief Counsel Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E., Room 7-240 Washington, DC 20544
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RULES COMMITTEE LIAISON MEMBERS

Liaisons for the Advisory Committee on Appellate Rules	Judge Frank M. Hull <i>(Standing)</i>
	Judge Pamela Pepper <i>(Bankruptcy)</i>
Liaison for the Advisory Committee on Bankruptcy Rules	Judge William J. Kayatta, Jr. <i>(Standing)</i>
Liaisons for the Advisory Committee on Civil Rules	Peter D. Keisler, Esq. <i>(Standing)</i>
	Judge A. Benjamin Goldgar <i>(Bankruptcy)</i>
Liaison for the Advisory Committee on Criminal Rules	Judge Jesse M. Furman <i>(Standing)</i>
Liaisons for the Advisory Committee on Evidence Rules	Judge Carolyn B. Kuhl <i>(Standing)</i>
	Judge Sara Lioi <i>(Civil)</i>
	Judge James C. Dever III <i>(Criminal)</i>

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

<p>Rebecca A. Womeldorf Chief Counsel Rules Committee Staff – Office of General Counsel Administrative Office of the U.S. Courts Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E., Room 7-300 Washington, DC 20544 Phone: 202-502-1820 rebecca_womeldorf@ao.uscourts.gov</p>	
<p>Bridget M. Healy Counsel (<i>Appellate / Bankruptcy</i>)</p>	<p>Shelly L. Cox Administrative Analyst</p>
<p>S. Scott Myers Counsel (<i>Bankruptcy / Standing</i>)</p>	
<p>Julie M. Wilson Counsel (<i>Civil / Criminal / Standing</i>)</p>	

FEDERAL JUDICIAL CENTER LIAISONS

<p>Hon. John S. Cooke Director Federal Judicial Center Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E., Room 6-100 Washington, DC 20002 Phone: 202-502-4060 jcooke@fjc.gov</p>	
<p>Laural L. Hooper, Esq. <i>(Criminal Rules Committee)</i> Senior Research Associate</p>	<p>Marie Leary, Esq. <i>(Appellate Rules Committee)</i> Senior Research Associate</p>
<p>Molly T. Johnson, Esq. <i>(Bankruptcy Rules Committee)</i> Senior Research Associate</p>	<p>Dr. Emery G. Lee <i>(Civil Rules Committee)</i> Senior Research Associate</p>
<p>Timothy T. Lau, Esq. <i>(Evidence Rules Committee)</i> Research Associate</p>	<p>Tim Reagan, Esq. <i>(Rules of Practice & Procedure)</i> Senior Research Associate</p>

Advisory Committee on Bankruptcy Rules

Subcommittee/Liaison Assignments, Effective October 25, 2018

<p>Consumer Subcommittee Judge A. Benjamin Goldgar, Chair Judge Pamela Pepper Judge George H. Wu Jeff J. Hartley, Esq. Debra L. Miller, Esq. Jeremy L. Retherford, Esq. Ramona D. Elliott, Esq., <i>EOUST liaison</i> Kenneth S. Gardner, <i>ex officio</i></p>	<p>Business Subcommittee Judge Stuart M. Bernstein, Chair Judge Thomas Ambro Judge Amul R. Thapar Judge Marcia S. Krieger Judge Melvin Hoffman Jeff J. Hartley, Esq. Tom Mayer, Esq. Professor David Skeel Ramona D. Elliott, Esq., <i>EOUST liaison</i> Kenneth S. Gardner, <i>ex officio</i></p>
<p>Forms Subcommittee Judge Melvin Hoffman, Chair Judge George H. Wu Judge A. Benjamin Goldgar Debra L. Miller, Esq. Jeremy L. Retherford, Esq. Ramona D. Elliott, Esq., <i>EOUST liaison</i> David Hubbert, Esq., <i>ex officio</i> Kenneth S. Gardner, <i>ex officio</i></p>	<p>Privacy, Public Access, and Appeals Subcommittee Judge Thomas Ambro, Chair Judge Pamela Pepper Judge A. Benjamin Goldgar Tom Mayer, Esq. Ramona D. Elliott, Esq., <i>EOUST liaison</i> David Hubbert, Esq., <i>ex officio</i></p>
<p>Restyling Subcommittee Judge Marcia S. Krieger, Chair Judge Susan P. Graber, <i>Standing Committee Liaison</i> Judge A. Benjamin Goldgar Jeff J. Hartley, Esq. Debra L. Miller, Esq. Kenneth S. Gardner, <i>ex officio</i> John Rao, Esq. <i>consultant</i></p>	<p>Technology and Cross Border Insolvency Subcommittee Judge Amul R. Thapar, Chair Judge Melvin Hoffman Professor David Skeel Ramona D. Elliott, Esq., <i>EOUST liaison</i></p>
<p>Civil Rules Liaison: Judge Benjamin Goldgar</p>	<p>Appellate Rules Liaison: Judge Pamela Pepper</p>

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Effective December 1, 2018

REA History: no contrary action by Congress; adopted by Supreme Court and transmitted to Congress (Apr 2018); approved by Judicial Conference (Sept 2017) and transmitted to Supreme Court (Oct 2017)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 8, 11, 39	Conformed the Appellate Rules to an amendment to Civil Rule 62(b) that eliminated the term “supersedeas bond” and makes plain an appellant may provide either “a bond or other security.”	CV 62, 65.1
AP 25	Amendments made as part of the inter-advisory committee project to develop coordinated rules for electronic filing and service. [NOTE: in March 2018, the Standing Committee withdrew the proposed amendment to Appellate Rule 25(d)(1) that would eliminate the requirement of proof of service when a party files a paper using the court's electronic filing system.]	BK 5005, CV 5, CR 45, 49
AP 26	Technical, conforming changes.	AP 25
AP 28.1, 31	Amendments respond to the shortened time to file a reply brief effectuated by the elimination of the “three day rule.”	
AP 29	An exception added to Rule 29(a) providing “that a court of appeals may strike or prohibit the filing of an amicus brief that would result in a judge’s disqualification.”	
AP 41	"Mandate: Contents; Issuance and Effective Date; Stay"	
AP Form 4	Deleted the requirement in Question 12 for litigants to provide the last four digits of their social security numbers.	
AP Form 7	Technical, conforming change.	AP 25
BK 3002.1	Amendments (1) created flexibility regarding a notice of payment change for home equity lines of credit; (2) created a procedure for objecting to a notice of payment change; and (3) expanded the category of parties who can seek a determination of fees, expenses, and charges that are owed at the end of the case.	
BK 5005 and 8011	Amendments made as part of the inter-advisory committee project to develop coordinated rules for electronic filing and service.	AP 25, CV 5, CR 45, 49
BK 7004	Technical, conforming change to update cross-reference to Civil Rule 4.	CV 4
BK 7062, 8007, 8010, 8021, and 9025	Amendments to conform with amendments to Civil Rules 62 and 65.1, which lengthen the period of the automatic stay of a judgment and modernize the terminology “supersedeas bond” and “surety” by using “bond or other security.”	CV 62, 65.1
BK 8002(a)(5)	Adds a provision to Rule 8002(a) similar to one in FRAP 4(a)(7) defining entry of judgment.	FRAP 4
BK 8002(b)	Conforms Rule 8002(b) to a 2016 amendment to FRAP 4(a)(4) concerning the timeliness of tolling motions.	FRAP 4

Revised August 2019

Effective December 1, 2018

REA History: no contrary action by Congress; adopted by Supreme Court and transmitted to Congress (Apr 2018); approved by Judicial Conference (Sept 2017) and transmitted to Supreme Court (Oct 2017)

Rule	Summary of Proposal	Related or Coordinated Amendments
BK 8002 (c), 8011, Official Forms 417A and 417C, Director's Form 4170	Amendments to the inmate filing provisions of Rules 8002 and 8011 conform them to similar amendments made in 2016 to FRAP 4(c) and FRAP 25(a)(2)(C). Conforming changes made to Official Forms 417A and 417C, and creation of Director's Form 4170 (Declaration of Inmate Filing).	FRAP 4, 25
BK 8006	Adds a new subdivision (c)(2) that authorizes the bankruptcy judge or the court where the appeal is then pending to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all the parties to the appeal.	
BK 8013, 8015, 8016, 8022, Part VIII Appendix	Amendments to conform with the 2016 length limit amendments to FRAP 5, 21, 27, 35, and 40 (generally converting page limits to word limits).	FRAP 5, 21, 27, 35, and 40
BK 8017	Amendments to conform with the 2016 amendment to FRAP 29 that provided guidelines for timing and length amicus briefs allowed by a court in connection with petitions for panel rehearing or rehearing in banc, and a 2018 amendment to FRAP 29 that authorized the court of appeals to strike an amicus brief if the filing would result in the disqualification of a judge.	AP 29
BK 8018.1 (new)	Authorizes a district court to treat a bankruptcy court's judgment as proposed findings of fact and conclusions of law if the district court determined that the bankruptcy court lacked constitutional authority to enter a final judgment.	
BK - Official Forms 411A and 411B	Reissued Director's Forms 4011A and 4011B as Official Forms 411A and 411B to conform to Bankruptcy Rule 9010(c). (Approved by Standing Committee at June 2018 meeting; approved by Judicial Conference at its September 2018 session.)	
CV 5	Amendments made as part of the inter-advisory committee project to develop coordinated rules for electronic filing and service.	

Revised August 2019

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Rule	Summary of Proposal	Related or Coordinated Amendments
CV 23	Amendments (1) require that more information regarding a proposed class settlement be provided to the district court at the point when the court is asked to send notice of the proposed settlement to the class; (2) clarify that a decision to send notice of a proposed settlement to the class under Rule 23(e)(1) is not appealable under Rule 23(f); (3) clarify in Rule 23(c)(2)(B) that the Rule 23(e)(1) notice triggers the opt-out period in Rule 23(b)(3) class actions; (4) updates Rule 23(c)(2) regarding individual notice in Rule 23(b)(3) class actions; (5) establishes procedures for dealing with class action objectors; refines standards for approval of proposed class settlements; and (6) incorporates a proposal by the Department of Justice to include in Rule 23(f) a 45-day period in which to seek permission for an interlocutory appeal when the United States is a party.	
CV 62	Amendments (1) extended the period of the automatic stay to 30 days; (2) clarified that a party may obtain a stay by posting a bond or other security; (3) eliminated reference to “supersedeas bond”; and (4) rearranged subsections.	AP 8, 11, 39
CV 65.1	Amendments made to reflect the expansion of Rule 62 to include forms of security other than a bond and to conform the rule with the proposed amendments to Appellate Rule 8(b).	AP 8
CR 12.4	Amendments to Rule 12.4(a)(2) – the subdivision that governs when the government is required to identify organizational victims – makes the scope of the required disclosures under Rule 12.4 consistent with the 2009 amendments to the Code of Conduct for United States Judges. Amendments to Rule 12.4(b) – the subdivision that specifies the time for filing disclosure statements – provides that disclosures must be made within 28 days after the defendant’s initial appearance; revised the rule to refer to “later” rather than “supplemental” filings; and revised the text for clarity and to parallel Civil Rule 7.1(b)(2).	

Revised August 2019

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Rule	Summary of Proposal	Related or Coordinated Amendments
CR 45, 49	Proposed amendments to Rules 45 and 49 are part of the inter-advisory committee project to develop coordinated rules for electronic filing and service. Currently, Criminal Rule 49 incorporates Civil Rule 5; the proposed amendments would make Criminal Rule 49 a stand-alone comprehensive criminal rule addressing service and filing by parties and nonparties, notice, and signatures.	AP 25, BK 5005, 8011, CV 5

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Current Step in REA Process: adopted by Supreme Court and transmitted to Congress (Apr 2019)

REA History: transmitted to Supreme Court (Oct 2018); approved by Judicial Conference (Sept 2018); approved by Standing Committee (June 2018); approved by the relevant advisory committee (Spring 2018); published for public comment (unless otherwise noted, Aug 2017-Feb 2018); approved by Standing Committee for publication (June 2017)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 3, 13	Changes the word "mail" to "send" or "sends" in both rules, although not in the second sentence of Rule 13.	
AP 26.1, 28, 32	Rule 26.1 would be amended to change the disclosure requirements, and Rules 28 and 32 are amended to change the term "corporate disclosure statement" to "disclosure statement" to match the wording used in proposed amended Rule 26.1.	
AP 25(d)(1)	Published in 2016-17. Eliminates unnecessary proofs of service in light of electronic filing.	
AP 5.21, 26, 32, 39	Unpublished. Technical amendments to remove the term "proof of service."	AP 25
BK 9036	The amendment to Rule 9036 would allow the clerk or any other person to notice or serve registered users by use of the court's electronic filing system and to serve or notice other persons by electronic means that the person consented to in writing. Related proposed amendments to Rule 2002(g) and Official Form 410 were not recommended for final approval by the Advisory Committee at its spring 2018 meeting.	
BK 4001	The proposed amendment would make subdivision (c) of the rule, which governs the process for obtaining post-petition credit in a bankruptcy case, inapplicable to chapter 13 cases.	
BK 6007	The proposed amendment to subsection (b) of Rule 6007 tracks the existing language of subsection (a) and clarifies the procedure for third-party motions brought under § 554(b) of the Bankruptcy Code.	
BK 9037	The proposed amendment would add a new subdivision (h) to the rule to provide a procedure for redacting personal identifiers in documents that were previously filed without complying with the rule's redaction requirements.	
CR 16.1 (new)	Proposed new rule regarding pretrial discovery and disclosure. Proposed subsection (a) would require that, no more than 14 days after the arraignment, the attorneys are to confer and agree on the timing and procedures for disclosure in every case. Proposed subsection (b) emphasizes that the parties may seek a determination or modification from the court to facilitate preparation for trial.	
EV 807	Residual exception to the hearsay rule and clarifying the standard of trustworthiness.	
2254 R 5	Makes clear that petitioner has an absolute right to file a reply.	

Revised August 2019

Effective (no earlier than) December 1, 2019

Current Step in REA Process: adopted by Supreme Court and transmitted to Congress (Apr 2019)

REA History: transmitted to Supreme Court (Oct 2018); approved by Judicial Conference (Sept 2018); approved by Standing Committee (June 2018); approved by the relevant advisory committee (Spring 2018); published for public comment (unless otherwise noted, Aug 2017-Feb 2018); approved by Standing Committee for publication (June 2017)

Rule	Summary of Proposal	Related or Coordinated Amendments
2255 R 5	Makes clear that movant has an absolute right to file a reply.	

Revised August 2019

Effective (no earlier than) December 1, 2020

Current Step in REA Process: approved by the Standing Committee (June 2019)

REA History: approved by the relevant advisory committee (Spring 2019); published for public comment (unless otherwise noted, Aug 2018-Feb 2019); approved by Standing Committee for publication (unless otherwise noted, June 2018)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 35, 40	Proposed amendment clarifies that length limits apply to responses to petitions for rehearing plus minor wording changes.	
BK 2002	Proposed amendment would: (1) require giving notice of the entry of an order confirming a chapter 13 plan; (2) limit the need to provide notice to creditors that do not file timely proofs of claim in chapter 12 and chapter 13 cases; and (3) add a cross-reference in response to the relocation of the provision specifying the deadline for objecting to confirmation of a chapter 13 plan.	
BK 2004	Amends subdivision (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.	CV 45
BK 2005	Unpublished. Replaces updates references to the Criminal Code that have been repealed.	
BK 8012	Conforms Bankruptcy Rule 8012 to proposed amendments to Appellate Rule 26.1 that were published in Aug 2017.	AP 26.1
BK 8013, 8015, and 8021	Unpublished. Eliminates or qualifies the term "proof of service" when documents are served through the court's electronic-filing system conforming to pending changes in 2019 to AP Rules 5, 21, 26, 32, and 39.	AP 5, 21, 26, 32, and 39
CV 30	Proposed amendment to subdivision (b)(6), the rule that addresses deposition notices or subpoenas directed to an organization, would require the parties to confer about the matters for examination before or promptly after the notice or subpoena is served. The amendment would also require that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify.	
EV 404	Proposed amendment to subdivision (b) would expand the prosecutor's notice obligations by: (1) requiring the prosecutor to "articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose"; (2) deleting the requirement that the prosecutor must disclose only the "general nature" of the bad act; and (3) deleting the requirement that the defendant must request notice. The proposed amendments also replace the phrase "crimes, wrongs, or other acts" with the original "other crimes, wrongs, or acts."	

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Current Step in REA Process: published for public comment (Aug 2019-Feb 2020)

REA History: unless otherwise noted, approved for publication (June 2019)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 3	The proposed amendments to Rule 3 address the relationship between the contents of the notice of appeal and the scope of the appeal. The proposed amendments change the structure of the rule and provide greater clarity, expressly rejecting the <i>expressio unius</i> approach, and adding a reference to the merger rule.	AP 6, Forms 1 and 2
AP 6	Conforming amendments to the proposed amendments to Rule 3.	AP 3, Forms 1 and 2
AP 42	The proposed amendment to Rule 42 clarifies the distinction between situations where dismissal is mandated by stipulation of the parties and other situations. The proposed amendment would subdivide Rule 42(b), add appropriate subheadings, and change the word “may” to “must” in new Rule 42(b)(1) for stipulated dismissals. The phrase “no mandate or other process may issue without a court order” is replaced in new (b)(3) with “[a] court order is required for any relief beyond the mere dismissal of an appeal—including approving a settlement, vacating an action of the district court or an administrative agency, or remanding the case to either of them.” A new subsection (C) was added to the rule to clarify that Rule 42 does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.	
AP Forms 1 and 2	Conforming amendments to the proposed amendments to Rule 3, creating Form 1A and Form 1B to provide separate forms for appeals from final judgments and appeals from other orders	AP 3, 6
BK 2005	The proposed amendment to subsection (c) of the replaces the reference to 18 U.S.C. § 3146(a) and (b), (which was repealed in 1984) with a reference to 18 U.S.C. § 3142 .	
BK 3007	The proposed amendment clarifies that credit unions may be served with an objection claim under the general process set forth in Rule 3007(a)(2)(A) - by first-class mail sent to the person designated on the proof of claim.	
BK 7007.1	The proposed amendment would conform the rule to recent amendments to Rule 8012, and Appellate Rule 26.1.	CV 7.1
BK 9036	The proposed amendment would require high-volume paper notice recipients (initially designated as recipients of more than 100 court papers notices in calendar month) to sign up for electronic service and noticing, unless the recipient designates a physical mailing address if so authorized by statute.	

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REA History: unless otherwise noted, approved for publication (June 2019)

Rule	Summary of Proposal	Related or Coordinated Amendments
CV 7.1	Proposed amendment would: (1) conform Civil Rule 7.1 with pending amendments to Appellate Rule 26.1 and Bankruptcy Rule 8012; and (2) require disclosure of the name and citizenship of each person whose citizenship is attributed to a party for purposes of determining diversity jurisdiction.	AP 26.1, BK 8012

Revised August 2019

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**Pending Legislation that Would Directly or Effectively Amend the Federal Rules
116th Congress**

Name	Sponsor(s)/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
Protect the Gig Economy Act of 2019	H.R. 76 <i>Sponsor:</i> Biggs (R-AZ)	CV 23	Bill Text: https://www.congress.gov/116/bills/hr76/BILLS-116hr76ih.pdf Summary (authored by CRS): This bill amends Rule 23 of the Federal Rules of Civil Procedure to expand the preliminary requirements for class certification in a class action lawsuit to include a new requirement that the claim does not allege misclassification of employees as independent contractors. Report: None.	<ul style="list-style-type: none"> 1/3/19: Introduced in the House; referred to the Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Civil Justice
Injunctive Authority Clarification Act of 2019	H.R. 77 <i>Sponsor:</i> Biggs (R-AZ)	CV	Bill Text: https://www.congress.gov/116/bills/hr77/BILLS-116hr77ih.pdf Summary (authored by CRS): This bill prohibits federal courts from issuing injunctive orders that bar enforcement of a federal law or policy against a nonparty, unless the nonparty is represented by a party in a class action lawsuit. Report: None.	<ul style="list-style-type: none"> 1/3/19: Introduced in the House; referred to the Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security
Litigation Funding Transparency Act of 2019	S. 471 <i>Sponsor:</i> Grassley (R-IA) <i>Co-Sponsors:</i> Cornyn (R-TX) Sasse (R-NE) Tillis (R-NC)	CV 23	Bill Text: https://www.congress.gov/116/bills/s471/BILLS-116s471is.pdf Summary: Requires disclosure and oversight of TPLF agreements in MDL's and in "any class action." Report: None.	<ul style="list-style-type: none"> 2/13/19: Introduced in the Senate; referred to Judiciary Committee

**Pending Legislation that Would Directly or Effectively Amend the Federal Rules
116th Congress**

<p>Due Process Protections Act</p>	<p>S. 1380 <i>Sponsor:</i> Sullivan (R-AK) <i>Co-Sponsor:</i> Durbin (D-IL)</p>	<p>CR 5</p>	<p>Bill Text: https://www.congress.gov/116/bills/s1380/BILLS-116s1380is.pdf</p> <p>Summary: This bill would amend Criminal Rule 5 (Initial Appearance) by:</p> <ol style="list-style-type: none"> 1. redesignating subsection (f) as subsection (g); and 2. inserting after subsection (e) the following: “(f) Reminder Of Prosecutorial Obligation. -- (1) IN GENERAL. -- In all criminal proceedings, on the first scheduled court date when both prosecutor and defense counsel are present, the judge shall issue an oral and written order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, and the possible consequences of violating such order under applicable law. (2) FORMATION OF ORDER. -- Each judicial council in which a district court is located shall promulgate a model order for the purpose of paragraph (1) that the court may use as it determines is appropriate.” <p>Report: None.</p>	<ul style="list-style-type: none"> • 5/8/19: Introduced in the Senate; referred to Judiciary Committee
<p>Assessing Monetary Influence in the Courts of the United States Act (AMICUS Act)</p>	<p>S. 1411 <i>Sponsor:</i> Whitehouse (D-RI) <i>Co-Sponsors:</i> Blumenthal (D-CT) Hirono (D-HI)</p>	<p>AP 29</p>	<p>Bill Text: https://www.congress.gov/116/bills/s1411/BILLS-116s1411is.pdf</p> <p>Summary: In part, the legislation would require certain amicus curiae to disclose whether counsel for a party authored the brief in whole or in part and whether a party or a party's counsel made a monetary contribution intended to fund the preparation or submission of the brief.</p> <p>Report: None.</p>	<ul style="list-style-type: none"> • 5/9/19: Introduced in the Senate; referred to Judiciary Committee

**Pending Legislation that Would Directly or Effectively Amend the Federal Rules
116th Congress**

<p>Back the Blue Act of 2019</p>	<p>S. 1480</p> <p><i>Sponsor:</i> Cornyn (R-TX)</p> <p><i>Co-Sponsors:</i> Barrasso (R-WY) Blackburn (R-TN) Blunt (R-MO) Boozman (R-AR) Capito (R-WV) Cassidy (R-LA) Cruz (R-TX) Daines (R-MT) Fischer (R-NE) Hyde-Smith (R-MS) Isakson (R-GA) Perdue (R-GA) Portman (R-OH) Roberts (R-KS) Rubio (R-FL) Tillis (R-NC)</p>	<p>§ 2254 Rule 11</p>	<p>Bill Text: https://www.congress.gov/116/bills/s1480/BILLS-116s1480is.pdf</p> <p>Summary: Section 4 of the bill is titled “Limitation on Federal Habeas Relief for Murders of Law Enforcement Officers.” It adds to § 2254 a new subdivision (j) that would apply to habeas petitions filed by a person in custody for a crime that involved the killing of a public safety officer or judge.</p> <p>Section 4 also amends Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts -- the rule governing certificates of appealability and time to appeal -- by adding the following language to the end of that Rule: “Rule 60(b)(6) of the Federal Rules of Civil Procedure shall not apply to a proceeding under these rules in a case that is described in section 2254(j) of title 28, United States Code.”</p> <p>Report: None.</p>	<ul style="list-style-type: none"> • 5/15/19: Introduced in the Senate; referred to Judiciary Committee
<p>HAVEN Act (Honoring American Veterans in Extreme Need Act of 2019)</p>	<p>H.R. 2938</p> <p><i>Sponsor:</i> McBath (D-GA-6)</p> <p><i>Co-Sponsors:</i> 38 (D-35, R-3)</p> <p>S. 679</p> <p><i>Sponsor:</i> Baldwin (D-WI)</p> <p><i>Co-Sponsors:</i> 41 (D-19, R-21, I-1)</p>	<p>Official Forms 122A-1, 122B, and 122C-1 lines 9 & 10.</p>	<p>Bill Text: https://www.congress.gov/bill/116th-congress/house-bill/2938/all-actions?loclr=cga-bill</p> <p>Summary: Not posted. The bill introduction states: “A BILL To exempt from the calculation of monthly income certain benefits paid by the Department of Veterans Affairs and the Department of Defense.”</p> <p>Report: None.</p>	<ul style="list-style-type: none"> • 8/26/19: became P.L. No. 116-52 • 7/23/19: Passed/agreed to in House. • 3/06/19: Introduced into the Senate, referred to the Committee on the Judiciary.

**Pending Legislation that Would Directly or Effectively Amend the Federal Rules
116th Congress**

<p>Small Business Reorganization Act of 2019</p>	<p>H.R. 3311 <i>Sponsor:</i> Cline (R-VA) <i>Co-Sponsors:</i> 3 (D-2, R-1) S 1091 <i>Sponsor:</i> Baldwin (D-WI) <i>Co-Sponsors:</i> 41 (D-19, R-21, I-1)</p>	<p>Rules 1020, 2007.1, 2009, 2012, 2015, Official Form 201.</p>	<p>Bill Text: https://www.congress.gov/bill/116th-congress/house-bill/3311/all-actions?loclr=cga-bill Summary: Not posted. The bill introduction states: “A BILL To amend chapter 11 of title 11, United States Code, to address reorganization of small businesses, and for other purposes.” Report: None.</p>	<ul style="list-style-type: none"> • 8/26/19: Became P.L. No. 116-54. • 7/23/19: Passed/agreed to in House. • 6/16/19: Introduced in House • 4/09/19: Introduced into the Senate, referred to the Committee on the Judiciary.
<p>National Guard and Reservists Debt Relief Extension Act of 2019</p>	<p>H.R. 3304 <i>Sponsor:</i> Cohen (D-TN) <i>Co-Sponsors:</i> 3 (D-1, R-2)</p>	<p>None. However, Official Form 122A-1Supp. Line 3 will need to be amended if the legislation does not pass by 12/18/19.</p>	<p>Bill Text: https://www.congress.gov/116/bills/hr3304/BILLS-116hr3304rh.pdf Summary: Not posted. The bill introduction states: “A bill to exempt for an additional 4-year period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.” Report: None.</p>	<ul style="list-style-type: none"> • Became P.L. No. 116-53 • 7/23/19: Passed/agreed to in House. • 6/18/19: Introduced in House
<p>N/A</p>	<p>N/A</p>	<p>CV 26</p>	<p>N/A</p>	<ul style="list-style-type: none"> • 9/26/19: House Judiciary Committee hearing on the topics of PACER, cameras in the courtroom, and sealing court filings

TAB 2

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of April 4, 2019

San Antonio, Texas.

The following members attended the meeting:

Bankruptcy Judge Dennis Dow, Chair
Circuit Judge Thomas Ambro (called in)
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Melvin S. Hoffman (called in)
David A. Hubbert, Esq.
District Judge Marcia S. Krieger
Thomas Moers Mayer, Esq.
Debra Miller, Chapter 13 trustee
District Judge Pamela Pepper
Jeremy L. Retherford, Esq.
Circuit Judge Amul R. Thapar (called in)
District Judge George Wu

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Laura Bartell, associate reporter
District Judge David G. Campbell, Chair of the Committee on Rules of Practice and Procedure
(the Standing Committee)
Professor Daniel Coquillette, consultant to the Standing Committee (called in)
Professor Catherine Struve, reporter to the Standing Committee (called in)
Circuit Judge Susan Graber, liaison to the Standing Committee
Bankruptcy Judge Mary Gorman
Bankruptcy Judge Marvin Isgur
Circuit Judge William J. Kayatta, Jr.
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustee
Kenneth Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Molly Johnson, Senior Research Associate, Federal Judicial Center
Ahmad Al Dajani, Administrative Office
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
Nancy Whaley, National Association of Chapter 13 Trustees
Elizabeth Jones, Supreme Court fellow
Abigail Willie, Supreme Court fellow

Discussion Agenda

1. Greetings and introductions

Judge Dennis Dow welcomed the group. He introduced new members Jeremy Retherford and Judge George Wu, and Judge William Kayatta who will be the new liaison to Standing Committee, replacing Susan Graber. He also introduced Judge David Campbell, the chair of the Standing Committee, and Professor Daniel Coquillette, and Professor Catherine Struve, the consultant and reporter for the Standing Committee, who were participating by phone. He also introduced others attending the meeting.

2. Approval of minutes of Washington, D.C., September 17, 2018 meeting

The minutes were approved by motion and vote.

3. Oral reports on meetings of other committees

(A) January 3, 2019 Standing Committee meeting

Professor Elizabeth Gibson provided the report. The only bankruptcy action item on the agenda for the January 3 meeting was the Advisory Committee's request that the Standing Committee authorize the Advisory Committee to begin restyling the Federal Rules of Bankruptcy Procedure with the understanding that the final decision on whether to recommend to the Standing Committee that any change be made to a Federal Rule of Bankruptcy Procedure rests with the Advisory Committee. The Standing Committee approved that procedure. During the discussion it was noted that it is important to keep Congress apprised about the project. The Standing Committee expressed an interest in getting a primer on bankruptcy and perhaps sharing that with the style consultants.

The Standing Committee was also informed that the Advisory Committee was considering amendments to Rule 9036 to deal with high-volume notice recipients and might have a proposal for publication next summer. The Standing Committee was also informed that the Advisory Committee had approved an amendment to Form 113, (*Chapter 13 Plan*), but decided to defer proceeding with the proposed amendment in order to see whether experience under the new form and related rules suggests the need for additional adjustments.

(B) Oct. 26, 2018 Meeting of the Advisory Committee on Appellate Rules

Judge Pepper delivered the report. At the June 2019 Standing Committee meeting, the Appellate Rules Committee plans to seek the Standing Committee's final approval to amend

Rules 35 and 40. These amendments, which concern length limits applicable to responses to a petition for rehearing, are currently published for public comment. The Appellate Rules Committee is also considering additional changes to Rules 35 and 40 aimed at reconciling discrepancies between the two rules. These discrepancies trace back to a time when parties could petition for panel rehearing but only “suggest” rehearing en banc.

At the next Standing Committee meeting, the Appellate Rules Committee will also seek approval to publish amendments to Rule 3 for public comment. These amendments would address the relationship between the contents of the notice of appeal and the scope of the appeal. The Appellate Rules Committee’s research revealed that when a notice of appeal from a final judgment also designates a specific interlocutory order, some courts (invoking the “expressio unius” canon) take the view that the additional specification limits the scope of appellate review to the designated interlocutory order. The proposed rule would not limit the scope of appeal on this basis.

The Appellate Rules Committee is considering whether granting voluntary dismissals should be mandatory under Rule 42(b). Rule 42(b) provides that the clerk “may” dismiss an appeal if the parties file a signed dismissal agreement. The proposal before the Appellate Committee would make dismissal mandatory, but where an action by the court is needed, such as a remand for the district court to review a proposed settlement, courts would have the discretion to decline to take the action proposed in the parties’ agreement.

The Appellate Rules Committee had been considering an amendment to Rule 36 that would provide a uniform practice for handling votes cast by judges who depart the bench before an opinion is filed with the clerk’s office, but the Supreme Court’s decision in *Yovino v. Rizo*, 139 S.Ct. 706 (Feb. 25, 2019), rendered that consideration unnecessary.

Finally, the Appellate Rules Committee had been considering whether the Supreme Court’s decision in *Hamer v. Neighborhood Housing Services of Chicago*, 138 S. Ct. 13 (2017), which characterized time limits set only by court-made rules as non-jurisdictional procedural limits, raised practical issues for the rules, but the Supreme Court held in *Nutraceutical Corp. v. Lambert*, 139 S.Ct. 710 (Feb. 26, 2019), that the 14-day deadline for filing a petition for permission to appeal in Civil Rule 23(f) is not subject to equitable exceptions. As a result, no further consideration is necessary.

(C) Nov. 1, 2018 Meeting of the Advisory Committee on Civil Rules

Judge Benjamin Goldgar provided the report. A subcommittee of the Civil Rules Committee continues to study possible rules for multi-district litigation, including third-party

funding of litigation. The Civil Rules Committee approved for transmission to the Standing Committee its published amendment to Rule 30(b)(6) after eliminating the requirement that parties confer about the identity of the witness to be deposed, and drafting a new Committee Note. The Civil Rules Committee approved for publication and comment an amendment to Rule 7.1(a) that parallels amendments to Bankruptcy Rule 8012 and Appellate Rule 26. The Civil Rules Committee and the Appellate Rules Committee have agreed to form a joint committee to consider the recent Supreme Court decision in *Hall v. Hall*, 138 S.Ct. 1118 (2018), in which the Court ruled that when originally independent cases are consolidated under Rule 42(a)(2), they remain separate actions for purposes of final-judgment appeal under 28 U.S.C. § 1291. Judge Goldgar pointed out that Rule 42 applies in bankruptcy cases, and Judge Bates, chair of the Civil Rules Committee, suggested that the Bankruptcy Rules Committee may be able to participate in the joint committee if it wishes to do so. Judge Goldgar volunteered to serve in that role, and the Advisory Committee accepted his offer.

(D) Dec.13-14, 2018 meeting of the Committee on the Administration of the Bankruptcy System

Judge Mary Gorman provided the report. She reported on the major Unclaimed Funds Task Force work. One focus is to get the unclaimed funds to the persons to whom they belong. The court for the Eastern District of Virginia has developed an unclaimed funds locator, but there are some problems with that locator. There is no smart search feature, and no ability to search across all courts. The Administrative Office is devoting resources to updating the locator, and those improvements are near.

Another suggestion is to waive filing fees to reopen a case to dispose of unclaimed funds (if reopening the case is necessary). Another suggestion is not to charge a transfer fee if the claimant is a successor in interest seeking unclaimed funds, but the Task Force does not want to encourage claimants to wait until funds are unclaimed to avoid the transfer fee. The Task Force is also pursuing a legislative proposal to create a statute of limitations for unclaimed funds requests, which was approved by the Executive Committee of the Judicial Conference and may proceed to Congress.

Professor Struve asked whether the committee considered federalism concerns raised by the Unclaimed Funds Act. Judge Isgur said the problem is exacerbated by payment of secured creditors being paid through the trustees and asked the Bankruptcy Committee to look at the issue. Judge Gorman promised to relay these issues.

Subcommittee Reports and Other Action Items

4. Report by Appeals, Privacy, and Public Access Subcommittee

- (A) Recommendation and review of public comments concerning proposed amendments to Rule 8012 relating to corporate disclosure statement

Judge Ambro and Professor Gibson provided the report. Amendments to Rule 8012 were approved for publication at the spring 2018 meeting of the Advisory Committee to track the relevant amendments to FRAP 26.1. Among other changes, the amendments would modify subsection (a) to make the disclosure requirements applicable to corporations seeking to intervene. The proposed amendments were published in August 2018. Three comments were submitted concerning the amendments, and all were supportive. The Subcommittee therefore recommended that the Advisory Committee give final approval to the amendments.

Tom Mayer expressed the need for additional amendments to Rule 8012 to extend the disclosure requirements to a broader range of entities. The Subcommittee did not disagree but believes that any such expansion should be undertaken in coordination with the other advisory committees with comparable rules, and should not delay the pending amendments.

The Advisory Committee, by motion and vote, gave final approval to the amendments to Rule 8012.

- (B) Recommendation concerning suggestion 19-BK-A to amend Rules 3011 and 9006(b) regarding unclaimed funds

Judge Ambro and Professor Bartell provided the report. The Committee on the Administration of the Bankruptcy System made a suggestion requesting the Advisory Committee to recommend amendments to Federal Rule of Bankruptcy 3011 (and a conforming change to Rule 9006(b)) for the purpose of limiting the time for requesting withdrawal of unclaimed funds from the bankruptcy court to five years after publication of the list pursuant to Rule 3011 of all known names and addresses of the entities and the amounts that they are entitled to be paid. The Bankruptcy Committee also intends to seek an amendment to 11 U.S.C. § 347(a) to provide that unclaimed funds remain with the bankruptcy court for five years, and at the end of that period all parties (including any claimant entitled to those funds) would be barred from asserting any claim against them. The clerks of court would have no further obligations with respect to the funds after that time.

Section 347 of the Bankruptcy Code provides that ninety days after the final distribution in a chapter 7, 12, or 13 case, the trustee shall stop payment on any check remaining unpaid, pay any remaining property of the estate into the court for disposition under chapter 129 of the Judicial Code. Under 28 U.S.C. § 2041, moneys paid into the court are deposited with the Treasury, in the name and to the credit of such court. Withdrawal of such funds is governed by 28 U.S.C. § 2042, which requires a court order to withdraw those funds, and if the money remains on deposit for at least five years unclaimed by the person entitled to it, the money gets deposited with the Treasury in the name and to the credit of the United States. Section 2042 goes on to say:

“Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.”

Section 2042 clearly contemplates that such petitions may be filed more than five years after the money is deposited.

Under 28 U.S.C. § 2075, bankruptcy rules of procedure “shall not abridge, enlarge, or modify any substantive right.” The Subcommittee concluded that the proposed amendments are beyond the scope of the rule-making power of the Supreme Court, and therefore recommended no modification to the rules in response to this suggestion.

Since the memorandum of the Subcommittee was submitted to the Advisory Committee, the Unclaimed Funds Task Force of the Committee on the Administration of the Bankruptcy System sent a letter suggesting that the matter should be recommitted to the Subcommittee because the Subcommittee erred in its analysis. Professor Bartell discussed the points made in the supplemental letter.

Judge Gorman said that the Task Force had understood the Subcommittee to believe erroneously that substantive rights were created by Section 2042. Professor Bartell agreed that the phrase “created by Section 2042” in the memorandum to the Advisory Committee was inaccurate. It should have said “contemplated by Section 2042.” The substantive claim to funds is created by the bankruptcy distribution statutory scheme. The Subcommittee was polled, and all members continued to adhere to the recommendation previously made. The Advisory Committee, by motion and vote, approved the recommendation of the Subcommittee to take no action on the suggestion.

5. Report by the Business Subcommittee

- (A) Recommendation concerning suggestion 18-BK-D from CACM (Court Administration and Case Management) to expand electronic noticing with proposed amendment to Rule 9036; recommendation concerning proposed “opt-in”

Professor Gibson provided the report. Currently pending before the Supreme Court are amendments to Rule 9036 that would allow clerks and parties to provide notices or serve documents (other than those governed by Rule 7004) by means of the court’s electronic-filing system on registered users of that system. The rule would also allow service or noticing on any entity by any electronic means consented to in writing by that person. We anticipate that these amendments will go into effect in December.

Since the spring meeting, the Subcommittee has continued to consider whether to facilitate electronic notice and service by creating an opt-in procedure under which creditors could specify on proofs of claim that they wish to receive notices and service at an electronic address that they would provide on the form. In addition, the Committee on Court Administration and Case Management (CACM) submitted a suggestion (18-BK-D) 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 bankruptcy courts in a calendar month

Working with AO staff and others involved with noticing issues, the Subcommittee is recommending for publication additional amendments to Rule 9036 that would provide for a high-volume-paper-notice recipient program. The following points were taken into account in drafting the proposed amendments:

- 1) Notice and service by the courts should be addressed separately from notice and service by parties. Courts have access to BNC; parties do not. The high-volume program would apply only to notice and service by courts.
- 2) The high volume program allows the recipient to sign up with BNC for electronic noticing and service. If they do not, the AO Director will designate an electronic address for them (through methods to be determined by the Director), but the recipient can designate a mailing address pursuant to § 342(e) and (f) of the Code that would prevail over the Director’s designation.

- 3) Registered users of CM/ECF (lawyers) can be required to receive notice and service through that system.
- 4) The working details of the high-volume program do not need to be spelled out in the rule, but the committee note gives a fuller explanation.
- 5) Consistent with amendments to Rule 8011 that went into effect last December, notice and service by electronic means (whether by parties or by the court) is complete upon filing or sending unless the filer or sender receives notice that the intended recipient did not receive it (e.g., receives a bounce-back).

The Subcommittee recommended that the draft and accompanying committee note contained in the agenda book be published for comment this summer.

Judge Isgur on behalf of CACM praised the draft and said it would save millions of dollars. There is a suggestion in CACM to have private parties contract with BNC using bankruptcy court data with BNC sharing the revenue. It is not clear whether that can happen, but CACM invites feedback.

Judge Pepper suggested that “send the paper” in line 20 be modified to “send the notice or serve the paper.” It was also suggested that the use of the word “it” in various lines (lines 9, 11, 27, 31, 33, 41) might be examined to see if references to “the notice or paper” would be better. Judge Campbell suggested moving lines 21-23 to the end of the paragraph and insert them after a new phrase reading “unless the entity has designated” These changes will be considered in connection with the restyling of the section prior to publication.

The Advisory Committee, by motion and vote, approved publication for comment of the draft amendments to Rule 9036 and accompanying committee note with the noted changes.

- (B) Recommendation and review of public comments concerning proposed amendments to Rule 2004 on examination of debtors and other entities

Professor Gibson provided the report. Amendments to Rule 2004(c) published for comment in August 2018 add references to “electronically stored information” and revise the subpoena requirements to conform to the current versions of Rule 9016 and Civil Rule 45. On two occasions the Advisory Committee considered acting on a suggestion of the Business Law Section of the American Bar Association, on behalf of its Committee on Bankruptcy Court Structure and Insolvency Process, that Rule 2004(c) be amended to include a proportionality requirement. At its fall meeting in 2017 the Advisory Committee voted, by a narrow margin, to include such a requirement, but could not agree on its wording. The matter was sent back to

subcommittee. At the Advisory Committee's meeting in spring 2018, it rejected, again by a narrow margin, a draft that incorporated such a requirement.

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 (BK-2018-0002-0008) suggested 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.

The National Association of Bankruptcy Trustees (BK-2018-0002-0010) supported the amendment.

Federal Bar Association's Bankruptcy Section (BK-2018-0002-0011) supported the published changes to Rule 2004(c), and urged caution before imposing a proportionality requirement.

Because a proposal close to the suggestion of the Michigan Bar committee has already been considered and rejected by the Advisory Committee, the Subcommittee recommended that the Advisory Committee grant final approval of the amendments to Rule 2004 as published.

The Advisory Committee, by motion and vote, gave final approval to the amendments to Rule 2004(c) and accompanying committee note as published.

(C) Consider publication of amendment to Rule 7007.1 to parallel proposed amendment to Civil Rule 7.1 regarding requirements for intervenors

Professor Gibson noted that the Civil Rules Committee will be proposing for publication an amendment to Rule 7.1 to conform to pending amendments that have been proposed for Appellate Rule 26.1 and Bankruptcy Rule 8012, which also govern disclosure statements for purposes of recusal. The amendment would add a requirement for nongovernmental corporations that are seeking to intervene to file a disclosure statement. The proposed amendment to Rule 7007.1 which is included in the agenda book is consistent with the amendments to those other rules, with minor stylistic and substantive differences.

Although the amendment to Rule 7007.1 is just for the purpose of conforming to the parallel rules, the Subcommittee recommended that it be published for comment in August 2019 to keep it on the same track as the proposed amendment to Civil Rule 7.1.

As was true for the proposed amendments to Rule 8012, Tom Mayer expressed the view that additional changes are needed to Rule 7007.1 to extend the requirements to a broader range of entities. The Subcommittee continues to believe that any expansion should be undertaken in coordination with the other advisory committees and should not hold up the pending amendments.

Judge Goldgar said that at the Civil Rules Committee's meeting questions were raised about the requirement for duplicate copies in Civil Rule 7.1. It was agreed that the bankruptcy rule should conform to Civil Rule 7.1 so Rule 7007.1 should follow whatever the Civil Rules Committee does on that issue.

The Advisory Committee, by motion and vote, approved publication for comment of the draft amendments to Rule 7007.1 and accompanying committee note, as potentially amended to conform to Civil Rule 7.1.

6. Report by the Consumer Subcommittee

(A) Consider suggestion 14-BK-E (from National Bankruptcy Conference)

Professor Bartell provided the report. Suggestion 14-BK-E from Richard Levin on behalf of the National Bankruptcy Conference (NBC) has been pending for some time. The problems it addresses are (1) the difficulties imposed by Rule 7004(h)'s requirement that service on an insured depository institution in a contested matter or adversary proceeding be made by certified mail addressed to an officer of the institution (a provision implementing § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106), and (2) that service on corporations or partnerships that are not insured depository institutions must be made pursuant to Rule 7004(b)(3) by first-class mail addressed to an "officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service."

The NBC proposed an amendment to Rule 3001 to require that a creditor identify on the proof of claim form the name and address of the person responsible for receiving notices under the Code. If the creditor were a corporation, the claimant would be required to list the name and address of an officer or agent for purposes of Rule 7004(b)(3). Additional modifications were proposed for insured depository institutions. The Subcommittee declined to approve any change to Rule 3001 for three reasons. First, proof of claim forms are not required in most chapter 7 bankruptcies because there are no assets to distribute; so the rule change would not provide the information it seeks to provide in many cases. Second, conflicting addresses might be on file for

a single creditor and that creates priority issues. Third, the proposal would not solve the problem it seeks to address because of likely changes in representatives of creditors over time.

The second proposal contained in 14-BK-E was a request that debtors' counsel have access to the BNC database, a suggestion that cannot be implemented, or alternatively an amendment to Rule 5003(e) that would allow creditors to file their addresses for providing notice under § 342(f) and the name and address of an officer to receive service of process. The register of addresses designated under § 342(f) would be kept by the clerk and be accessible by registered users of the court's electronic-filing system. The Subcommittee rejected this proposal because it would impose significant burdens on the clerks of court, and would create yet another potentially conflicting address for a creditor without resolving the priority dispute.

The third proposal made in 14-BK-E was to amend Rule 9036 to require large creditors (those who have filed or anticipate filing in the aggregate 100 or more proofs of claim in bankruptcy courts within any 12-month period) to register for the electronic-filing system in all bankruptcy courts in which they file proofs of claim and use that system for filing all documents and receiving all notices and service of process rather than by mail (other than pursuant to Rule 7004). The Business Subcommittee had this issue before it in the form of another proposal, 18-BK-D. Therefore, this Subcommittee did not address it.

The Subcommittee recommended no rule changes in response to Suggestion 14-BK-E. The Advisory Committee, on motion and vote, approved that recommendation.

(B) Recommendation and review of public comments concerning proposed amendments to Rule 2002

Professor Gibson provided the report. In August 2018 a package of amendments to Rule 2002 were published. These amendments 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 update time periods, 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.

Six sets of comments were submitted on one or more of these proposed amendments. Four of the comments included brief statements of support for the amendments. Two other comments were generally supportive, but made additional suggestions. The Subcommittee declined to make any changes in response to those suggestions, and recommended that the Advisory Committee give final approval to the amendments to Rule 2002 as published.

Judge Hoffman expressed concern that a surrogate might file a claim on behalf of a creditor after thirty days, and the creditor would not get notices in the case. Because Rule 3004

requires notice to the creditor, it appears that the clerks' offices are adding the creditor back to the matrix after a claim is filed on its behalf, and so it will get notice. No change is needed to deal with that issue.

The Advisory Committee, by motion and vote, gave final approval to the amendments to Rule 2002 and accompanying committee note as published.

7. Report by the Forms Subcommittee

(A) Recommendation concerning suggestion 18-BK-F to amend Official Form 122A-1

Professor Gibson provided the report. Christian Cooper, a senior staff attorney who assists pro se debtors in the Bankruptcy Court for the Central District of California, submitted a suggestion (18-BK-F) regarding one of the means test forms—Official Form 122A-1 (*Chapter 7 Statement of Your Current Monthly Income*). Mr. Cooper stated that many pro se debtors whose income does not trigger a presumption of abuse fail to see the instruction under the signature line on Form 122A-1 that they should not file Form 122A-2 (the means test calculation). He suggests that the instruction should also be added to the end of line 14a.

Amending line 14a as Mr. Cooper suggests would make that instruction parallel to the instruction on line 14b. Line 14b says to fill out Form 122A-2. 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.

The Subcommittee agreed with the suggestion and recommended that the Advisory Committee propose such an amendment for final approval by the Standing Committee and Judicial Conference without publication. The Subcommittee concluded that the change is sufficiently minor that publication is not needed.

The Advisory Committee, upon motion and vote, agreed to propose the amendment and committee note for final approval by the Standing Committee and the Judicial Conference without publication.

(B) Recommendation concerning suggestion 19-BK-B to create a director's form Application for Unclaimed Funds

Professor Bartell provided the report. 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, comprised of district and bankruptcy judges, clerks of court, and liaisons from the Bankruptcy Administrators program and the EOUST. Each district currently uses its own form for this purpose. The Subcommittee recommended that a uniform director’s form be adopted, and (working with the AO) made some modifications to the form, application and proposed orders included in the original suggestion.

The Subcommittee recommended to the Advisory Committee that the AO be asked to post a new Director’s Form for the application for the payment of unclaimed funds in the form, and with the instructions and forms of orders, included in the agenda book.

Professor Bartell noted that the Guide to Judiciary Policy is being revised with respect to guidance on unclaimed funds, but the revisions do not affect the recommendation.

There was discussion about whether the instructions should require use of the standard form of powers of attorney. The general consensus was not to require that explicitly. It would be up to the court to conclude that the power of attorney was sufficient.

The Advisory Committee, by motion and vote, asked the AO to post a new Director’s Form in the form, and with the instructions and forms of orders, included in the agenda book.

8. Report by the Restyling Subcommittee

(A) Report on status of effort

Judge Marcia Krieger, chair of the Subcommittee, reported on the informal meeting of the Restyling Subcommittee over lunch. This is a large project, which will take a number of years to complete. The three style consultants are working on Parts 1 and 2 of the rules. After the style consultants have all reviewed the proposals, they will send them to the reporters. When the reporters have a version that should be shared with the Restyling Subcommittee, it will be uploaded to a ShareFile program that allows everyone to see all drafts. Skype for Business will be used to allow the Subcommittee to see a working draft collaboratively while it discusses and makes changes. Judge Krieger thanked the AO and FJC for facilitating these technological mechanics.

Many Article III judges and others do not understand bankruptcy practice and language, so Judge Krieger 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.

The reporters await the first group of rules from the style consultants.

Nothing has happened yet on keeping Congress apprised of the progress on restyling, but that will be pursued after the first group of restyled rules is produced.

Scott Myers reported that the current schedule contemplates the first group of rules would be ready for publication in August 2020. The Subcommittee will also keep a list of issues that are substantive in nature that require change, which can be made at the same time as the restyling or thereafter.

(B) Discussion of considerations with respect to restyling the Bankruptcy Rules

Abigail Willie, Supreme Court fellow, reported on her research on issues relating to restyling. The issue she researched was whether the restyling of any rule was interpreted to make a substantive change to the rules when the other committees undertook this process. She found no published case in which anyone argued that restyling effected a substantive change in the law.

She then looked at what other issues the Advisory Committee might want to consider in the restyling process. The issues she identified were flagging ambiguous words or phrases; use of auxiliary words like “shall” and “should;” use of intensifiers; elimination of redundant phrases; sacred phrases and terms of art; transactions costs; continuity; and protecting the substance of the rules when using plain language.

(C) Discussion of Civil Rules Restyling effort

Judge Lee H. Rosenthal, participating by telephone, discussed restyling of the civil rules. She said that it is possible to change style without changing substance. The good news is that restyling project was the best thing she did during her time on the rules committee – the benefits of the restyling are significant. There is no alternative to restyling.

The major challenge she foresees is that we are starting with the Code, which is not a model of good writing. She encourages lots of review at every stage – each review uncovers new issues. She recommends using footnotes to identify drafting decisions. Civil Rules used subcommittees for different sections. They did not publish until everything was completed.

She encouraged the Advisory Committee to enlist major bar organizations to help identify the concerns even before publication.

She emphasized that the Advisory Committee needs to make clear that jurisprudence of rules predating the restyling continues to be viable. Every restyled Civil Rule had a note that said that the amendments were intended to be stylistic only and make no substantive change.

She recommended resisting changes of numbers or subsections. The restyling subcommittee will have to consider to what extent we conform to other restyled rules or to the Code.

It is critical to keep Congress apprised of the work. The entire restyling project for the Civil Rules almost collapsed because the key Congressional players did not understand what was happening.

She closed by noting that the project will take longer than anticipated, and there will be mistakes, but it will be interesting and important. This is a major service to the constituents.

Information Items

9. Review of notice provisions in Rule 3002.1 and effect on Chapter 13 discharge where trustee payments through a plan are successfully completed, but direct payments by the debtor to a mortgagee are not current.

Elizabeth Jones, Supreme Court fellow, presented this issue. In a conduit district, where all payments are made through the trustee, everyone knows when there is a problem and the court is able to respond immediately, perhaps by dismissal if payments are not made. If all payments are made at the end of the plan period, the debtor gets a discharge. In a direct pay district, if payments that are to be made outside of the plan are not made, no one knows about it until the Rule 3002.1 statement goes out and the recipient checks its records. At this point it is unclear that any action can be taken, and those debtors are treated differently from the debtor in a conduit district.

The Code does contemplate the direct payments are permitted pursuant to court order or a chapter 13 plan, but Ms. Jones suggested some changes that might be made to the rules to address the problem. She also suggested that changes could be made to require periodic reporting by the debtor on the status of direct payments, or a midterm audit could be required.

10. Consumer Subcommittee status report on consideration of suggestions 18-BK-G and 18-BK-H for amendments to Rule 3002.1 concerning home mortgage information

Elizabeth Gibson provided a report on the status. The idea is that chapter 13 debtors who are making current payments and cure payments should know whether they are current at the end of the case and the rule change would give them that information. A task force will be looking at these issues over the summer and may make a recommendation at the fall meeting.

11. Update on possible amendments to Rule 5005 in connection with pending amendments to Rule 9036

Ramona Elliot explained that the EOUST is looking at the pending amendments to Rule 9036 and their interplay with Rule 5005.

12. Future meetings

The fall 2019 meeting will be in Washington D.C. on September 26, 2019. The time and place of the spring 2020 meeting have not been set.

13. New Business

The Committee assigned to the Forms Subcommittee for its consideration suggestion 19-BK-C to amend Official Form 309A (and other versions of Form 309) to list addresses for the debtor for the previous three years.

14. Adjournment

The meeting was adjourned at 2:28 p.m.

Proposed Consent Agenda

The Chair and Reporters proposed the following items for study and consideration prior to the Advisory Committee's meeting. No objections were presented, and all recommendations were approved by acclamation at the meeting.

1. Consumer Subcommittee
 - (A) Recommendation of no action regarding suggestion 18-BK-I (to require the debtor's attorney to mail the statement of intent to creditors) because the rules already impose a duty on the debtor to send the statement of intent to creditors
 - (B) Recommendation for approval without publication of technical amendment to Rule 2005(c) to reflect statutory change

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MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of June 25, 2019 | Washington, DC

The Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee or Committee) met in Washington, DC, on June 25, 2019. The following members participated in the meeting:

Judge David G. Campbell, Chair
Judge Jesse M. Furman
Daniel C. Girard, Esq.
Robert J. Giuffra, Jr., Esq.
Judge Susan P. Graber
Judge Frank Mays Hull
Judge William Kayatta, Jr.

Peter D. Keisler, Esq.
Professor William K. Kelley
Judge Carolyn B. Kuhl
Judge Amy St. Eve
Elizabeth J. Shapiro, Esq.*
Judge Srikanth Srinivasan

*Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, and Andrew D. Goldsmith, National Coordinator of Criminal Discovery Initiatives, represented the Department of Justice (DOJ) on behalf of the Honorable Jeffrey A. Rosen, Deputy Attorney General.

The following attended on behalf of the Advisory Committees:

Advisory Committee on Appellate Rules –
Judge Michael A. Chagares, Chair
Professor Edward Hartnett, Reporter

Advisory Committee on Civil Rules –
Judge John D. Bates, Chair
Professor Edward H. Cooper, Reporter
Professor Richard L. Marcus,
Associate Reporter

Advisory Committee on Bankruptcy Rules –
Judge Dennis R. Dow, Chair
Professor S. Elizabeth Gibson, Reporter
Professor Laura Bartell,
Associate Reporter

Advisory Committee on Evidence Rules –
Judge Debra Ann Livingston, Chair
Professor Daniel J. Capra, Reporter

Advisory Committee on Criminal Rules –
Judge Donald W. Molloy, Chair
Professor Sara Sun Beale, Reporter
Professor Nancy J. King,
Associate Reporter

Others providing support to the Committee included: Professor Catherine T. Struve, the Standing Committee's Reporter; Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee; Rebecca A. Womeldorf, the Standing Committee's Secretary; Bridget Healy, Scott Myers, and Julie Wilson, Rules Committee Staff Counsel; Ahmad Al Dajani, Law Clerk to the Standing Committee; and Judge John S. Cooke, Director, and Dr. Tim Reagan, Senior Research Associate, of the Federal Judicial Center (FJC).

OPENING BUSINESS

Judge Campbell called the meeting to order and welcomed everyone to Washington, DC. This meeting is the last for two members, Judge Susan Graber and Judge Amy St. Eve. Judge Campbell thanked Judge Graber for her contributions as a member of the Committee and for her service as liaison to the Advisory Committee on Bankruptcy Rules. Judge Campbell thanked Judge St. Eve for her contributions as a member of the Committee and her leadership on the Task Force on Protecting Cooperators and wished her luck on her new assignment as a member of the Budget Committee. Judge Campbell also noted this would be the last Standing Committee meeting for Judge Donald Molloy, Chair of the Advisory Committee on Criminal Rules, and thanked him for his many years of service to the rules process. Judge Campbell also recognized Scott Myers for twenty years of federal government service, which has included time as a member of the United States Marine Corps, a law clerk, and counsel to the Rules Committees.

Rebecca Womeldorf reviewed the status of proposed rules amendments proceeding through each stage of the Rules Enabling Act process and referred members to the detailed tracking chart in the agenda book for further details. Judge Campbell noted that the rules adopted by the Supreme Court on April 25, 2019 will go into effect on December 1, 2019 provided Congress takes no contrary action.

APPROVAL OF THE MINUTES FROM THE PREVIOUS MEETING

Upon motion by a member, seconded by another, and on a voice vote: **The Committee approved the minutes of the January 3, 2019 meeting.**

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Chagares and Professor Hartnett presented the report of the Advisory Committee on Appellate Rules.

Action Items

Final Approval of Proposed Amendments to Rule 35 (En Banc Determination) and Rule 40 (Petition for Panel Rehearing). Judge Chagares asked the Committee to recommend final approval of proposed amendments to Rules 35 and 40 which will set length limits applicable to a response filed to a petition for en banc review or for panel rehearing. The proposed amendments were published for public comment in August 2018. The one written comment received was supportive and Judge Chagares reported receiving informal favorable comments from colleagues. No revisions were made after publication.

Upon motion, seconded by a member, and on a voice vote: **The Committee decided to recommend the amendments to Rule 35 and Rule 40 for approval by the Judicial Conference.**

Publication of Proposed Amendments to Rule 3 (Appeal as of Right—How Taken) and Conforming Amendments to Rule 6 and Forms 1 and 2. Judge Chagares asked the Committee for approval to publish for public comment proposed amendments to Rule 3(c) regarding contents of the notice of appeal, along with conforming amendments to Rule 6 and Forms 1 and 2. Judge

Chagares noted by way of background the recent Supreme Court decision in *Garza v. Idaho*, 139 S. Ct. 738 (2019), in which the Court stated that the filing of a notice of appeal should be a simple, non-substantive act.

Judge Chagares explained that this proposal originated in a 2017 suggestion that pointed to a problem in the caselaw concerning the scope of notices of appeal. Some cases, the suggestion noted, apply an *expressio unius* approach to interpreting the notice of appeal. Under that approach, for example, if the notice of appeal designates a particular interlocutory order in addition to the final judgment, such courts might limit the scope of the appeal to the designated order rather than treating the notice as bringing up for review all interlocutory orders that merged into the judgment. Extensive research revealed confusion on the issue both across and within circuits. Professor Hartnett noted another problematic aspect of the caselaw: numerous decisions treat notices of appeal that designate an order that disposed of all remaining claims in a case as limited to the claims disposed of in the designated order. Judge Chagares noted that the Advisory Committee’s goal in proposing amendments to Rule 3(c) is to ensure that the filing of a notice of appeal is a simple, non-substantive act that creates no traps for the unwary.

Professor Hartnett reviewed the rationale behind the Advisory Committee’s proposed amendments. Professor Hartnett noted that one source of the problem was Rule 3(c)(1)(B)’s current requirement that a notice of appeal “designate the judgment, order, or part thereof being appealed.” Some have read this provision to require designation of any order that the appellant wishes to challenge on appeal, rather than simply designation of the judgment or order that serves as the basis of the court’s appellate jurisdiction and from which time limits are calculated.

The Advisory Committee proposed four interrelated changes to Rule 3(c)(1)(B) to address the structure of the rule and to provide greater clarity. First, to highlight the distinction between the ordinary case in which an appeal is taken from the final judgment and the less-common case in which an appeal is taken from some other order, the terms “judgment” and “order” are separated by a dash. Second, to clarify that the kind of order that is to be designated in the latter situation is one that can serve as the basis of the court’s appellate jurisdiction, the word “appealable” is added before the word “order.” Third, to clarify that the judgment or order to be designated is the one serving as the basis of the court’s appellate jurisdiction, the phrase “from which the appeal is taken” replaces the phrase “being appealed.” Finally, the phrase “part thereof” is deleted because the Advisory Committee viewed this phrase as contributing to the problem. The result requires the appellant to designate the judgment – or the appealable order – from which the appeal is taken. To underscore the distinction between an appeal from a judgment and an appeal from an appealable order, Professor Hartnett noted, the proposed conforming amendments to Form 1 would create a Form 1A (Notice of Appeal to a Court of Appeals From a Judgment of a District Court) and a Form 1B (Notice of Appeal to a Court of Appeals From an Appealable Order of a District Court).

Other proposed changes address the merger rule. A new paragraph (4) was added to underscore the merger rule, which provides that when a notice of appeal identifies a judgment or order, this includes all orders that merge into the designated judgment or order for purposes of appeal. The Advisory Committee also added to the Committee Note a paragraph discussing the

merger principle. In addition, the Advisory Committee added a fifth paragraph to the rule addressing two kinds of scenarios where an appellant’s designation of an order should be read to encompass the final judgment in a civil case. In one scenario, some pieces of the case are resolved earlier, and others only later; a notice of appeal designating the order that resolves all remaining claims as to all parties should be read as a designation of the final judgment. In the other scenario, a notice of appeal designates the order disposing of a post-judgment motion of a kind that re-started the time to appeal the final judgment; that notice should be read to encompass a designation of the final judgment. In both scenarios, the proposed rule operates whether or not the court has entered judgment on a separate document.

A new sixth paragraph was added providing that “[a]n appellant may designate only part of a judgment or appealable order by expressly stating that the notice of appeal is so limited. Without such an express statement, specific designations do not limit the scope of the notice of appeal.” The final sentence was added to expressly reject the *expressio unius* approach. The Advisory Committee settled on this approach to avoid the inadvertent loss of appellate rights while empowering litigants to define the scope of their appeal.

Finally, the Advisory Committee recommended conforming changes to Rule 6 to change the reference to “Form 1” to “Forms 1A and 1B,” and conforming changes to Form 2 to reflect the deletion of “part thereof” from Rule 3(c)(1)(B). The Advisory Committee consulted with reporters to the Advisory Committee on Bankruptcy Rules regarding the amendments to Rule 6.

A member asked why the Advisory Committee referenced but did not define the merger rule in the rule text. Professor Hartnett explained that the Advisory Committee did not want to limit the merger principle’s continuing development by codifying it in the rule. The rule’s reference to the merger rule will prompt an inexperienced litigant to review the Committee Note for more information. Judge Campbell observed that an attempt to define the merger rule in the Rule text could change current law by overriding existing nuances. Two judge members expressed concern that the Rule needs to be understandable to pro se litigants and unsophisticated lawyers. One of these members asked why the Rule text could not state in simple terms the outlines of the merger principle – e.g., “an appeal from a final judgment brings up for review any order that can be appealed at that time”? Professor Hartnett responded that the Advisory Committee was concerned that such a formulation in the Rule text might alter current law; he stated that the Advisory Committee wanted to alert litigants to the merger rule in the rule itself and provide additional guidance for litigants in the Committee Note. An attorney member suggested that the proposed draft offered the most elegant solution – using Rule text that serves as a placeholder for the merger doctrine. A judge member expressed agreement with this view.

That judge member next asked why the Advisory Committee proposed to retain, in new subdivision (c)(6), the appellant’s ability to designate only part of a judgment or order. Professor Hartnett suggested that a designation of just part of a judgment might serve the interest of repose by assuring other parties that the scope of the appeal was limited. Professor Cooper offered as an example an instance in which the plaintiff’s claims against both of two defendants have been dismissed but the plaintiff has no wish to challenge the dismissal as to one of the defendants; a

limited notice of appeal, in such a case, would reassure the defendant whom the plaintiff no longer wishes to pursue.

A judge asked about the potential for over-inclusion in notices of appeal as a result of the proposed amendments, and whether there is a benefit to requiring that parties be specific about what they are appealing. Professor Hartnett responded that the notice is not the place to limit the issues on appeal. A notice is just a simple document transferring jurisdiction from the district court to the appellate court. The scope of the appeal can be clarified in the ensuing briefing.

Upon motion, seconded by a member, and on a voice vote: **The Committee approved for publication in August 2019 the proposed amendments to Rules 3 and 6 and Forms 1 and 2.**

Professor Struve congratulated the Advisory Committee and Professor Hartnett for a clever solution to a very tough problem. Professor Hartnett thanked Professor Cooper for his assistance.

Publication of Proposed Amendments to Rule 42(b) (Voluntary Dismissal). Judge Chagares stated that the Advisory Committee sought publication of proposed amendments to Rule 42(b). Rule 42(b) currently provides that the clerk “may” dismiss an appeal if the parties file a signed dismissal agreement. Prior to the 1998 non-substantive restyling of the Appellate Rules, Rule 42(b) used the word “shall” instead of “may” dismiss. Following the 1998 restyling, some courts have concluded that discretion exists to decline to dismiss. Attorneys cannot advise their clients with confidence that an action will be dismissed upon agreement by the parties. To clarify the distinction between situations where dismissal is mandated by stipulation of the parties and other situations, the proposed amendment would subdivide Rule 42(b), add appropriate subheadings, and change the word “may” to “must” in new Rule 42(b)(1) for stipulated dismissals.

Judge Chagares explained that the phrase “no mandate or other process may issue without a court order” in current Rule 42(b) has caused confusion as well. Some circuit clerks have taken to issuing orders in lieu of mandates when appeals are dismissed in order to make clear that jurisdiction over the case is being returned to the district court. These issues are avoided – and the purpose of that language served – by deleting the phrase and instead stating directly, in new subsection (b)(3): “A court order is required for any relief beyond the mere dismissal of an appeal—including approving a settlement, vacating an action of the district court or an administrative agency, or remanding the case to either of them.”

A member suggested that language from the proposed Committee Note be moved to the rule itself, creating a new subdivision stating that the Rule does not affect any law that requires court approval of a settlement. Four other members expressed agreement with the idea of putting such a caveat into the Rule text. A motion was made and seconded to amend the proposal to include such a caveat; the motion passed. The Committee discussed how to draft the caveat; it started by considering language that had been used in a prior draft, as follows: “If court approval of a settlement is required by law or sought by the parties, the court may approve the settlement or remand to consider whether to approve it.” Following a break and extensive discussion of

possible language, including suggestions from the style consultants, Judge Chagares proposed instead to add a new subdivision (c) which would modify both preceding paragraphs of Rule 42 and state as follows: “(c) Court Approval. This Rule 42 does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.” The Committee Note was revised to add a cite to “F.R.Civ.P. 23(e) (requiring district court approval)” and to explain that the “amendment replaces old terminology and clarifies that any order beyond mere dismissal—including approving a settlement, vacating, or remanding—requires a court order.” By consensus, this new subdivision (c) was incorporated into the proposed amendments to Rule 42, upon which the Committee proceeded to vote.

Upon motion, seconded by a member, and on a voice vote: **The Committee approved for publication in August 2019 the proposed amendments to Rule 42.**

Information Items

Possible Additional Amendments to Rules 35 (En Banc Determination) and 40 (Petition for Panel Rehearing). Judge Chagares advised that the Advisory Committee continued to study whether amendments were warranted to clarify and codify practices under Rules 35 and 40.

Rule 4 (Appeal as of Right – When Taken). Judge Chagares explained that the Advisory Committee has been considering whether to amend Rule 4(a)(5)(C) (which deals with extensions of time to appeal) in light of the Court’s decision in *Hamer v. Neighborhood Housing Services of Chicago*, 138 S. Ct. 13 (2017). In *Hamer*, the Court distinguished time limits imposed by rule from those imposed by statute, characterizing time limits set only by rules as non-jurisdictional procedural limits. Professor Hartnett noted that the Advisory Committee tabled its consideration of the issue pending the Court’s decision in *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710 (2019). In *Nutraceutical*, the Court held that a mandatory claim-processing rule was not subject to equitable tolling. After reviewing this holding, the Advisory Committee decided not to take action on a possible amendment to Rule 4(a)(5)(C).

Potential Amendment to Rule 36. The Advisory Committee considered an amendment to Rule 36 that would provide a uniform practice for handling votes cast by judges who depart the bench before an opinion is filed with the clerk’s office. Consideration was tabled pending the Court’s decision in *Yovino v. Rizo*, 139 S. Ct. 706 (2019), addressing whether a federal court may count the vote of a judge who dies before the decision is issued. The Court answered this question in the negative, explaining that “federal judges are appointed for life, not for eternity.” Since the Court has resolved the question, the Advisory Committee removed this item from its docket.

Suggestion Regarding the Railroad Retirement Act and Civil Rule 5.2. Judge Chagares noted that the U.S. Railroad Retirement Board’s General Counsel submitted a suggestion that cases brought under the Railroad Retirement Act should be among the cases excluded (under Civil Rule 5.2) from certain types of electronic access. Petitions for review of the Railroad Retirement Board’s final decisions go directly to the courts of appeals, not the district courts; thus, any change would need to be to the Federal Rules of Appellate Procedure. Judge Chagares has appointed a subcommittee to consider the suggestion and to investigate whether any other

benefit regimes would warrant similar treatment. The subcommittee is consulting with the Committee on Court Administration and Case Management.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Dow and Professors Gibson and Bartell presented the report of the Advisory Committee on Bankruptcy Rules.

Action Items

Judge Dow first addressed proposed amendments to three rules published for comment last August: Rule 2002 (Notices), Rule 2004 (Examination), and Rule 8012 (Corporate Disclosure Statement).

Final Approval of Proposed Amendments to Rule 2002 (Notices). Judge Dow explained that Rule 2002 generally deals with requirements for providing notice in bankruptcy cases, and that the proposed changes affect three subparts of the Rule. The first change involves Rule 2002(f)(7), which currently directs notices to be given of the “entry of an order confirming a chapter 9, 11, or 12 plan.” Although it is unclear why the rule does not currently require notice of the entry of a Chapter 13 confirmation order, the Advisory Committee concluded that notice of a confirmation order is appropriate under all bankruptcy chapters. The one comment addressing this change argued that the amendment was not needed because at least one court already serves orders confirming Chapter 13 plans. Because that comment addressed a local practice only, however, the Advisory Committee recommended final approval of the amendment as proposed.

The Committee had no questions and Judge Campbell suggested that the Committee vote separately on the proposed amendments to each of the three relevant subparts of Rule 2002. Upon motion, seconded by a member, and on a voice vote: **The Committee decided to recommend the amendments to Rule 2002(f)(7) for approval by the Judicial Conference.**

The second change pertains to Rule 2002(h) which authorizes the court to direct that certain notices to creditors in chapter 7 cases be sent only to creditors that timely file a proof of claim. The proposed amendment would allow the court to exercise similar discretion in chapter 12 and 13 cases and would also conform time periods in the subdivision to the respective deadlines for filing proofs of claim set out in recently amended Rule 3002(c).

One of the comments on Rule 2002(h), while generally supportive, raised two issues. The first issue concerned whether the clerk’s noticing responsibilities in a chapter 13 case should extend 30 days beyond the proof-of-claim deadline to give the debtor or trustee time to file a claim on behalf of a creditor. The Advisory Committee rejected this suggestion because the rule does not currently address such a situation in a chapter 7 case and the purpose of the proposed amendment is simply to extend the rule to chapter 12 and 13 cases. In addition, because the rule is permissive, a court already has authority to continue to provide notices until after the expiration of a debtor or trustee’s derivative authority to file a proof of claim on behalf of a creditor.

The second issue raised was whether notice of the proposed use, sale, or lease of property of the estate and the hearing on approval of a compromise or settlement should be given to all

creditors otherwise entitled to service of the noticed motion, even if they have not timely filed a proof of claim. No justification was provided for this suggestion and the Advisory Committee saw no reason to amend the rule in this respect. It recommended that Rule 2002(h) be approved as published.

Upon motion, seconded by a member, and on a voice vote: **The Committee decided to recommend the amendments to Rule 2002(h) for approval by the Judicial Conference.**

The final amendment to Rule 2002 concerned subdivision (k) which addresses providing notices under specified parts of Rule 2002 to the U.S. trustee. The change adds a reference to subdivision (a)(9) of the rule, corresponding to the relocation of the deadline for objecting to confirmation of a chapter 13 plan from subdivision (b) to subdivision (a)(9). The change ensures that the U.S. trustee will continue to receive notice of this deadline.

Upon motion, seconded by a member, and on a voice vote: **The Committee decided to recommend the amendments to Rule 2002(k) for approval by the Judicial Conference.**

Judge Dow next addressed the proposed amendments to Rule 2004. He explained that the rule provides for the examination of debtors and other entities regarding a broad range of issues relevant to a bankruptcy case, and that it includes provisions to compel the attendance of witnesses and the production of documents. The Advisory Committee received a suggestion that the rule be amended to impose a proportionality limitation on the scope of the production of documents and electronically stored information.

The Advisory Committee considered this issue over three meetings. By a close vote, the Committee ultimately decided not to add proportionality language because the rule already allows the court to limit the scope of a document request, and because the change might prompt additional litigation. The Advisory Committee did, however, decide 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.

After considering the comments, the Advisory Committee unanimously approved the amendments to Rule 2004(c) as published. Two of the three comments submitted supported the proposal as published. Although a third comment urged inclusion of proportionality language, the Advisory Committee declined to revisit that issue as it had been carefully considered and rejected by the Advisory Committee prior to publication.

Judge Campbell recalled discussion at the Advisory Committee meeting of the fact that debtor examinations in bankruptcy are intended to be broad in scope and of a concern that adding proportionality language might signal an intent to limit those examinations. Judge Dow agreed.

Upon motion, seconded by a member, and on a voice vote: **The Committee decided to recommend the amendments to Rule 2004 for approval by the Judicial Conference.**

Final Approval of Proposed Amendments to Rule 8012 (Corporate Disclosure Statement). Current 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 percent or more of the party's stock (or file a statement that there is no such corporation). It is based on Federal Rule of Appellate Procedure 26.1. Amendments to Rule 26.1 were promulgated by the Supreme Court on April 25, 2019 and are scheduled to go into effect December 1, 2019 absent contrary action by Congress.

The Advisory Committee's proposed amendments to Rule 8012 track the relevant amendments to Appellate Rule 26.1. An amendment to 8012(a) adds a disclosure requirement for nongovernmental corporate intervenors, and a new subsection (b) requires disclosure of debtors' names and requires disclosures about nongovernmental corporate debtors. Publication of the proposed amendments to Rule 8012 elicited three supportive comments and no suggestions for revision.

Judge Dow noted that, during the consideration of the proposed amendments, one member of the Advisory Committee suggested a need for additional amendments that would extend the Rules' disclosure requirements to a broader range of entities. Judge Dow said such an undertaking would require coordination with the other advisory committees and should not delay the current round of amendments, which are designed to conform Rule 8012 to Appellate Rule 26.1.

Upon motion, seconded by a member, and on a voice vote: **The Committee decided to recommend the amendments to Rule 8012 for approval by the Judicial Conference.**

Judge Dow then addressed several proposed amendments that the Advisory Committee considered to be technical in nature and appropriate for the Standing Committee's final approval without publication.

Proposed Amendments to Rule 2005 (Apprehension and Removal of Debtor to Compel Attendance for Examination). Rule 2005(c), which addresses conditions to ensure attendance and appearance, refers to provisions of the federal criminal code (previously codified at 18 U.S.C. § 3146) that were repealed more than 30 years ago. The Advisory Committee considered the matter and recommended a technical amendment updating the statutory citation in the rule to 18 U.S.C. § 3142, the part of the criminal code that now addresses conditions to ensure attendance or appearance. Judge Dow explained, however, that after the Standing Committee's agenda book was published there was discussion among the reporters about whether such a change would be appropriate without publication.

Professor Struve explained her concerns with a technical amendment. Current Section 3142 contains a number of features that were not present in the old Section 3146. For example, it refers to statutory authorization for the collection of DNA samples. Presumably it is implausible to think that a debtor apprehended under Rule 2005 would be subjected to DNA collection as a condition of release. But, she suggested, such differences between the former and

present statutory provisions provided reason to send the proposed amendment through the ordinary process of notice and comment.

Professor Capra raised the issue of whether statutory citations should be included in the Rules at all given that statutes change. Perhaps it would be better for the Rule to direct the court to consider “the applicable requirement in the criminal code” in considering conditions to compel attendance or appearance. Professor Kimble suggested that a general reference would not help readers. If a particular statute is relevant it should be cited and updated as needed.

A member suggested that there was little risk that inapposite provisions of § 3142 would be applied under Rule 2005(c), and Professor Bartell stated that bankruptcy debtors are not arrestees, so there is not a realistic danger that they would be subjected to DNA collection.

Judge Campbell observed that the Committee must decide whether citation to an updated statutory cross reference was appropriate, or whether the prior statutory language should be inserted into the rule. In addition, even if only a statutory cross reference was appropriate, the Committee also needed to decide the separate issue of whether approval would be appropriate without public comment.

Professor Garner suggested that “applicable” or “relevant” be inserted prior to the Rule’s reference to the “provisions and policies of” the statutory provision.

After further discussion Judge Campbell observed that it seemed clear that the Committee did not support amending the rule as a technical matter without publication, and Judge Dow amended the request on behalf of the Advisory Committee to seek the Standing Committee’s approval to publish the amendment for public comment, with a slight revision. Instead of a simple change to replace the existing statutory citation with the new statutory citation, the proposed amendment to Rule 2005(c) would state that in determining the conditions that would reasonably ensure attendance the court would be “governed by the **relevant** provisions and policies of title 18 U.S.C. § 3142.” In addition, a new sentence was added to the Committee Note: “Because 18 U.S.C. § 3142 contains provisions bearing on topics not included in former 18 U.S.C. § 3146(a) and (b), the rule is also amended to limit the reference to the ‘relevant’ provisions and policies of § 3142.”

The Committee approved the proposed amendments to Rule 2005(c) for publication in August 2019.

Judge Dow next discussed proposed technical conforming amendments to Rules 8013 (Motions; Intervention), 8015 (Form and Length of Briefs; Form of Appendices and Other Papers), and 8021 (Costs). The amendments would revise these Rules to accord with 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 and would revise Rule 8015 to accord with the pending amendment to Rule 8012.

Upon motion, seconded by a member, and on a voice vote: **The Committee decided to recommend the technical amendments to Rules 8013, 8015, and 8021 for approval by the Judicial Conference without prior publication.**

The final recommended technical change concerned Official Form 122A-1, the first part of a two-part form used to calculate the debtor's disposable income and to determine whether it is appropriate for the debtor to file under Chapter 7 of the Bankruptcy Code. An instruction at the end of Official Form 122A-1 tells the filer not to complete the second part of the form (Official Form 122A-2) if the box at line 14a is checked. Line 14a, in turn, should be checked if the debtor's current monthly income, multiplied by 12, is less than or equal to the applicable median family income. The Advisory Committee received a suggestion that the instruction at the bottom of the form is often overlooked, and that it should also be included at the end of line 14a. The Advisory Committee agreed that the suggested amendment would make it more likely that the forms would be completed correctly.

Upon motion, seconded by a member, and on a voice vote: **The Committee decided to recommend the technical amendment to Official Form 122A-1 for approval by the Judicial Conference without prior publication.**

Professor Gibson next reported on three proposed amendments recommended for publication.

Rule 3007 (Objections to Claims). The proposed amendment addresses the narrow issue of how credit unions should be served with objections to their claims. Rule 3007 was amended in 2017 to clarify that objections to claims are generally not required to be served in the manner of a summons and complaint, as provided by Rule 7004, but instead may be served on most claimants by mailing them to the person designated on the proof of claim. Rule 3007 contains two exceptions to this general procedure, one of which is that "if the objection is to the claim of an insured depository institution [service must be] in the manner provided by Rule 7004(h)." Rule 3007(a)(2)(A)(ii). The purpose of this exception is to comply with a legislative mandate (enacted as part of the Bankruptcy Reform Act of 1994 and set forth in Rule 7004(h)) providing that an "insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act)" is entitled to a heightened level of service in adversary proceedings and contested matters.

The Advisory Committee concluded that the exception set out in Rule 3007(a)(2)(A)(ii) is too broad because it does not qualify the term "insured depository institution" by the definition set forth in section 3 of the Federal Deposit Insurance Act, as is the case in Rule 7004(h) itself. Rule 7004(h) was added by the Bankruptcy Reform Act of 1994 which required special service requirements for insured depository institutions as defined under the FDIA. Because the more expansive Bankruptcy Code definition of "insured depository institution" set forth in 11 U.S.C. § 101(35) specifically includes credit unions, such entities also seem to be entitled to heightened service under Rule 3007(a)(2)(A)(ii). The proposed amendment to Rule 3007(a)(2)(A)(ii) would limit its applicability to an insured depository institution as defined by section 3 of the FDIA (consistent with the legislative intent of the Bankruptcy Reform Act of 1994, as set forth in Rule 7004(h)), thereby clarifying that an objection to a claim filed by a credit union may be served, like most claim objections, on the person designated on the proof of claim.

Upon motion, seconded by a member, and on a voice vote: **The Committee approved for publication in August 2019 the proposed amendments to Rule 3007.**

Rule 7007.1 governs disclosure statements in the bankruptcy court. Like the amendment to Rule 8012 discussed earlier, the proposed amendment to Rule 7007.1 would conform the rule to the pending amendments to Appellate Rule 26.1.

Upon motion, seconded by a member, and on a voice vote: **The Committee approved for publication in August 2019 the proposed amendments to Rule 7007.1.**

The proposed amendment to Rule 9036 would implement a suggestion from the Committee on Court Administration and Case Management that high-volume-paper-notice recipients (initially defined as recipients of more than 100 court-generated paper notices in a calendar month) be required to sign up for electronic service, subject to exceptions required by statute.

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. However, only courts may serve or give notice to an entity at an electronic address registered with the Bankruptcy Noticing Center as part of the Electronic Bankruptcy Noticing program.

Finally, the title of Rule 9036 is changed to "Notice and Service by Electronic Transmission" to better reflect its applicability to both electronic noticing and service. The rule does not preclude noticing and service by other means authorized by the court or rules.

Proposed amendments to Rule 2002(g) and Official Form 410 were previously published in 2017. These proposed amendments (like the proposed amendments to Rule 9036) are designed to increase electronic noticing and service. The proposed amendments to Rule 2002 and Form 410 would create an 'opt-in' system at an email address indicated on the proof of claim. The Advisory Committee has not yet submitted those proposed amendments for final approval, however, because the comments recommended a delayed effective date of December 1, 2021 to provide time to make needed implementation changes to the courts' case management and electronic filing system. Because that is the same date the proposed changes to Rule 9036 would be on track to go into effect if published this summer, the recommended changes to Rules 2002(g) and 9036 and Official Form 410 could go into effect at the same time.

Upon motion, seconded by a member, and on a voice vote: **The Committee approved for publication in August 2019 the proposed amendments to Rule 9036.**

Information Items

Professor Bartell reported on two information items, beginning with the ongoing project to restyle the bankruptcy rules. The style consultants provided an initial draft of Part I to the reporters in mid-May, and the reporters have given the consultants comments on that draft. Professor Bartell reported that she and Professor Gibson have been delighted at what the style consultants have done. She thinks the bench and bar will welcome the improvements to the Rules. She praised the style consultants for their work. When the consultants respond to the reporters' 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 second information item concerns part of a larger project within the judiciary to address the problem of unclaimed funds in the bankruptcy system. The Committee on the Administration of the Bankruptcy System created an "Unclaimed Funds Task Force" to address this issue. Among other things, the Unclaimed Funds Task Force proposed adoption of a Director's Bankruptcy Form (along with proposed instructions and a proposed order) for applications for withdrawal of unclaimed funds in closed bankruptcy cases. The Advisory Committee concluded that standard documentation would be appropriate, made minor modifications to the draft submitted by the task force, and recommended that the Director of the Administrative Office adopt the form effective December 1, 2019. The form, instructions, and proposed orders are available on the pending bankruptcy forms page of uscourts.gov and will be relocated to the list of Official and Director's Bankruptcy Forms on December 1, 2019.

Judge Campbell praised the restyling effort and observed that the Advisory Committee is on track to consider the first batch of restyled rules at its fall 2019 meeting. Judge Campbell noted that the time is ripe to send a letter to the appropriate congressional leaders making sure they know the restyling effort is underway.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Bates provided the report of the Advisory Committee on Civil Rules, with support from Professors Cooper and Marcus. Judge Bates noted the Advisory Committee had two action items, one for final approval and the second for publication, and several information items.

Action Items

Rule 30(b)(6). The Advisory Committee recommended final approval of an amendment to Rule 30(b)(6), the rule that deals with depositions of an organization. This issue drew intense interest from the bar. After the proposed amendment was published for comment in August 2018, two public hearings were held. The first hearing in Phoenix drew twenty-five witnesses. Fifty-five witnesses testified at the second hearing in Washington, DC. Some 1780 written comments were submitted, although that number overstates the substance of the comments as many of those comments repeated points made in previous comments.

After considering the public comments, the Advisory Committee approved a modified version of the proposed amendment that was published for comment. Compared with the current rule, the central change made by the revised proposal is to require the party taking the deposition and the organization to confer in advance of the deposition about the matters for examination. Many commenters observed that conferring in advance of the deposition reflects best practice; this modest proposed rule change did not cause great concern from commenters and was uniformly supported by the Advisory Committee. The Advisory Committee made several changes to the proposed amendment as compared with the version that went out for comment. It deleted the proposed requirement that the parties confer about the identity of the witnesses that the organization would designate, and it also deleted the requirement that the parties confer about the “number and description of” the matters for examination. Because the conferring-in-advance requirement would be superfluous in connection with a deposition by written questions, the Advisory Committee added to the Committee Note the observation that the duty to confer about the matters for examination does not apply to depositions by written questions under Rule 31(a)(4).

Other proposed changes to Rule 30(b)(6) were the subject of active discussion and debate, although the Advisory Committee ultimately decided not to recommend them. One change considered by the Advisory Committee would have required the organization to identify the designated witness or witnesses at some specified time in advance of the deposition. Another change would have added a 30-day notice requirement for 30(b)(6) depositions. It was agreed that these changes would have likely required re-publication. After a great deal of discussion, the Advisory Committee determined, in a split but clear vote, not to pursue these amendments.

Professor Marcus agreed with the summary of the process of considering changes to Rule 30(b)(6) as related by Judge Bates and noted that the Standing Committee had also engaged in a vigorous discussion of the issues at previous meetings. Judge Bates noted that the Advisory Committee voted to approve the Committee Note language line-by-line, and virtually word-by-word. The ultimate proposal reflects the hard work of a subcommittee chaired by Judge Joan Ericksen.

A member voiced support for changes to a rule both sides of the bar agree is problematic but wondered whether much is accomplished by imposing a requirement to confer without specifying what must be discussed; this member suggested that the proposed amendment had “no meat on the bone.” The Committee Note could provide additional guidance, but the current version does not do so. The member noted the difficulty in changing the rule given the differing views on what should be a required disclosure prior to a deposition. A judge member echoed the concern that the modest amendment does not add that much given that Rules 26 and 37 provide a process to handle any objection to a 30(b)(6) notice.

Judge Bates agreed that the amendment is modest and will not lead to a wholesale change in 30(b)(6) deposition practice. The amendment does put existing best practice in the rule itself, which may lead to improvements in some cases. The Advisory Committee ended up with this limited recommendation because it found agreement within the bar on this narrow issue, while in general other suggestions were met with intense disagreement from one side or the other.

A judge member stated that he understood the disagreement and the reasons for it but wondered why the Committee should endorse such a limited change given the presumption that something notable has changed. Judge Campbell responded that often rules are written for the weakest lawyers and gave his view that the modest change would improve practice in some cases. In his experience, the most frequent complaint from one side is that the witness is not adequately prepared while the most frequent complaint by the other is that the notice is not precise enough on what the matters are for examination. These complaints usually come to him from the lawyers who do not talk to each other in advance of the deposition. He has often thought if you could get people to talk in advance of the deposition both sides would have greater understanding going into the deposition and a better-prepared witness. It is a marginal change but one that will help. Judge Bates stated that this was the sentiment of the Advisory Committee.

Responding to the suggestion that Rules 26 and 37 already provide a process to handle disputes over Rule 30(b)(6) depositions, Professor Marcus noted that those rules address the handling of disputes that have already become combative; the proposed amendment to Rule 30(b)(6), by contrast, would require the parties to confer *before* conflict has a chance to arise. A member noted that he viewed the amendment as a warning of sorts not to engage in gamesmanship. If this does not work, this rule will come back to the Committee. Judge Bates noted that this rule comes back to the Advisory Committee every few years. The Federal Magistrate Judges Association, Professor Marcus noted, supported the proposed amendment while also suggesting that further changes might be warranted depending on how this change works in practice.

Professor Beale complimented the Advisory Committee on the consideration of a huge amount of input received from the public. She stated that Professor Marcus's presentation of that input could serve as a model for how to handle a large volume of comments. Judge Bates and Professor Coquillette echoed similar praise for the work of the Advisory Committee and Professor Marcus. Professor Coquillette emphasized that it is not just the result that matters, it is the public perception of the process. The Reporters and the Committee, he observed, had done much to build confidence in that process among members of the bar. Another member emphasized that with this particular rule, most changes proposed by one party were changes thought to alter the negotiating balance vis-à-vis the opposing party. The Advisory Committee's careful and impressive effort had been to improve the Rule without seeming to favor one side or the other.

Upon motion, seconded by a member, and on a voice vote: **The Committee decided to recommend the amendments to Rule 30(b)(6) for approval by the Judicial Conference.**

Rule 7.1. Judge Bates introduced the second action item from the Advisory Committee, a proposal to publish for comment amendments to Rule 7.1, the rule concerning disclosure statements. The first proposed amendment conforms Rule 7.1 to pending amendments to Appellate Rule 26.1 and Bankruptcy Rule 8012(a) so that a disclosure statement is required of a nongovernmental corporation that seeks to intervene. The proposed amendment also deletes the direction to file two copies of the disclosure statement, as that requirement has been rendered superfluous by electronic court dockets.

A second proposed amendment would add a new subsection 7.1(a)(2) requiring parties to disclose the name and citizenship of those whose citizenship is attributable to the party for purposes of determining diversity jurisdiction. A prominent example of the need for this amendment arises in cases where a party is a limited liability company (LLC). Many judges now require the parties to provide detailed information about LLC citizenship. This practice serves to ensure that diversity jurisdiction actually exists, a significant matter, and it protects against the risk that a federal court's substantial investment in a case will be lost by a belated discovery – perhaps even on appeal – that there is no diversity.

Judge Bates observed that a member of the Standing Committee had raised a question about the applicability of 7.1(b)(2), which requires a supplemental filing whenever information changes after the filing of a disclosure statement. Given that diversity is determined at the time of filing, a supplemental filing is irrelevant for diversity purposes. Accordingly, Judge Bates suggested a slight modification of the proposed language to 7.1(a)(2) to state: “at the time of filing.” This would remove the obligation to make a supplemental filing when it is not relevant to the diversity determination.

A judge member spoke in favor of the proposal, as modified by the friendly amendment just described. He suggested a conforming change to the Committee Note (at page 232, line 273 of the agenda book).

Judge Campbell pointed to the language “unless the court orders otherwise” in proposed new subdivision (a)(2) as a safety valve for situations in which a party has a privacy concern connected to disclosure. In such an instance, the party could seek court protection from public disclosure of the information but would still need to provide the information bearing on the existence (or not) of diversity jurisdiction.

Upon motion, seconded by a member, and on a voice vote: **The Committee approved for publication in August 2019 the proposed amendments to Rule 7.1.**

Information Items

Consideration of Proposals to Develop MDL Rules. Judge Bates reviewed the continuing examination of proposals to formulate rules for multidistrict litigation (MDL) proceedings, the work on which has been done by the MDL Subcommittee, chaired by Judge Robert Dow. Judge Bates described efforts by the subcommittee to obtain information on this complex set of issues. He noted that the Judicial Panel on Multidistrict Litigation (JPML) has been very helpful and engaged. Judge Bates observed that the consideration of possible MDL rules has generated a great deal of discussion among lawyers and judges, and the MDL process will likely be improved as a result, even if rules are not ultimately proposed.

Judge Bates described the focus of ongoing work, primarily on four subjects: (1) the use of Plaintiff Fact Sheets (PFSS) – and perhaps Defendant Fact Sheets (DFSS) – to organize MDL personal injury litigation, particularly in MDLs with a thousand or more cases, and to “jump start” discovery; (2) the feasibility of providing an additional avenue for interlocutory appellate review of district court orders in MDLs; (3) addressing the court's role in relation to global

settlement of multiple claims in MDLs; and (4) third-party litigation funding (TPLF), which is not unique to the MDL setting.

TPLF. Judge Bates noted that the general topic of TPLF has received a great deal of attention. TPLF is not unique to MDL proceedings, and indeed might be less prevalent in MDLs than other settings. Many courts require disclosure of TPLF information. TPLF is a rapidly evolving area. The TPLF topic remains on the subcommittee's agenda; it is not clear whether the subcommittee will recommend a rules response to this issue.

Judicial Involvement in MDL Settlements. The subcommittee continues to study judicial involvement in review of MDL settlements. Both the plaintiffs' and the defense bar would like to avoid rules that would require more judicial involvement in settlements. Current practice varies a lot by judge; transferee judges are split on it, with some being very active in settlements and others not. The issues are different than in a class action because every individual MDL plaintiff has an attorney.

PFSs/DFSs. Judge Bates stated that most of the subcommittee's attention has focused on PFSs and interlocutory appellate review. PFSs are used in some 80% of the big MDLs, although there is some definitional issue about what counts as a PFS. DFSs are also often used in large MDLs. A more recent proposal concerns something called an initial census of claims, which is similar to a PFS but more streamlined, and would be used early in the litigation to capture exposure and injury, not expert testimony or causation. This proposal has some support from both sides of the bar, which may mean there is no reason to have a rule. One problem with a PFS is the length of time to get those negotiated – sometimes as long as eight months – as well as the time necessary to produce responsive information. Something simpler that could be routinely used might be advantageous. The subcommittee continues to look for ideas that could get support from transferee judges as well as the plaintiffs' and defense bars.

Interlocutory Review. Judge Bates described the subcommittee's ongoing examination of issues concerning interlocutory review in MDL proceedings, a subject on which plaintiff and defense counsel have very different perspectives. One area of dispute is the utility of review under 28 U.S.C. § 1292(b). Different studies have reached different conclusions. The Advisory Committee received one study on the subject compiled by the defense bar. At a recent event in Boston, the plaintiffs' bar presented additional and contrary data in an oral presentation. The Advisory Committee asked the plaintiffs' bar to put their empirical data in writing. The defense bar felt it had not responded fully to the plaintiffs' presentation. The subcommittee is awaiting further information from both sides of the bar.

Professor Marcus noted that the process of considering rulemaking has generated good discussion about best practices that may ultimately be more beneficial than new rules.

A member asked whether the subcommittee had analyzed the grant rate for § 1292(b) applications by circuit. This member has asked an associate to look at this question but the research is not completed yet. The question, this member suggested, is whether the district court should continue to serve as a gatekeeper for these interlocutory appeals. This member noted that Rule 23(f) works well in the class action context and wondered about comparing the grant rate for Rule

23(f) petitions. Judge Bates responded that the bar is providing that data, and sometimes conflicting data. One might also investigate whether the defense bar sometimes opts not to seek review under § 1292(b). Professor Marcus indicated that the data are currently contested.

A judge member asked why the proposal under discussion would expand the availability of interlocutory review only for mass tort MDLs and not other complex litigation. Professor Marcus characterized the current issue as responding to the “squeaky wheel” and pointed to proposed legislation that addresses claims in the MDL setting. Professor Marcus noted that in rulemaking applicable to one type of case, you will always have to define what the rule does not apply to, which can be difficult. An attorney member suggested that expanded interlocutory review should apply to all MDLs, not merely a subset of them. Judge Bates observed that the more one increases the number of MDLs eligible for expanded interlocutory review, the harder it would become to provide expedited treatment for those appeals.

Judge Campbell noted that requiring PFSs in cases over a certain threshold, for example, MDLs over a thousand cases, will raise the issue that MDLs grow over time; by the time a given MDL hits the threshold, it might be late to require a PFS. Professor Marcus noted that because MDL centralization may often occur before a given threshold number of cases is reached, it is difficult to draft an applicable rule. Who monitors this, and how do you write that in a rule? Judge Bates stated this is an example of why transferee judges say they need flexibility.

Another judge member noted that there are two different things going on with regard to PFS proposals. The first is use of the PFS to jump start discovery. The second is use of the PFS to screen out meritless cases. These are two different objectives, which may require different solutions.

Social Security Disability Review. The Social Security Disability Review Subcommittee continues to work toward a determination whether new Civil Rules can improve the handling of actions to review disability decisions under 42 U.S.C. § 405(g). This proposal originated from the Administrative Conference of the United States. Professor Cooper has worked on this effort along with the chair of the subcommittee, Judge Sara Lioi.

The Social Security Administration (SSA) is very enthusiastic about the idea of national rules, even the pared-down discussion draft that the subcommittee has discussed with SSA and other groups most recently. The DOJ is not as enthusiastic but is not voicing an objection. The plaintiffs’ bar is coalescing in opposition to national rules, which it views as unnecessary. The subcommittee met on June 20, 2019 with claimants’ representatives, the SSA, the DOJ, magistrate judges, and others who are familiar with present practices. The purpose of the meeting was to focus on getting input from the claimants’ bar. It was a good meeting with positive input that will lead to changes in the working draft.

Professor Cooper stated the subcommittee hopes to make a recommendation at the Advisory Committee’s October meeting on whether to proceed further with a rulemaking proposal on this topic. Such rulemaking, he noted, would be in tension with the important principle of trans-substantivity in the rules. Even so, Professor Cooper cautioned that the subcommittee should not lightly turn away from a proposal that could improve the lives of those

who deal with these cases. Social Security cases, he observed, constitute a large share (8%) of the federal civil docket. Another issue is how to draft a rule that would supersede undesirable local rules while permitting the retention of valuable ones.

Professor Coquillette emphasized the need to exercise caution when departing from the principle of trans-substantivity in rulemaking. As soon as one permits the insertion into the national Rules of substance-specific provisions, one increases the risk of lobbying by special interests. If there is a need for rules on Social Security review cases, one solution might be to create a separate set of rules for that purpose.

Other Information Items. Judge Bates briefly summarized the following additional information items:

(1) Questions have arisen about the meaning of the provisions in Civil Rule 4(c)(3) for service of process by a United States marshal in cases brought by a plaintiff *in forma pauperis*. These questions are being explored with the U.S. Marshals Service.

(2) The Civil and Appellate Rules Committees have formed a joint subcommittee to consider whether to amend the rules – perhaps only the Civil Rules – to address the effect (on the final judgment rule) of consolidating initially separate actions. *Hall v. Hall*, 138 S. Ct. 1118 (2018), established a clear rule that actions initially filed as separate actions retain their separate identities for purposes of final judgment appeals, no matter how completely the actions have been consolidated in the trial court. Complete disposition of all claims among all parties to what began as a single case establishes finality for purposes of appeal under 28 U.S.C. § 1291. The subcommittee has begun its deliberations with a conference call to discuss initial steps. The opinion in *Hall v. Hall* concluded by suggesting that if “our holding in this case were to give rise to practical problems for district courts and litigants, the appropriate Federal Rules Advisory Committees would certainly remain free to take the matter up and recommend revisions accordingly.”

(3) Rule 73(b)(1) was reviewed after the Advisory Committee received reports that the CM/ECF system automatically sends to the district judge assigned to a case individual consents to trial before a magistrate judge. That feature of the system disrupts the operation of the rule that “[a] district judge or magistrate judge may be informed of a party’s response to the clerk’s notice only if all parties have consented to the referral.” No other ground to revisit Rule 73(b)(1) has been suggested. It would be better to correct the workings of the CM/ECF system than to amend the rule. Initial advice was that it is not possible to defeat the automatic notice feature, but there may be a work-around that would obviate the need for a rule. The Advisory Committee has suspended consideration of possible rule amendments while a system fix is explored.

(4) The Advisory Committee continues to consider the privacy of disability filings under the Railroad Retirement Act. The Appellate Rules Committee is taking the lead because review of those cases goes to the courts of appeals in the first instance.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Livingston and Professor Capra delivered the report of the Advisory Committee on Evidence Rules. Judge Livingston explained that the Advisory Committee had one action item – the proposed amendment to Rule 404(b) for final approval – and three information items related to Rules 106, 615, and 702.

Proposed Amendment to Rule 404(b) (Character Evidence; Crimes or Other Acts). The Advisory Committee sought final approval of proposed amendments to Rule 404(b). Professor Capra explained that the Advisory Committee had been monitoring significant developments in the case law on Rule 404(b), governing admissibility of other crimes, wrongs, or acts. He stated that the Advisory Committee determined that it would not propose substantive amendments to Rule 404(b) to accord with the developing case law because such amendments would make the rule rigid and more difficult to apply without achieving substantial improvement.

The Advisory Committee determined, however, that it would be useful to amend Rule 404(b) in some respects, especially with regard to the notice requirement in criminal cases. As to that requirement, the Committee determined that the notice should articulate the purpose for which the evidence will be offered and the reasoning supporting the purpose. Professor Capra noted issues that the Committee had observed with the operation of the current Rule. In some cases a party offers evidence for a laundry list of purposes, and the jury receives a corresponding laundry list of limiting instructions. Some courts rule on admissibility without analyzing the non-propensity purpose for which the evidence is offered. And some notices lack adequate specificity.

Professor Capra stated that the proposal to amend Rule 404(b) was published for comment in August 2018. Given how often 404(b) is invoked in criminal cases, Professor Capra expected robust comments, but only a few comments were filed, and they were generally favorable. In response to public comments and discussion before the Standing Committee, the Advisory Committee made two changes to the proposed Rule text as issued for public comment. Most importantly, the Committee changed the term “non-propensity” purpose to “permitted” purpose. Secondly, the Committee changed the notice provision to clarify that the “fair opportunity” requirement applies to notice given at trial after a finding of good cause.

A Committee member suggested replacing the verb “articulate” in the proposed amendment because, he suggested, the term usually refers to a spoken word rather than written material. He noted that the term is not used elsewhere in the Federal Rules. Professor Capra pointed out that the proposed amendment was an effort to get beyond merely stating a purpose. The terms “specify” or “state” were suggested as substitutions for “articulate.” Judge Campbell stated that the use of the term “articulate” suggests both identifying the purpose and explaining the reasoning. Professor Capra noted that the word “articulate” is what the Advisory Committee agreed to, and it suggests more rigor. A DOJ representative noted that the language in the proposed amendment was the subject of painstaking negotiation, and that she preferred to retain

the negotiated language to avoid unintended consequences. The Committee determined to retain the term “articulate.”

A judge member noted that the Committee Note still used the term “non-propensity” purpose even though that term had been removed from the text of the rule. Professor Capra explained that the use of the term was intentional and resulted from significant discussion at the Advisory Committee’s meeting. Judge Campbell added that part of the reason for retaining the language in the Committee Note was to provide guidance to judges in applying the rule. Judge Livingston explained that the term propensity is embedded in caselaw and the Committee Note’s use of that term would provide a good signal to readers to focus their caselaw research on that term.

Another judge member asked about the use of the term “relevant” in the Committee Note’s statement that “[t]he prosecution must ... articulate a non-propensity purpose ... and the basis for concluding that the evidence is relevant in light of this purpose.” Judge Livingston explained that this passage reflected a complex underlying discussion, and that the Committee was attempting to avoid undue specificity in the Committee Note.

Upon motion by a member, seconded by another, and on a voice vote: **The Committee decided to recommend the amendments to Rule 404(b) for approval by the Judicial Conference.**

Professor Capra thanked the DOJ for all its work on the rule. A DOJ representative noted the sensitivity of Rule 404(b) and thanked Professor Capra, Judge Livingston, and prior chair Judge Sessions for more than five years’ work on the rule.

Information Items

Professor Capra summarized the Advisory Committee’s ongoing consideration of possible amendments to Rule 106, sometimes known as the rule of completeness. The Advisory Committee is considering two kinds of potential amendments – one that would provide that a completing statement is admissible over a hearsay objection, and another that would provide that the rule covers oral as well as written or recorded statements. In an illustrative scenario, the defendant makes the statement “this is my gun, but I sold it two months ago,” and the prosecution offers the first portion of the statement and objects to the admission of the latter portion on hearsay grounds. Some courts admit a completing oral statement into evidence over a hearsay objection, but other courts do not admit the completing statement. The Advisory Committee reached consensus on the desirability of acting to resolve the conflict but is carefully considering how such an amendment should be written and what limitations should govern when such a completing statement should be admitted over a hearsay objection. The Advisory Committee has received information about how completing oral statements are handled in other jurisdictions, including California and New Hampshire.

The next information item concerns Rule 615, the sequestration rule. The Advisory Committee is considering whether to propose an amendment addressing the scope of a Rule 615 order. The Rule text contemplates the exclusion of witnesses from the courtroom; one question is

whether a Rule 615 order can also bar access to trial testimony by witnesses when they are outside the courtroom. Most courts have answered this question in the affirmative, but others apply a more literal reading of the rule. The Advisory Committee is considering an amendment that would specifically allow courts discretion to extend a Rule 615 order beyond the courtroom. The rule would not be mandatory. One potentially challenging issue is how to treat trial counsel's preparation of excluded witnesses.

Professor Capra next reported on the Advisory Committee's ongoing work with regard to Rule 702. In September 2016 the President's Council of Advisors on Science and Technology issued a report which contained a host of recommendations for federal scientific agencies, the DOJ, and the judiciary, relating to forensic sciences and improving the way forensic feature-comparison evidence is employed in trials. This prompted the Advisory Committee's consideration of possible changes to Rule 702. Judge Livingston appointed a Rule 702 Subcommittee to study what the Advisory Committee might do to address concerns relating to forensic evidence. In fall 2017 the Advisory Committee held a symposium on forensics and *Daubert* at Boston College School of Law.

Following discussion by the Advisory Committee, the main issue the subcommittee is considering concerns how to help courts to deal with overstatements by expert witnesses, including forensic expert witnesses. Professor Capra noted that the DOJ is currently reviewing its practices related to forensic evidence testimony, and some have suggested waiting to see the results of the DOJ's efforts. Judge Livingston stated that one threshold issue is whether the problems should be addressed by rule, or perhaps by judicial education. Judge Livingston thanked the DOJ and Professor Capra for putting together a presentation for the Second Circuit on forensic evidence that is available on video. Professor Capra noted that there will be a miniconference in the fall at Vanderbilt Law School to continue discussion of these issues and *Daubert*.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Molloy presented the report of the Advisory Committee on Criminal Rules, which consisted of four information items.

Judge Molloy first reported on the Advisory Committee's decision not to move forward with suggestions that it amend Rule 43 to permit the court to sentence or take a guilty plea by videoconference. The Advisory Committee has considered suggestions to amend Rule 43 several times in recent years. The first suggestion came from a judge who assists in districts other than his own and who sought to conduct proceedings by videoconference as a matter of efficiency and convenience. The Advisory Committee concluded that an amendment to Rule 43 was not warranted to address that circumstance.

The second suggestion to amend Rule 43 came from the Seventh Circuit's opinion in *United States v. Bethea*, 888 F.3d 864, 868 (7th Cir. 2018), which included the specific statement that "it would be sensible" to amend Rule 43(a)'s requirement that the defendant must be physically present for the plea and sentence. In *Bethea*, the defendant's many health problems made it extremely difficult for him to come to the courtroom, and given his susceptibility to

broken bones, doing so might have been dangerous for him. After *Bethea* was permitted to appear by videoconference for his plea and sentencing as requested by his counsel, *Bethea* appealed and argued that the physical-presence requirement in Rule 43 was not waivable. The Seventh Circuit in *Bethea* concluded that even under the exceptional facts presented “the plain language of Rule 43 requires all parties to be present for a defendant’s plea” and “a defendant cannot consent to a plea via videoconference.” *Id.* at 867. Advisory Committee members emphasized that physical presence is extraordinarily important at plea and sentencing proceedings, but they also recognized that *Bethea* was a very compelling case. On the other hand, members wondered if the case might be a one-off, since practical accommodations at the request of the defendant – with the agreement of the government and the court – have been made in such rare situations, obviating the need for an amendment.

A subcommittee that was formed to consider the issue and chaired by Judge Denise Page Hood recommended against amending the rule to permit use of videoconferencing for plea and sentencing proceedings. The subcommittee acknowledged that there are, and will continue to be, cases in which health problems make it difficult or impossible for a defendant to appear in court to enter a plea or be sentenced, and that Rule 43 does not presently allow the use of videoconferencing in such cases (though that is less clear for sentencing than for plea proceedings). Nonetheless, it recommended against amending the rule for three reasons. First, and most important, the subcommittee reaffirmed the importance of direct face-to-face contact between the judge and a defendant who is entering a plea or being sentenced. Second, there are options – other than amending the rules – to allow a case to move forward despite serious health concerns. These options include, for example, reducing the criminal charge to a misdemeanor (where videoconferencing is permissible under Rule 43), transferring the case to another district to avoid the need for a gravely ill defendant to travel, and entering a plea agreement containing both a specific sentence under Rule 11(c)(1)(C) and an appeal waiver. Finally, the subcommittee was concerned that there would inevitably be constant pressure from judges to expand any exception to the requirement of physical presence at plea or sentencing. The Advisory Committee unanimously agreed with the subcommittee’s recommendation not to amend Rule 43.

Shortly after that determination, the Advisory Committee received a request for reconsideration of that determination. Judges who serve in border states asked for the ability to use videoconferencing for pleas and sentencing. These judges explained that their courts were dealing with thousands of cases brought under 8 U.S.C. § 1326 against defendants charged with illegal reentry. Their districts cover vast distances and, under existing rules, either the judge must travel, or the U.S. Marshals Service must transport defendants. While sympathetic to the issue, the Advisory Committee determined that it would be undesirable to open the door to videoconferencing for these critical procedures. There is a slippery slope and once exceptions are made to the physical presence requirement, exceptions could swallow the rule in the name of efficiency.

Professor King noted that several years ago when the rules were reviewed with an idea of updating them to account for technological advancements, including enhanced audio/visual capabilities, some rules were amended but Rule 43’s physical-presence requirement was left unchanged.

Judge Molloy next addressed the Advisory Committee's consideration of a suggestion received from a magistrate judge to amend Rule 40 to clarify the procedures for arrest for violations of conditions of release set in another district. The issue arises from the interaction of Rule 40 with 18 U.S.C. § 3148(b) and Rule 5(c)(3). Section 3148(b) governs the procedure for revocation of pretrial release, and as generally understood it provides that the revocation proceedings will ordinarily be heard by the judicial officer who ordered the release. After discussing the ambiguities in Rule 40 and in 18 U.S.C. § 3148(b), the Advisory Committee decided Rule 40 could benefit from clarification but agreed with an observation by Judge Campbell that many rules could benefit from clarification, but the Rules Committees must be selective. Given the relative infrequency with which this scenario arises, and the fact that the courts have generally handled the cases that do arise without significant problems, the Advisory Committee decided to take no action at this time. Judge Bruce McGiverin greatly assisted the Advisory Committee in understanding the issues by sharing his own experience and by consulting widely among the community of magistrate judges.

Judge Molloy next introduced the Advisory Committee's consideration of Rule 16, an issue he noted ties in with the Evidence Rules Advisory Committee's report about expert testimony as well as Civil Rule 26's requirements for expert discovery. Judge Molloy noted that he has served on the Advisory Committee for eleven years and for most of that time Rule 16 has been on the agenda. Judge Kethledge chairs the Rule 16 Subcommittee that has been asked to review suggestions to amend Rule 16 so that it more closely follows Civil Rule 26's provisions for disclosures regarding expert witnesses. Back in the early 1990s, there was a suggestion that discovery rules on experts in criminal cases be made parallel to rules governing civil cases. The Criminal Rules did not change, although changes to Civil Rule 26 went forward.

To address the questions before the subcommittee, Judge Kethledge convened a miniconference to discuss possible amendments to Rule 16. There was a very strong group of participants, from various parts of the country, including six or seven defense practitioners, and five or six representatives from the DOJ. Most had significant personal experience with these issues and had worked with experts.

Judge Kethledge organized discussion at the miniconference into two parts. First, participants were asked to identify any concerns or problems they saw with the current rule. Second, they were asked to provide suggestions to improve the rule.

The defense side identified two problems with the rule. First, Rule 16 has no timing requirement. Practitioners reported they sometimes received summaries of expert testimony a week or the night before trial, which significantly impaired their ability to prepare for trial. Second, they said that they do not receive disclosures with sufficiently detailed information to allow them to prepare to cross examine the witness. In contrast, the DOJ representatives stated that they were unaware of problems with the rule and expressed opposition to making criminal discovery more akin to Rule 26.

When discussion turned to possible solutions on the issues of timing and completeness of expert discovery, participants made significant progress in identifying some common ground. The DOJ representatives said that framing the problems in terms of timing and sufficiency of the

notice was very helpful. It was useful to know that the practitioners were not seeking changes regarding forensic evidence, overstatement by expert witnesses, or information about the expert's credentials. The lack of precise framing explained, at least to some degree, why the DOJ personnel who focused on these other issues were not aware of problems with disclosure relating to expert witnesses. The subcommittee came away from the miniconference with concrete suggestions for language that would address timing and completeness of expert discovery.

Judge Molloy stated that the subcommittee plans to present a proposal to amend Rule 16 at the Advisory Committee's September meeting.

A DOJ representative noted that the Department views this less as a need for a rule change and more as a need to train lawyers so that prosecutors and defense counsel alike understand what the rules are. Prosecutors need to understand what the concerns are and the Department needs to conduct training to ensure this understanding. The DOJ has worked with Federal Public Defender Donna Elm to highlight the problematic issues; a training course presented by the DOJ's National Advocacy Center will be shown to all prosecutors. Even if a rule change were to go forward, it would take years. Collaboration on training means that the Department can begin to address problems now.

Judge Molloy provided a brief update on progress in implementing the recommendations of the Task Force on Protecting Cooperators. Task Force member Judge St. Eve reported on the status of efforts by the Bureau of Prisons to implement certain recommendations. One recommendation is to adopt provisions for disciplining inmates who pressure other inmates to "show their papers."

Judge Campbell thanked the advisory committee chairs and reporters for all the work that goes into the consideration of every suggestion. He noted that even a five-minute report on a given issue may be the result of long and painstaking effort.

OTHER COMMITTEE BUSINESS

Proposal to Revise Electronic Filing Deadline. Judge Chagares explained his suggestion that the Advisory Committees study whether the rules should be amended to move the current midnight electronic-filing deadline to earlier in the day, such as when the clerk's office closes in the respective court's time zone. The Supreme Court of Delaware has adopted such a practice. Judge Campbell delegated to Judge Chagares the task of forming a subcommittee to study the issue and provide an initial report at the January meeting.

Legislative Report. Julie Wilson delivered the legislative report. She noted that the 116th Congress convened on January 3, 2019, and she described several bills that have been introduced or reintroduced that are of interest to the rules process or the courts generally. There has been no legislative activity to move these bills forward. Ms. Wilson reviewed several pieces of legislation of general interest to the courts. Scott Myers provided an overview of H.R. 3304, a bipartisan bill introduced the week before the Committee meeting that would extend for an additional four years the existing exemption from the means test for chapter seven filers who are certain National Guard reservists. The bill is expected to pass; absent passage, an amendment to the

Bankruptcy Rules would be required. The Rules Committee Staff will continue to monitor any legislation introduced that would directly or effectively amend the federal rules.

Judiciary Strategic Planning. Judge Campbell discussed the Judiciary’s strategic planning process and the Committee’s involvement in that process. He solicited comments on the Committee’s identified strategic initiatives and the extent to which those initiatives have achieved their desired outcomes. Judge Campbell also invited input on the proposed approach for the update of the *Strategic Plan for the Federal Judiciary* that is to take place in 2020. Judge Campbell will correspond with the Judiciary’s planning coordinator regarding these matters.

Procedure for Handling Public Input Outside the Established Public Comment Period. Judge Campbell summarized prior discussions by the Committee concerning how public submissions received outside the formal public comment period should be handled, including submissions addressed directly to the Standing Committee. Professor Struve explained the revised draft principles concerning public input during the Rules Enabling Act process and welcomed additional comments on the draft. These procedures are proposed to be posted on the website for the Judiciary. *See Revised Draft Principles Concerning Public Input During the Rules Enabling Act Process* (agenda book, p. 495).

Upon motion by a member, seconded by another, and on a voice vote: **The Committee approved the principles concerning public input.**

CONCLUDING REMARKS

Before adjourning the meeting, Judge Campbell thanked the Committee’s members and other attendees for their preparation and contributions to the discussion. The Committee will next meet in Phoenix, Arizona on January 28, 2020.

Respectfully submitted,

Rebecca A. Womeldorf
Secretary, Standing Committee

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SUMMARY OF THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The Committee on Rules of Practice and Procedure recommends that the Judicial Conference:

1. Approve the proposed amendments to Appellate Rules 35 and 40 as set forth in Appendix A and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law pp. 2-3
2. a. Approve the proposed amendments to Bankruptcy Rules 2002, 2004, 8012, 8013, 8015, and 8021 as set forth in Appendix B and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law; and
b. Approve effective December 1, 2019, Official Form 122A-1 for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date pp. 6-10
3. Approve the proposed amendment to Civil Rule 30(b)(6) as set forth in Appendix C and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law pp. 13-15
4. Approve the proposed amendment to Evidence Rule 404 as set forth in Appendix D and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law pp. 20-21

The remainder of this report is submitted for the record and includes the following for the information of the Judicial Conference:

§	Federal Rules of Appellate Procedure	pp. 3-6
§	Federal Rules of Bankruptcy Procedure	pp. 10-13
§	Federal Rules of Civil Procedure.....	pp. 15-18
§	Federal Rules of Criminal Procedure.....	pp. 18-20
§	Federal Rules of Evidence	pp. 21-24
§	Other Items	pp. 24-25

<p>NOTICE NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.</p>
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REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

The Committee on Rules of Practice and Procedure (Standing Committee or Committee) met on June 25, 2019. All members participated.

Representing the advisory committees were Judge Michael A. Chagares, Chair, and Professor Edward Hartnett, Reporter, of the Advisory Committee on Appellate Rules; Judge Dennis Dow, Chair, Professor S. Elizabeth Gibson, Reporter, and Professor Laura Bartell, Associate Reporter, of the Advisory Committee on Bankruptcy Rules; Judge John D. Bates, Chair, Professor Edward H. Cooper, Reporter, and Professor Richard L. Marcus, Associate Reporter, of the Advisory Committee on Civil Rules; Judge Donald W. Molloy, Chair, Professor Sara Sun Beale, Reporter, and Professor Nancy J. King, Associate Reporter, of the Advisory Committee on Criminal Rules; and Judge Debra Ann Livingston, Chair, and Professor Daniel J. Capra, Reporter, of the Advisory Committee on Evidence Rules.

Also participating in the meeting were Professor Catherine T. Struve, the Standing Committee's Reporter; Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee; Rebecca A. Womeldorf, the Standing Committee's Secretary; Bridget Healy, Scott Myers, and Julie Wilson, Rules Committee Staff Counsel; Ahmad Al Dajani, Law Clerk to the Standing Committee; and Judge John S. Cooke, Director, and Dr. Tim Reagan, Senior Research Associate, of the Federal Judicial Center (FJC).

NOTICE

**NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE
UNLESS APPROVED BY THE CONFERENCE ITSELF.**

Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, and Andrew Goldsmith, National Coordinator of Criminal Discovery Initiatives, represented the Department of Justice (DOJ) on behalf of Deputy Attorney General Jeffrey A. Rosen.

In addition to its general business, including a review of the status of pending rules amendments in different stages of the Rules Enabling Act process, the Committee received and responded to reports from the five rules advisory committees and discussed four information items.

FEDERAL RULES OF APPELLATE PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee submitted proposed amendments to Rules 35 and 40. The amendments were published for public comment in August 2018.

The proposed amendments to Rules 35 (En Banc Determination) and 40 (Petition for Panel Rehearing) would create length limits for responses to petitions for rehearing. The existing rules limit the length of petitions for rehearing, but do not restrict the length of responses to those petitions. The proposed amendments would also change the term “answer” in Rule 40(a)(3) to the term “response,” making it consistent with Rule 35.

There was only one comment submitted. That comment, submitted by Aderant Compulaw, agreed with the proposed amendment to Rule 40(a)(3), noting that “it will promote consistency and avoid confusion if Appellate Rule 35 and Appellate Rule 40 utilize the same terminology.” The Advisory Committee sought final approval for the proposed amendments as published.

The Standing Committee voted unanimously to adopt the recommendations of the Advisory Committee. The proposed amendments to the Federal Rules of Appellate Procedure

and committee notes are set forth in Appendix A, with an excerpt from the Advisory Committee's report.

Recommendation: That the Judicial Conference approve the proposed amendments to Appellate Rules 35 and 40 as set forth in Appendix A and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Rules and Forms Approved for Publication and Comment

The Advisory Committee submitted proposed amendments to Rules 3, 6, and 42, and Forms 1 and 2, with a request that they be published for public comment in August 2019. The Standing Committee unanimously approved the Advisory Committee's request.

Rule 3 (Appeal as of Right – How Taken), Rule 6 (Appeal in a Bankruptcy Case), Form 1 (Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court), and Form 2 (Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court)

The proposed amendments address the effect on the scope of an appeal of designating a specific interlocutory order in a notice of appeal. The initial suggestion pointed to a line of cases in one circuit applying an *expressio unius rationale* to conclude that a notice of appeal that designates a final judgment plus one interlocutory order limits the appeal to that order rather than treating a notice of appeal that designates the final judgment as reaching all interlocutory orders that merged into the judgment. Research conducted after receiving the suggestion revealed that the problem is not confined to a single circuit, but that there is substantial confusion both across and within circuits.

Rule 3(c)(1)(B) currently requires that a notice of appeal “designate the judgment, order, or part thereof being appealed.” The judgment or order to be designated is the one serving as the basis of the court's appellate jurisdiction and from which time limits are calculated. However, some interpret this language as an invitation, if not a requirement, to designate each and every order of the district court that the appellant may wish to challenge on appeal. Such an interpretation overlooks a key distinction between the judgment or order on appeal – the one

serving as the basis of the court’s appellate jurisdiction and from which time limits are calculated – and the various orders or decisions that may be reviewed on appeal because they merge into the judgment or order on appeal.

The Advisory Committee considered various ways to make this point clearer. It settled on four interrelated changes to Rule 3(c)(1)(B). First, to highlight the distinction between the ordinary case in which an appeal is taken from the final judgment and the less-common case in which an appeal is taken from some other order, the term “judgment” and the term “order” are separated by a dash. Second, to clarify that the kind of order that is to be designated in the latter situation is one that can serve as the basis of the court’s appellate jurisdiction, the word “appealable” is added before the word “order.” Third, to clarify that the judgment or order to be designated is the one serving as the basis of the court’s appellate jurisdiction, the phrase “from which the appeal is taken” replaces the phrase “being appealed.” Finally, the phrase “part thereof” is deleted because the Advisory Committee viewed this phrase as contributing to the problem. The result would require the appellant to designate the judgment – or the appealable order – from which the appeal is taken. Additional new subsections of Rule 3(c) would call attention to the merger principle.

The proposed amendments to Form 1 would create a Form 1A (Notice of Appeal to a Court of Appeals From a Judgment of a District Court) and Form 1B (Notice of Appeal to a Court of Appeals From an Appealable Order of a District Court). Having different suggested forms for appeals from final judgments and appeals from other orders clarifies what should be designated in a notice of appeal. In addition, the Advisory Committee recommended conforming amendments to Rule 6 to change the reference to “Form 1” to “Forms 1A and 1B,” and to Form 2 to reflect the deletion of “part thereof” from Rule 3(c)(1)(B).

Rule 42 (Voluntary Dismissal)

Current Rule 42(b) provides that the circuit clerk “may” dismiss an appeal “if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due.” Prior to the 1998 restyling of the rules, Rule 42(b) used the word “shall” instead of “may” dismiss. Although the 1998 amendment to Rule 42 was intended to be stylistic only, some courts have concluded that there is now discretion to decline to dismiss. To clarify the distinction between situations where dismissal is mandated by stipulation of the parties and other situations, the proposed amendment would subdivide Rule 42(b), add appropriate subheadings, and change the word “may” to “must” in new Rule 42(b)(1) for stipulated dismissals.

In addition, current Rule 42(b) provides that “no mandate or other process may issue without a court order.” This language has created some difficulty for circuit clerks who have taken to issuing orders in lieu of mandates when appeals are dismissed in order to make clear that jurisdiction over the case is being returned to the district court.

The issues with the language “no mandate or other process may issue without a court order” are avoided – and the purpose of that language served – by deleting it and instead stating directly in new subsection (b)(3): “A court order is required for any relief beyond the mere dismissal of an appeal—including approving a settlement, vacating an action of the district court or an administrative agency, or remanding the case to either of them.” A new subsection (c) was added to the rule to clarify that Rule 42 does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.

Information Items

The Advisory Committee on Appellate Rules met on April 5, 2019. Discussion items included undertaking a comprehensive review of Rules 35 and 40, as well as a suggestion to

limit remote access to electronic files in actions for benefits under the Railroad Retirement Act of 1974, 45 U.S.C. §§ 231-231v.

Rule 35 (En Banc Determination) and Rule 40 (Petition for Panel Rehearing)

As detailed above, the proposed amendments to Rules 35 and 40 published for public comment in August 2018 create length limits for responses to petitions for rehearing. The consideration of those proposed changes prompted the Advisory Committee to consider discrepancies between Rules 35 and 40. The discrepancies are traceable to the time when parties could petition for panel rehearing (covered by Rule 40) but could not petition for rehearing en banc (covered by Rule 35), although parties could “suggest” rehearing en banc. The Advisory Committee determined not to make the rules more parallel but continues to consider possible ways to clarify practice under the two rules.

Privacy in Railroad Retirement Act Benefit Cases

The Advisory Committee was forwarded a suggestion directed to the Advisory Committee on Civil Rules. The suggestion requested that Civil Rule 5.2(c), the rule that limits remote access to electronic files in certain types of cases, be amended to include actions for benefits under the Railroad Retirement Act because of the similarities between actions under the Act and the types of cases included in Civil Rule 5.2(c). But review of Railroad Retirement Act decisions lies in the courts of appeals. For this reason, the Advisory Committee on Appellate Rules will take the lead in considering the suggestion.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules and Official Forms Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 2002, 2004, 8012, 8013, 8015, and 8021, and Official Form 122A-1, with a recommendation that they be approved and transmitted to the Judicial Conference. Three of the

rules were published for comment in August 2018 and are recommended for final approval after consideration of the comments. The proposed amendments to the remaining three rules and the official form are technical or conforming in nature and are recommended for final approval without publication.

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)

The published amendment to Rule 2002: (1) requires giving notice of the entry of an order confirming a chapter 13 plan; (2) limits the need to provide notice to creditors that do not file timely proofs of claim in chapter 12 and chapter 13 cases; and (3) adds a cross-reference in response to the relocation of the provision specifying the deadline for objecting to confirmation of a chapter 13 plan.

Six comments were submitted. Four of the comments included brief statements of support for the amendment. Another comment suggested extending the clerk's noticing duties 30 days beyond the creditor proof of claim deadline because a case trustee or the debtor can still file a claim on behalf of a creditor for 30 days after the deadline. Because the creditor would receive notice of the claim filed on its behalf, the Advisory Committee saw no need for further amendment to the rule. The comment also argued that certain notices should be sent to creditors irrespective of whether they file a proof of claim, but the Advisory Committee disagreed with carving out certain notices. Another comment opposed the change that would require notice of entry of the confirmation order because some courts already have a local practice of sending the confirmation order itself to creditors. The Advisory Committee rejected this suggestion because not all courts send out confirmation orders.

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

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), the attendance of a witness and the production of documents may be compelled by means of a subpoena. The proposed amendment would add explicit authorization to compel production of electronically stored information (ESI). The proposed amendment further provides that a subpoena for a Rule 2004 examination is properly issued from the court where the bankruptcy case is pending by an attorney authorized to practice in that court, even if the examination is to occur in another district.

Three comments were submitted. Two of the comments were generally supportive of the proposed amendments as published, while one comment from the Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan urged that the rule should state that the bankruptcy judge has discretion to consider proportionality in ruling on a request for production of documents and ESI. Prior to publishing proposed Rule 2004, the Advisory Committee carefully considered whether to reference proportionality explicitly in the rule and declined to do so, in part because debtor examinations under Rule 2004 are intended to be broad-ranging. It instead proposed an amendment that would refer specifically to ESI and would harmonize Rule 2004(c)'s subpoena provisions with the subpoena provisions of Civil Rule 45. After consideration of the comments, the Advisory Committee unanimously approved the amendment to Rule 2004(c) as published.

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 percent or more of the party's stock (or file a

statement that there is no such corporation). It is modeled on Appellate Rule 26.1 (adopted by the Supreme Court and transmitted to Congress on April 25, 2019).

At its spring 2018 meeting, the Advisory Committee considered and approved for publication an amendment to Rule 8012 to track the pending amendment to Appellate Rule 26.1 that was adopted by the Supreme Court and transmitted to Congress on April 25, 2019. The amendment to Rule 8012(a) adds a disclosure requirement for nongovernmental corporate intervenors. New Rule 8012(b) requires disclosure of debtors' names and requires disclosures by nongovernmental corporate debtors. Three comments were submitted, all of which were supportive. The amendment was approved as published.

Rules 8013 (Motions; Intervention), 8015 (Form and Length of Briefs; Form of Appendices and Other Papers), and 8021 (Costs)

An amendment to Appellate Rule 25(d) that was adopted by the Supreme Court and transmitted to Congress on April 25, 2019, will eliminate the requirement of proof of service for documents served through the court's electronic-filing system. Corresponding amendments to Appellate Rules 5, 21, 26, 32, and 39 will 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 provisions in Part VIII of the Bankruptcy Rules in large part track the language of their Appellate Rules counterparts, the Advisory Committee recommended conforming technical changes to Bankruptcy Rules 8013(a)(1), 8015(g), and 8021(d). The recommendation was approved.

Official Form 122A-1 (Chapter 7 Statement of Your Current Monthly Income)

The Advisory Committee received a suggestion from an attorney who assists pro se debtors in the Bankruptcy Court of the Central District of California. He noted that Official Form 122A-1 contains an instruction at the end of the form, after the debtor's signature line, explaining that the debtor should *not* complete and file a second form (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. He suggested that the instruction not to file also be added at the end of line 14a of Form 122A-1, where the debtor's current monthly income is calculated. The Advisory Committee agreed that repeating the instruction as suggested would add clarity to the form and recommended the change. The Standing Committee approved the change.

The proposed amendments to the Federal Rules of Bankruptcy Procedure and the proposed revision of Official Bankruptcy Form 122A-1 and committee notes are set forth in Appendix B, with an excerpt from the Advisory Committee's report.

Recommendation: That the Judicial Conference:

- a. Approve the proposed amendments to Bankruptcy Rules 2002, 2004, 8012, 8013, 8015, and 8021 as set forth in Appendix B, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.
- b. Approve effective December 1, 2019, Official Form 122A-1 for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date.

Rules Approved for Publication and Comment

The Advisory Committee submitted proposed amendments to Rules 2005, 3007, 7007.1, and 9036 with a request that they be published for public comment in August 2019. The Standing Committee unanimously approved the Advisory Committee's request.

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

Judge Brian Fenimore of the Western District of Missouri noted that Rule 2005(c) – a provision that deals with conditions to assure attendance or appearance – refers to now-repealed provisions of the Criminal Code. The Advisory Committee agreed that the current reference to 18 U.S.C. § 3146 is no longer accurate and recommended replacing it with a reference to 18 U.S.C. § 3142, where the topic of conditions is now located. Because 18 U.S.C. § 3142 also

addresses matters beyond conditions to assure attendance or appearance, the proposed rule amendment will state that only “relevant” provisions and policies of the statute should be considered.

Rule 3007 (Objections to Claims)

The proposed amendment to Rule 3007 clarifies that only an insurance depository institution as defined by section 3 of the Federal Deposit Insurance Act (FDIA) is entitled to heightened service of a claim objection, and that an objection to a claim filed by a credit union may be served on the person designated on the proof of claim.

Rule 3007 provides, in general, that a claim objection is not required to be served in the manner provided by Rule 7004, but instead can be served by mailing it to the person designated on a creditor’s proof of claim. The rule includes exceptions to this general procedure, one of which is that “if the objection is to the claim of an insured depository institution [service must be] in the manner provided by Rule 7004(h).” The purpose of this exception is to comply with a legislative mandate in the Bankruptcy Reform Act of 1994, set forth in Rule 7004(h), providing that an “insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act)” is entitled to a heightened level of service in adversary proceedings and contested matters.

The current language in Rule 3007(a)(2)(A)(ii) is arguably too broad in that it does not qualify the term “insured depository institution” as being defined by the FDIA. Because the more expansive Bankruptcy Code definition of “insured depository institution” set forth in 11 U.S.C. § 101(35) specifically includes credit unions, such entities also seem to be entitled to heightened service under the rule. The proposed amendment to Rule 3007(a)(2)(A)(ii) would limit its applicability to an insured depository institution as defined by section 3 of the FDIA (consistent with the legislative intent of the Bankruptcy Reform Act of 1994, as set forth in

Rule 7004(h)), thereby clarifying that an objection to a claim filed by a credit union may be served, like most claim objections, on the person designated on the proof of claim.

Rule 7007.1 (Corporate Ownership Statement)

Continuing the advisory committees' efforts to conform the various disclosure statement rules to the pending amendment to Appellate Rule 26.1, the Advisory Committee proposed for publication conforming amendments to Rule 7007.1.

Rule 9036 (Notice by Electronic Transmission)

The proposed amendment would implement a suggestion from the Committee on Court Administration and Case Management requiring high-volume-paper-notice recipients to sign up for electronic service, subject to exceptions required by statute.

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. However, only courts may serve or give notice to an entity at an electronic address registered with the Bankruptcy Noticing Center as part of the Electronic Bankruptcy Noticing program.

Finally, the title of Rule 9036 will change to "Notice and Service by Electronic Transmission" to better reflect its applicability to both electronic noticing and service. The rule does not preclude noticing and service by other means authorized by the court or rules.

Information Items

The Advisory Committee met on April 4, 2019. The agenda for that meeting included a report on the work of the Restyling Subcommittee on the process of restyling the Bankruptcy Rules. The Advisory Committee anticipates this project will take several years to complete.

The Advisory Committee also reviewed a proposed draft Director’s Bankruptcy Form for an application for withdrawal of unclaimed funds in closed bankruptcy cases, along with proposed instructions and proposed orders. The initial draft was the product of the Unclaimed Funds Task Force of the Committee on the Administration of the Bankruptcy System. The Advisory Committee supported the idea of a nationally available form to aid in processing unclaimed funds, made minor modifications, and recommended that the Director adopt the form effective December 1, 2019. The form, instructions, and proposed orders are available on the pending bankruptcy forms page of uscourts.gov and will be relocated to the list of Official and Director’s Bankruptcy Forms on December 1, 2019.

FEDERAL RULES OF CIVIL PROCEDURE

Rule Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted a proposed amendment to Rule 30(b)(6), with a recommendation that it be approved and transmitted to the Judicial Conference. The proposed amendment was published for public comment in August 2018.

Rule 30(b)(6), the rule that addresses deposition notices or subpoenas directed to an organization, appears regularly on the Advisory Committee’s agenda. Counsel for both plaintiffs and defendants complain about problematic practices of opposing counsel under the current rule, but judges report that they are rarely asked to intervene in these disputes. In the past, the Advisory Committee studied the issue extensively but identified no rule amendment that would effectively address the identified problems. The Advisory Committee added the issue to its agenda once again in 2016 and has concluded, through the exhaustive efforts of its Rule 30(b)(6) Subcommittee, that discrete rule changes could address certain of the problems identified by practitioners.

In assessing the utility of rule amendments, the subcommittee began its work by drafting more than a dozen possible amendments and then narrowing down that list. In the summer of 2017, the subcommittee invited comment about practitioners' general experience under the rule as well as the following six potential amendment ideas:

1. Including a specific reference to Rule 30(b)(6) among the topics for discussion by the parties at the Rule 26(f) conference and between the parties and the court at the Rule 16 conference;
2. Clarifying that statements of the Rule 30(b)(6) deponent are not judicial admissions;
3. Requiring and permitting supplementation of Rule 30(b)(6) testimony;
4. Forbidding contention questions in Rule 30(b)(6) depositions;
5. Adding a provision to Rule 30(b)(6) for objections; and
6. Addressing the application of limits on the duration and number of depositions as applied to Rule 30(b)(6) depositions.

More than 100 comments were received. The focus eventually narrowed to imposing a duty on the parties to confer. The Advisory Committee agreed that such a requirement was the most promising way to improve practice under the rule.

The proposed amendment that was published for public comment required that the parties confer about the number and description of matters for examination and the identity of each witness the organization will designate to testify. As published, the duty to confer requirement was meant to be iterative and included language that the conferral must “continu[e] as necessary.”

During the comment period, the Advisory Committee received approximately 1,780 written comments and heard testimony from 80 witnesses at two public hearings. There was

strong opposition to the proposed requirement that the parties confer about the identity of each witness, as well as to the directive that the parties confer about the “number and description of” the matters for examination. However, many commenters supported a requirement that the parties confer about the matters for examination.

After carefully reviewing the comments and testimony, as well as the subcommittee’s report, the Advisory Committee modified the proposed amendment by: (1) deleting the requirement to confer about the identity of the witness; (2) deleting the “continuing as necessary” language; (3) deleting the “number and description of” language; and (4) adding to the committee note a paragraph explaining that the duty to confer does not apply to a deposition under Rule 31(a)(4) (Questions Directed to an Organization). The proposed amendment approved by the Advisory Committee therefore retains a requirement that the parties confer about the matters for examination. The duty adds to the rule what is considered a best practice – conferring about the matters for examination will certainly improve the focus of the examination and preparation of the witness.

The Standing Committee voted unanimously to adopt the recommendation of the Advisory Committee. The proposed amendment and committee note are set forth in Appendix C, with an excerpt from the Advisory Committee’s report.

Recommendation: That the Judicial Conference approve the proposed amendment to Civil Rule 30(b)(6) as set forth in Appendix C and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

Rule Approved for Publication and Comment

The Advisory Committee submitted a proposed amendment to Rule 7.1, the rule that addresses disclosure statements, with a request that it be published for comment in August 2019. The Standing Committee unanimously approved the Advisory Committee’s recommendation.

The proposed amendment to Rule 7.1 would do two things. First, it would require a disclosure statement by a nongovernmental corporation that seeks to intervene, a change that would conform the rule to proposed amendments to Appellate Rule 26.1 (adopted by the Supreme Court and transmitted to Congress on April 25, 2019) and Bankruptcy Rule 8012 (to be considered by the Conference at its September 2019 session). Second, the proposal would amend the rule to require a party in a diversity case to disclose the citizenship of every individual or entity whose citizenship is attributed to that party.

The latter change aims to facilitate the early determination of whether diversity jurisdiction exists under 28 U.S.C. § 1332(a), or whether complete diversity is defeated by the citizenship of an individual or entity attributed to a party. For example, a limited liability company takes on the citizenship of each of its owners. If one of the owners is a limited liability company, the citizenships of all the owners of that limited liability company pass through to the limited liability company that is a party in the action. Requiring disclosure of “every individual or entity whose citizenship is attributed” to a party will ensure early determination that jurisdiction is proper.

Information Items

The Advisory Committee met on April 2-3, 2019. Among the topics for discussion was the work of two subcommittees tasked with long-term projects, and the creation of a joint Appellate-Civil subcommittee.

Multidistrict Litigation Subcommittee

As previously reported, since November 2017, this subcommittee has been considering suggestions that specific rules be developed for multidistrict litigation (MDL) proceedings. Since its inception, the subcommittee has engaged in a substantial amount of fact gathering, with valuable assistance from the Judicial Panel on Multidistrict Litigation and the FJC.

Subcommittee members have also participated in several conferences hosted by different constituencies, including MDL transferee judges.

At the Advisory Committee's April 2019 meeting, there was extensive discussion of the various issues on which the subcommittee has determined to focus its work. The Advisory Committee agreed with the subcommittee's inclination to focus primarily on four issues: (1) use of plaintiff fact sheets and defendant fact sheets to organize large personal injury MDL proceedings and to "jump start" discovery; (2) providing an additional avenue for interlocutory appellate review of some district court orders in MDL proceedings; (3) addressing the court's role in relation to global settlement of multiple claims; and (4) third-party litigation funding. It is still too early to know whether this work will result in any recommendation for amendments to the Civil Rules.

Social Security Disability Review Subcommittee

The Social Security Disability Review Subcommittee continues its work considering a suggestion by the Administrative Conference of the United States (ACUS) that the Judicial Conference develop uniform procedural rules for cases in which an individual seeks district court review of a final administrative decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g).

The subcommittee developed a preliminary draft rule for discussion purposes, including for discussion at the Advisory Committee's April 2019 meeting. On June 20, 2019, the subcommittee convened a meeting to obtain feedback on its draft rule. Invited participants included claimants' representatives, a magistrate judge, as well as representatives of ACUS, the Social Security Administration, and the DOJ. One of the authors of the study that forms the basis of the ACUS suggestion also attended. Each participant provided his or her perspective on the draft rule, followed by a roundtable discussion.

The subcommittee will continue to gather feedback on the draft rule, including from magistrate judges. The subcommittee hopes to come to a decision as to whether pursuit of a rule is advisable in time for the Advisory Committee’s October 2019 meeting.

Subcommittee on Final Judgment in Consolidated Cases

The Civil and Appellate Rules Advisory Committees have formed a joint subcommittee to consider whether either rule set should be amended to address the effect on the “final judgment rule” of consolidating initially separate cases.

The impetus for this project is *Hall v. Hall*, 138 S. Ct. 1118 (2018). In *Hall*, the petitioner argued that two individual cases consolidated under Civil Rule 42(a) should be regarded as one case, with the result that one case would not be considered “final” until all of the consolidated cases are resolved. *Id.* at 1124. The Court disagreed, holding that individual cases consolidated under Civil Rule 42(a) for some or all purposes at the trial level retain their separate identities for purposes of final judgment appeals. *Id.* at 1131. The Court concluded by suggesting that if “our holding in this case were to give rise to practical problems for district courts and litigants, the appropriate Federal Rules Advisory Committees would certainly remain free to take the matter up and recommend revisions accordingly.” *Id.*

Given the invitation from the Court, the subcommittee was formed to gather information as to whether any “practical problems” have arisen post-*Hall*. If so, the subcommittee will determine the value of any rules amendments to address those problems.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Advisory Committee on Criminal Rules presented no action items.

Information Item

The Advisory Committee met on May 7, 2019. The bulk of the meeting focused on work of the Rule 16 Subcommittee, formed to consider suggestions from two district judges that

pretrial disclosure of expert testimony in criminal cases under Rule 16 be expanded to more closely parallel the robust expert disclosure requirements in Civil Rule 26. The Advisory Committee charged the subcommittee with studying the issue, including the threshold desirability of an amendment, as well as the features any recommended amendment should contain.

Early on, the subcommittee determined that it would be useful to hold a mini-conference to explore the contours of the issue with all stakeholders. At its October 2018 meeting (in anticipation of the mini-conference), the Advisory Committee heard a presentation by the DOJ on its development and implementation of policies governing disclosure of forensic and non-forensic evidence.

Participants in the May 6, 2019 mini-conference included defense attorneys, as well as prosecutors and representatives from the DOJ, each of whom has extensive personal experience with pretrial disclosures and the use of experts in criminal cases. The discussion proceeded in two parts. First, participants were asked to identify any concerns or problems with the current rule. Second, they were asked to provide suggestions on how to improve the rule.

The defense attorneys identified two problems with Rule 16 in its current form: (1) the lack of a timing requirement; and (2) the lack of detail in the disclosures provided by prosecutors. Defense practitioners reported they sometimes receive summaries of expert testimony a week or the night before trial, which significantly impairs their ability to prepare for trial. They also reported that they often do not receive sufficiently detailed disclosures to allow them to prepare to cross examine the expert witness. In stark contrast, the DOJ representatives reported no problems with the current rule.

As to the subcommittee's second inquiry concerning ways to improve the rule, participants discussed possible solutions on the issues of timing and completeness of expert

discovery. Significant progress was made in identifying common ground; the discussion produced concrete suggestions for language that would address the timing and sufficiency issues identified by defense practitioners. The subcommittee plans to present its report and a proposed amendment to Rule 16 at the Advisory Committee's September 2019 meeting.

FEDERAL RULES OF EVIDENCE

Rule Recommended for Approval and Transmission

The Advisory Committee submitted a proposed amendment to Rule 404, with a recommendation that it be approved and transmitted to the Judicial Conference. The proposed amendment was published for public comment in August 2018.

Rule 404(b) is the rule that governs the admissibility of evidence of other crimes, wrongs, or acts. Several courts of appeal have suggested that the rule needs to be more carefully applied and have set forth criteria for more careful application. In its ongoing review of the developing case law, the Advisory Committee determined that it would not propose substantive amendment of Rule 404(b) because any such amendment would make the rule more complex without rendering substantial improvement.

However, the Advisory Committee did recognize that important protection for defendants in criminal cases could be promoted by expanding the prosecutor's notice obligations under the rule. The DOJ proffered language that would require the prosecutor to describe in the notice "the non-propensity purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose." In addition, the Advisory Committee determined that the current requirement that the prosecutor must disclose only the "general nature" of the bad act should be deleted considering the prosecution's expanded notice obligations under the DOJ proposal, and that the existing requirement that the defendant request notice was an unnecessary impediment and should be deleted.

Finally, the Advisory Committee determined that the restyled phrase “crimes, wrongs, or other acts” should be restored to its original form: “other crimes, wrongs, or acts.” This would clarify that Rule 404(b) applies to crimes, wrongs, and acts other than those charged.

The comments received were generally favorable. The Advisory Committee considered those comments, as well as discussion at the June 2018 Standing Committee meeting, and made minor changes to the proposed amendment, including changing the term “non-propensity purpose” to “permitted purpose.”

The Standing Committee voted unanimously to adopt the recommendations of the Advisory Committee. The proposed amendment and committee note are set forth in Appendix D, with an excerpt from the Advisory Committee’s report.

Recommendation: That the Judicial Conference approve the proposed amendment to Evidence Rule 404 as set forth in Appendix D and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

Information Items

The Advisory Committee met on May 3, 2019. The agenda included discussion of possible amendments to Rules 106, 615, and 702. The Advisory Committee also continues to monitor the development of the law following the decision in *Crawford v. Washington*, 541 U.S. 36 (2004).

Possible Amendments to Rule 702 (Testimony by Expert Witnesses)

A subcommittee on Rule 702 has been considering questions that arise in the application of the rule, including treatment of forensic expert evidence. The subcommittee, after extensive discussion, made three recommendations with which the Advisory Committee agreed: (1) it would be difficult to draft a freestanding rule on forensic expert testimony because any such amendment would have an inevitable and problematic overlap with Rule 702; (2) it would not be advisable to set forth detailed requirements for forensic evidence either in text or committee note

because such a project would require extensive input from the scientific community, and there is substantial debate about what requirements are appropriate; and (3) it would not be advisable to publish a “best practices manual” for forensic evidence.

The subcommittee expressed interest in considering an amendment to Rule 702 that would focus on the important problem of overstating results in forensic and other expert testimony. One example: an expert stating an opinion as having a “zero error rate” where that conclusion is not supportable by the methodology. The Advisory Committee has heard extensively from the DOJ on its efforts to regulate the testimony of its forensic experts. The Advisory Committee continues to consider a possible amendment on overstatement of expert opinions.

In addition, the Advisory Committee is considering other ways to aid courts and litigants in meeting the challenges of forensic evidence, including assisting the FJC in judicial education. In this regard, the Advisory Committee is holding a mini-conference on October 25, 2019 at Vanderbilt Law School. The goal of the mini-conference is to determine “best practices” for managing *Daubert* issues. A transcript of the mini-conference will be published in the *Fordham Law Review*.

Possible Amendment to Rule 106 (Remainder of or Related Writings or Recorded Statements)

The Advisory Committee continues to consider whether Rule 106, the rule of completeness, should be amended. Rule 106 provides that if a party introduces all or part of a written or recorded statement in such a way as to create a misimpression about the statement, then the opponent may require admission of a completing statement that would correct the misimpression. A suggestion from a district judge noted two possible amendments: (1) to provide that a completing statement is admissible over a hearsay objection; and (2) to provide that the rule covers oral as well as written or recorded statements.

Several alternatives for an amendment to Rule 106 are under consideration. One option is to clarify that the completing statement should be admissible over a hearsay objection because it is properly offered to provide context to the initially proffered statement. Another option is to state that the hearsay rule should not bar the completing statement, but that it should be up to the court to determine whether it is admissible for context or more broadly as proof of a fact. The final consideration will be whether to allow unrecorded statements to be admissible for completion, or rather to leave it to parties to convince courts to admit such statements under other principles, such as the court's power under Rule 611(a) to exercise control over evidence.

Possible Amendments to Rule 615 (Excluding Witnesses)

The Advisory Committee is considering problems raised in the case law and in practice regarding the scope of a Rule 615 order and whether it applies only to exclude witnesses from the courtroom (as stated in the text of the rule) or if it can extend outside the confines of the courtroom to prevent prospective witnesses from obtaining or being provided trial testimony. Most courts have held that a Rule 615 order extends to prevent access to trial testimony outside of court, but other courts have read the rule as it is written. The Advisory Committee has been considering an amendment that would clarify the extent of an order under Rule 615. Advisory Committee members have noted that where parties can be held in contempt for violating a court order, some clarification of the scope of the order is desirable. The investigation of this problem is consistent with the Advisory Committee's ongoing efforts to ensure that the Evidence Rules are keeping up with technological advancement, given increasing witness access to information about testimony through news, social media, or daily transcripts.

At its May 2019 meeting, the Advisory Committee resolved that any amendment to Rule 615 should allow, but not mandate, orders that extend beyond the courtroom. One issue that the Advisory Committee must work through is how an amendment will treat preparation of excluded witnesses by trial counsel.

OTHER ITEMS

The Standing Committee's agenda included four information items. First, the Committee discussed a suggestion from the Chair of the Advisory Committee on Appellate Rules that a study be conducted to determine whether the Appellate, Bankruptcy, Civil, and Criminal Rules should be amended to change the current midnight electronic filing deadline to an earlier time in the day, such as when the clerk's office closes in the respective court's time zone.

The Chair authorized the creation of a joint subcommittee comprised of representatives of the Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules, and delegated to Judge Chagares the task of coordinating the subcommittee's work. The subcommittee plans to present its report to the Committee at its January 2020 meeting.

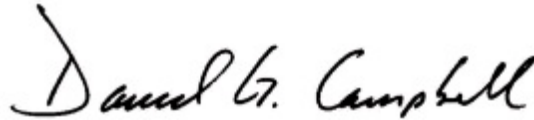
Second, the Committee was briefed on the status of legislation introduced in the 116th Congress that would directly or effectively amend a federal rule of procedure.

Third, based on feedback received at the Committee's January 2019 meeting, the Reporter to the Committee drafted revised proposed procedures for handling submissions outside the standard public comment period, including those addressed directly to the Standing Committee rather than to the relevant advisory committee. The Committee discussed and approved those procedures.

Fourth, at the request of the Judiciary Planning Coordinator, Committee members discussed the extent to which the Committee's current strategic initiatives have achieved their desired outcomes and the proposed approach for the 2020 update to the *Strategic Plan for the*

Federal Judiciary, and authorized Judge Campbell to convey the Committee’s views to the Judiciary Planning Coordinator.

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	Peter D. Keisler
Daniel C. Girard	William K. Kelley
Robert J. Giuffra Jr.	Carolyn B. Kuhl
Susan P. Graber	Jeffrey A. Rosen
Frank M. Hull	Srikanth Srinivasan
William J. Kayatta Jr.	Amy J. St. Eve

Appendix A – Federal Rules of Appellate Procedure (proposed amendments and supporting report excerpt)

Appendix B – Federal Rules of Bankruptcy Procedure and Official Bankruptcy Form (proposed amendments and supporting report excerpt)

Appendix C – Federal Rules of Civil Procedure (proposed amendment and supporting report excerpt)

Appendix D – Federal Rules of Evidence (proposed amendment and supporting report excerpt)

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: APPELLATE SUBCOMMITTEE

SUBJECT: REVISIONS TO RULE 8023

DATE: AUG. 24, 2019

At the meeting of the Committee on Rules and Practice (the “Standing Committee”) on June 25, 2019, the Advisory Committee on Appellate Rules presented proposed amendments to Rule 42(b). The Standing Committee authorized publication. Rule 42(b) currently reads as follows:

(b) Dismissal in the Court of Appeals. The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant’s motion on terms agreed to by the parties or fixed by the court.

The amended version is intended to make dismissal mandatory upon agreement by the parties, as the rule stated prior to its restyling. It also intends to clarify that a court order is required for any action other than a simple dismissal. Finally, after discussion at the Standing Committee, the Advisory Committee added a new section emphasizing that the rule does not change applicable law requiring court approval of settlements, payments, or other consideration. The revised Rule 42(b) that was approved for publication reads as follows:

(b) Dismissal in the Court of Appeals.

(1) Stipulated Dismissal. The circuit clerk must dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due.

(2) Appellant’s Motion to Dismiss. An appeal may be dismissed on the appellant’s motion on terms agreed to by the parties or fixed by the court.

(3) Other Relief. A court order is required for any relief beyond the mere dismissal of an appeal—including approving a settlement, vacating an action of the district court or an administrative agency, or remanding the case to either of them.

(c) Court Approval. This Rule 42 does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.

Bankruptcy Rule 8023 was modeled on Rule 42(b), and currently reads as follows:

Rule 8023. Voluntary Dismissal.

The clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP.

In order to maintain the parallel structure of the rules, Rule 8023 would be amended to read as follows:

Rule 8023. Voluntary Dismissal.

(a) Stipulated Dismissal. The clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due.

(b) Appellant's Motion to Dismiss. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP.

(c) Other Relief. A court order is required for any relief beyond the mere dismissal of an appeal—including approving a settlement, vacating an action of the bankruptcy court, or remanding the case to it.

(d) Court Approval. This rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.

Committee Note

The amendment is intended to conform the rule to the revised version of Federal Rule of Appellate Procedure 42(b) on which it was modelled. It clarifies that the fees that must be paid are court fees, not attorney's fees. The Rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration. See, e.g., Fed. R. Bankr. P. 9019 (requiring court approval of compromise or settlement). The amendment clarifies that any order beyond mere dismissal—including approving a settlement, vacating or remanding—requires a court order.

The Subcommittee recommends that the Advisory Committee recommend to the Standing Committee the publication of the conforming changes to Rule 8023.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS
SUBJECT: SUGGESTION REGARDING THE CALCULATION OF DEADLINES
DATE: AUGUST 29, 2019

The Advisory Committee has received a suggestion (19-BK-G) submitted by Sai (an advocate for pro se litigants) that seeks to shift from parties to the courts the obligation of determining when actions must be taken and documents filed under the various sets of federal rules. The identical suggestion was also submitted to the Civil, Criminal, and Appellate Advisory Committees. In the case of the Bankruptcy Rules, Sai suggests that the following provision be added to the end of Rule 9006 as new subdivision (h):

1. For every applicable date or time specified under these Rules, or in any order, the court shall give immediate notice, by order, to all appeared filers, of
 - a. the calculated time certain, including time zone, of every event not completed or adjudicated;
 - b. whether and how the time may be modified, and any conditions for such a modification under all applicable rules and orders; and
 - c. whether the event is optional or expired.
2. All filers shall be entitled to rely on the court's computed times.

Sai explains that the calculation of deadlines under the federal rules can be difficult, even for attorneys and even more so for pro se litigants, and that the consequences of a calculation error can be severe. Sai notes that clerk's offices already calculate these deadlines for court purposes and suggests that they should issue the results of their calculations as "a simple clerk's order" that parties would be permitted to rely on.

Because this suggestion applies to four sets of rules, it will be pursued on a coordinated basis with the other advisory committees if the committees decide to proceed with it. But first the advisory committees are asked to discuss the suggestion at their fall meetings and provide feedback on the committee members' views about it.

The Subcommittee discussed the suggestion during its conference call on August 19, and little support was expressed for it. Members feared that the burden it would place on clerk's offices would be excessive and were also concerned that it would impermissibly require those offices to provide legal advice to parties. Some questioned whether, in the case of jurisdictional deadlines, a rule could allow parties to rely on what turns out to be an erroneous calculation by the court.

This suggestion will be before the full Advisory Committee for discussion of whether it should be pursued as proposed or in any narrower respect, such as having the clerk's office specify deadlines for only a limited set of actions and filings. The views of the Committee will then be shared with the other advisory committees.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: BUSINESS SUBCOMMITTEE

SUBJECT: RULE 5005 (TRANSMITTAL TO U.S. TRUSTEE)

DATE: AUGUST 24, 2019

The changes to Fed. R. Bankr. P. 9036 (entitled “Notice or Service Generally”), which are set to become effective in December, provide that whenever the bankruptcy rules “require or permit sending a notice or serving a paper by mail, the clerk or other party may send the notice to – or serve the paper on – a registered user by filing it with the court’s electronic-filing system.” The rule “does not apply to any complaint or motion required to be served in accordance with Rule 7004.”

Federal Rule of Bankruptcy Procedure 5005(b), entitled “Transmittal to the United States Trustee,” provides in clause (1) that “The complaints, motions, applications, objections and other papers required to be transmitted to the United States trustee by these rules shall be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending.”

Rule 5005(b)(2) provides that “The entity, other than the clerk, transmitting a paper to the United States trustee shall promptly file as proof of such transmittal a verified statement identifying the paper and stating the date on which it was transmitted to the United States trustee.”

For the last year, the EOUST has been considering whether any changes should be made to Rule 5005 in light of the pending changes to Rule 9036. Although final approval from the DOJ has not yet been obtained, the EOUST would like to suggest proposed amendments to Rule 5005 to conform this USTP-specific rule to both amended Rule 9036 and current bankruptcy practice under Rule 5005(b).

The following are comments from Ramona Elliott:

First, in our experience, parties commonly fulfill their transmittal requirements under Rule 5005(b)(1) by filing papers electronically, subject to limited exceptions such as certain types of voluminous papers filed in large chapter 11 cases that are often set forth in local rules or orders. Moreover, often through arrangements with the local clerks, the local offices are receiving papers electronically regardless of whether the United States Trustee is technically a

registered CM/ECF user. The proposed language would permit parties to transmit papers to the United States Trustee electronically in the same way and with the same exceptions provided for by amended Rule 9036, regardless of whether the UST is a registered user.

Second, parties are complying with Rule 5005(b)(2)'s requirement of a verified statement of transmittal by including a certificate of service. That certificate is not separately docketed if the paper is filed electronically, nor is it verified. The proposed language would provide that parties who transmit papers electronically need not also file a separate statement proving transmittal. It also provides that, for papers that continue to be transmitted by mail or delivery, the certificate of service need not be verified.

The proposed amendments to Rule 5005 are indicated in the following redlined copy:

1 Rule 5005. Filing and Transmittal of Papers

2 (b) Transmittal to the United States Trustee.

3 (1) The complaints, notices, motions, applications, objections and other papers required to be
4 transmitted to the United States trustee ~~by these rules shall be mailed or delivered to an~~
5 ~~office of the United States trustee, or to another place designated by the United States~~
6 ~~trustee, in the district where the case under the Code is pending~~ may be sent by filing with
7 the court's electronic-filing system in accordance with Rule 9036, unless a court order or
8 local rule provides otherwise.

9 (2) The entity, other than the clerk, transmitting a paper to the United States trustee other than
10 through the court's electronic-filing system shall promptly file as proof of such transmittal
11 a ~~verified~~ statement identifying the paper and stating the date on which it was transmitted
12 to the United States trustee.

13 (3) Nothing in these rules shall require the clerk to transmit any paper to the United States
14 trustee if the United States trustee requests in writing that the paper not be transmitted.

15 Committee Note

16 Subdivision (b)(1) is amended to authorize the clerk or parties to transmit papers to the United
17 States trustee by electronic means in accordance with Rule 9036, regardless of whether the United
18 States trustee is a registered user with the court's electronic-filing system. Subdivision (b)(2) is
19 amended to recognize that parties meeting transmittal obligations to the United States trustee using
20 the court's electronic-filing system need not file a statement evidencing transmittal under Rule
21 5005(b)(2). The amendment to subdivision (b)(2) also eliminates the requirement that statements
22 evidencing transmittal filed under Rule 5005(b)(2) be verified.

The Subcommittee recommends that the Advisory Committee recommend the amended rule to the Standing Committee for publication.

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TAB 5B

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: SMALL BUSINESS REORGANIZATION ACT OF 2019—RULE AND FORM AMENDMENTS

DATE: AUGUST 30, 2019

On August 1, Congress passed the Small Business Reorganization Act of 2019 (“SBRA”) (<https://www.congress.gov/116/bills/hr3311/BILLS-116hr3311eh.pdf>), which creates a new subchapter of chapter 11 for the reorganization of small business debtors. It does not repeal existing chapter 11 provisions regarding small business debtors, but instead it creates an alternative procedure that small business debtors may elect to use. Proceedings using the current chapter 11 provisions will continue to be called “small business cases,” while cases for which the new procedure is elected will be called “cases under subchapter V of chapter 11.”¹

The President signed the legislation on August 23. It will go into effect 180 days after that date, which will be February 19, 2020.

The enactment of SBRA requires amendments to a number of bankruptcy rules and forms, often to except subchapter V cases from provisions referring generally to chapter 11 or to add new provisions applying to subchapter V cases. Because SBRA will take effect long before the rulemaking process can run its course, the amended rules will need to be issued initially as interim rules for adoption by each judicial district, and amended forms will need to be issued by

¹ The definition of “small business case” in Code § 101(51C) is amended to exclude cases under subchapter V of chapter 11. The definition of “small business debtor” in § 101(51D) does not exclude debtors that elect subchapter V, but it is amended to delete the requirement of no or an inactive unsecured creditors committee. In addition, the exclusion of debtors “operating real property or activities incidental thereto” is deleted and replaced by “owning single asset real estate.” Public companies are also excluded from the definition.

the Advisory Committee subject to later approval by the Standing Committee and notice to the Judicial Conference.

Section I of this memo provides an overview of SBRA that was included in retired Bankruptcy Judge Tom Small’s written testimony to Congress on the legislation. Section II presents, for each affected rule, amendments proposed by the Subcommittee and a draft Committee Note explaining the reason for the amendment. Official Form amendments proposed by the Subcommittee are addressed in Section III. Finally, Section IV discusses the procedure for implementation.

I. Summary of SBRA

The House Report on SBRA—H.R. Rep. No. 116-171 (2019)—<https://www.congress.gov/congressional-report/116th-congress/house-report/171>—explains that “the NBC [National Bankruptcy Conference] and the ABI [American Bankruptcy Institute] developed recommendations to improve the reorganization process for small business chapter 11 debtors. H.R. 3311 is largely derived from these recommendations.” *Id.* at 4. Representatives from both organizations testified in favor of the bill. Judge Small testified on behalf of the NBC, and his written testimony contained the following helpful summary of SBRA:

Summary of Subchapter V

The Small Business Reorganization Act of 2019 would create a new subchapter of chapter 11 for the reorganization of a small business debtor [as defined in Bankruptcy Code § 101(51D) and which among other requirements provides that the debtor be engaged in commercial or business activities, and that the debtor have aggregate noncontingent, liquidated, secured, and unsecured debts as of the date of the order for relief in an amount equal to not more than \$2,725,625 (excluding debts owed to 1 or more affiliates or insiders)]. § 1182(1).

The subchapter is voluntary, and the election procedure is left to the Bankruptcy Rules. H.R. 3311 § 4(a)(2)(B).

There will be a standing trustee in every subchapter V case who will perform duties similar to those performed by a chapter 12 or chapter 13 trustee. § 1183. The small business debtor will be a debtor in possession. §§ 1182(2) and 1184. A debtor in possession could be removed “for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor.” § 1185.

Only the subchapter V small business debtor may file a plan, and the case will be on a fast track. § 1189. The debtor must file a plan within 90 days after the order for relief, but that time may be extended. § 1189(b). A status conference is required in every subchapter V case. § 1188.

Unless the court for cause orders otherwise, there will be no creditors’ committee and no disclosure statement. § 1181(b). Although there will not be a disclosure statement in most subchapter V cases, each subchapter V plan must include “a brief history of the business operations of the debtor, a liquidation analysis, and projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization.” § 1190.

A small business debtor in subchapter V is required to make the same disclosures that a small business debtor is required to make under Bankruptcy Code § 1116. § 1187(a) and (b). Additionally, a small business debtor in subchapter V must file the periodic reports that a small business debtor is required to file under Bankruptcy Code § 308. § 1187(b).

There are two ways to have a plan confirmed under subchapter V -- consensually under § 1191(a) or nonconsensually under § 1191(b).

To have a consensual plan under § 1191(a), all the requirements of § 1129(a), other than § 1129(a)(15) [special disposable income requirements for individual chapter 11 debtors], must be met, including the high voting requirements of § 1126. If a consensual plan is confirmed under § 1191(a), the trustee’s service is terminated upon “substantial consummation.” § 1183(c). Also, if a consensual plan is confirmed under § 1191(a), the debtor receives a discharge at confirmation under § 1141(d).

If a consensual plan is not confirmed under § 1191(a), the debtor may seek a nonconsensual confirmation under § 1191(b). Confirmation under § 1191(b) requires that all of the requirements of § 1129(a) be met other than § 1129(a)(8), (10) and (15). Additionally, the plan must “not discriminate unfairly, and [be] fair and equitable, with respect to each class of claims or interests that is impaired under, and had not accepted the plan.” § 1191(b). The condition that a plan be fair and equitable with respect to a class of secured claims means that the requirements of § 1129(b)(2)(A) be met. § 1191(c)(1). The condition that a plan be fair and equitable with respect to each class of claims or interests means “as of the effective date of the plan -- (A) the plan provides that all of the debtor’s projected disposable

income to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or (B) the value of the property to be distributed under the plan in the 3-year period, or longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.” § 1191(c)(2).

Finally, to be confirmable under § 1191(b), the court must find that the debtor “will be able to make all payments under the plan, or there is a reasonable likelihood that the debtor will be able to make all payments under the plan, and the plan provides appropriate remedies, that may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.” §1191(c)(3).

For purposes of § 1191(b), “disposable income” means “the income that is received by the debtor and that is not reasonably necessary to be expended -- (1) for (A) the maintenance or support of the debtor or a dependent of the debtor or (B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or (2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.” § 1191(d).

A plan confirmable under § 1191(b), may, notwithstanding §1129(a)(9)(A), provide for payment through the plan of a claim of a kind specified in § 507(a)(2) or (3). § 1191(e).

If a plan is confirmed under § 1191(b) the trustee remains in place until the plan is completed, and the debtor does not receive a discharge until completion of all payments due within the first three years of the plan, or such other longer period not to exceed five years as the court may fix. § 1192. The debts that are discharged when a plan is confirmed under § 1191(b) are the debts provided for in § 1141(d)(1)(A) and all other debts allowed under § 503 except “any debt -- (1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or (2) the kind specified in section 523(a) of this title.” § 1192.

Plan modifications are allowed, but a plan confirmed under § 1191(a) may not be modified after “substantial consummation.” § 1193(a) and (b). A plan confirmed under § 1191(b) may be modified by the debtor at any time within 3 years, or such longer time not to exceed 5 years as fixed by the court. § 1193(c).

Section 1195 provides that “[n]otwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title, by a debtor solely because such person holds a claim of less than [\$10,000] that arose prior to commencement of the case.” § 1195.

The annual compensation of the subchapter V standing trustee and the percentage fee charged would be determined by the United States trustee pursuant to 28 U.S.C. § 586(e). If a plan is confirmed under § 1191(a) and the services of the trustee are terminated upon “substantial consummation,” the court shall award compensation to the trustee “consistent with services performed” and subject to the limits established under 28 U.S.C. § 586(e)(1). The quarterly fees provided in 28 U.S.C. § 1930(a)(6) shall not apply in a subchapter V case.²

II. Proposed Rule Amendments

The Subcommittee proposes amendments to six bankruptcy rules in response to the enactment of SBRA. They are set out below.

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

* * * * *

(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the information comes to the debtor’s knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer’s debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. The duty to file a supplemental schedule in accordance with this subdivision continues notwithstanding the closing of the case, except that the schedule need not be filed in a chapter 11, chapter 12,

² In addition to enacting the provisions of subchapter V, SBRA (in § 3) imposes a due diligence requirement under § 547(b) of the Code for avoiding a preference and increases the dollar amount in 28 U.S.C. § 1409(b) (Venue of Certain Proceedings) from \$10,000 to \$25,000. Section 4 of SBRA makes conforming amendments to various Code and title 28 provisions.

14 or chapter 13 case with respect to property acquired after the debtor receives a
15 discharge entry of the order confirming a chapter 11 plan or discharging the debtor
16 in a chapter 12 or chapter 13 case.

COMMITTEE NOTE

Subdivision (h) of the rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. As amended, subdivision (h) provides that the duty to file a supplemental schedule under the rule terminates with the discharge of the debtor. In a subchapter V case that will occur upon confirmation of the plan under § 1191(a) or thereafter if the plan is confirmed under § 1191(b). See § 1192.

1 **Rule 1020. ~~Small Business~~ Chapter 11 Reorganization Case for Small**
2 **Business Debtors**

3 (a) SMALL BUSINESS DEBTOR DESIGNATION. In a voluntary chapter
4 11 case, the debtor shall state in the petition whether the debtor is a small business
5 debtor and, if so, whether the debtor elects to have subchapter V of chapter 11
6 apply. In an involuntary chapter 11 case, the debtor shall file within 14 days after
7 entry of the order for relief a statement as to whether the debtor is a small business
8 debtor and, if so, whether the debtor elects to have subchapter V of chapter 11
9 apply. ~~Except as provided in subdivision (c), the~~ The status of the case as a small
10 business case or a case under subchapter V of chapter 11 shall be in accordance
11 with the debtor's statement under this subdivision, unless and until the court enters
12 an order finding that the debtor's statement is incorrect.

13 (b) OBJECTING TO DESIGNATION. ~~Except as provided in subdivision~~
14 ~~(c), the~~ The United States trustee or a party in interest may file an objection to the

15 debtor's statement under subdivision (a) no later than 30 days after the conclusion
16 of the meeting of creditors held under § 341(a) of the Code, or within 30 days after
17 any amendment to the statement, whichever is later.

18 ~~(e) APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS.~~
19 ~~If a committee of unsecured creditors has been appointed under § 1102(a)(1), the~~
20 ~~case shall proceed as a small business case only if, and from the time when, the~~
21 ~~court enters an order determining that the committee has not been sufficiently active~~
22 ~~and representative to provide effective oversight of the debtor and that the debtor~~
23 ~~satisfies all the other requirements for being a small business. A request for a~~
24 ~~determination under this subdivision may be filed by the United States trustee or a~~
25 ~~party in interest only within a reasonable time after the failure of the committee to~~
26 ~~be sufficiently active and representative. The debtor may file a request for a~~
27 ~~determination at any time as to whether the committee has been sufficiently active~~
28 ~~and representative.~~

29 ~~(d)~~ (dc) PROCEDURE FOR OBJECTION OR DETERMINATION. Any
30 objection or request for a determination under this rule shall be governed by Rule
31 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the
32 trustee; the creditors included on the list filed under Rule 1007(d), or, if any a
33 committee has been appointed under § 1102(a)(3), the committee or its authorized
34 agent;³~~or, if no committee of unsecured creditors has been appointed under § 1102,~~
35 ~~the creditors included on the list filed under Rule 1007(d); or, and any other entity~~
36 as the court directs.

³ As amended, § 1102(a)(3) will provide, “Unless the court for cause orders otherwise, a committee of creditors may not be appointed in a small business case or a case under subchapter V of this chapter.”

COMMITTEE NOTE

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The title and subdivision (a) of the rule are amended to include that option and to require a small business debtor to state in its voluntary petition, or in a statement filed within 14 days after the order for relief is entered in an involuntary case, whether it elects to proceed under subchapter V.

Former subdivision (c) of the rule is deleted because the existence or level of activity of a creditors' committee is no longer a criterion for small-business-debtor status. SBRA eliminated that portion of the definition of "small business debtor" in § 101(51D) of the Code.

Former subdivision (d) is redesignated as subdivision (c), and the list of entities to be served is revised to reflect that in most small business and subchapter V cases there will not be a committee of creditors.

1 **Rule 2009. Trustees for Estates When Joint Administration Ordered**

2 (a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING
3 JOINTLY ADMINISTERED. If the court orders a joint administration of two or
4 more estates under Rule 1015(b), creditors may elect a single trustee for the estates
5 being jointly administered, unless the case is under subchapter V of chapter 7 or
6 subchapter V of chapter 11 of the Code.

7 (b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE.
8 Notwithstanding entry of an order for joint administration under Rule 1015(b), the
9 creditors of any debtor may elect a separate trustee for the estate of the debtor as
10 provided in § 702 of the Code, unless the case is under subchapter V of chapter 7
11 or subchapter V of chapter 11 of the Code.

12 (c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY
13 ADMINISTERED.

14 (1) *Chapter 7 Liquidation Cases.* * * * * *

15 (2) *Chapter 11 Reorganization Cases.* If the appointment of a
16 trustee is ordered or is required by the Code, the United States trustee may
17 appoint one or more trustees for estates being jointly administered in chapter
18 11 cases.

19 * * * * *

COMMITTEE NOTE

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. In a case under that subchapter, § 1183 of the Code requires the United States trustee to appoint a trustee, so there will be no election. Accordingly, subsections (a) and (b) of the rule are amended to except cases under subchapter V from their coverage. Subsection (c)(2), which addresses the appointment of trustees in jointly administered chapter 11 cases, is amended to make it applicable to cases under subchapter V.

1 **Rule 2012. Substitution of Trustee or Successor Trustee; Accounting**

2 (a) TRUSTEE. If a trustee is appointed in a chapter 11 case (other than
3 under subchapter V), or the debtor is removed as debtor in possession in a chapter
4 12 case or a case under subchapter V of chapter 11, the trustee is substituted
5 automatically for the debtor in possession as a party in any pending action,
6 proceeding, or matter.

7 * * * * *

COMMITTEE NOTE

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (a) of the rule is amended to include any case under that subchapter in which the debtor is removed as debtor in possession under § 1185 of the Code.

1 **Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or**
2 **Change of Status**

3 (a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in
4 possession shall:

5 (1) in a chapter 7 liquidation case and, if the court directs, in a
6 chapter 11 reorganization case (other than under subchapter V), file and
7 transmit to the United States trustee a complete inventory of the property of
8 the debtor within 30 days after qualifying as a trustee or debtor in
9 possession, unless such an inventory has already been filed;

10 (2) keep a record of receipts and the disposition of money and
11 property received;

12 (3) file the reports and summaries required by § 704(a)(8) of the
13 Code, which shall include a statement, if payments are made to employees,
14 of the amounts of deductions for all taxes required to be withheld or paid
15 for and in behalf of employees and the place where these amounts are
16 deposited;

17 (4) as soon as possible after the commencement of the case, give
18 notice of the case to every entity known to be holding money or property
19 subject to withdrawal or order of the debtor, including every bank, savings

20 or building and loan association, public utility company, and landlord with
21 whom the debtor has a deposit, and to every insurance company which has
22 issued a policy having a cash surrender value payable to the debtor, except
23 that notice need not be given to any entity who has knowledge or has
24 previously been notified of the case;

25 (5) in a chapter 11 reorganization case (other than under subchapter
26 V), on or before the last day of the month after each calendar quarter during
27 which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and
28 transmit to the United States trustee a statement of any disbursements made
29 during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6)
30 for that quarter; and

31 (6) in a chapter 11 small business case, unless the court, for cause,
32 sets another reporting interval, file and transmit to the United States trustee
33 for each calendar month after the order for relief, on the appropriate Official
34 Form, the report required by § 308. If the order for relief is within the first
35 15 days of a calendar month, a report shall be filed for the portion of the
36 month that follows the order for relief. If the order for relief is after the 15th
37 day of a calendar month, the period for the remainder of the month shall be
38 included in the report for the next calendar month. Each report shall be filed
39 no later than 21 days after the last day of the calendar month following the
40 month covered by the report. The obligation to file reports under this
41 subparagraph terminates on the effective date of the plan, or conversion or
42 dismissal of the case.

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(b) TRUSTEE, DEBTOR IN POSSESSION, AND DEBTOR IN A CASE UNDER SUBCHAPTER V OF CHAPTER 11. In a case under subchapter V of chapter 11, the debtor in possession shall perform the duties prescribed in subdivision (a)(2)–(4) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (b). The debtor shall perform the duties prescribed in subdivision (a)(6).

(~~b~~c) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer’s debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this ~~paragraph~~ subdivision (c).

(~~e~~d) CHAPTER 13 TRUSTEE AND DEBTOR.

(1) *Business Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

66 (2) *Nonbusiness Cases*. In a chapter 13 individual's debt adjustment
67 case, when the debtor is not engaged in business, the trustee shall perform
68 the duties prescribed by clause (2) of subdivision (a) of this rule.

69 (de) FOREIGN REPRESENTATIVE. In a case in which the court has
70 granted recognition of a foreign proceeding under chapter 15, the foreign
71 representative shall file any notice required under § 1518 of the Code within 14
72 days after the date when the representative becomes aware of the subsequent
73 information.

74 (ef) TRANSMISSION OF REPORTS. In a chapter 11 case the court may
75 direct that copies or summaries of annual reports and copies or summaries of other
76 reports shall be mailed to the creditors, equity security holders, and indenture
77 trustees. The court may also direct the publication of summaries of any such reports.
78 A copy of every report or summary mailed or published pursuant to this subdivision
79 shall be transmitted to the United States trustee.

COMMITTEE NOTE

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (b) is amended to prescribe the duties of a debtor in possession, trustee, and debtor in a subchapter V case. Those cases are excepted from subdivision (a) because, unlike other chapter 11 cases, there will generally be both a trustee and a debtor in possession. Subdivision (b) also reflects that § 1187 of the Code prescribes reporting duties for the debtor in a subchapter V case.

Former subdivisions (b), (c), (d), and (e) are redesignated (c), (d), (e), and (f) respectively

1 **Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9**
2 **Municipality or Chapter 11 Reorganization Case**

3 (a) IDENTIFICATION OF PLAN. Every proposed plan and any
4 modification thereof shall be dated and, in a chapter 11 case, identified with the
5 name of the entity or entities submitting or filing it.

6 (b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure
7 statement, if required under § 1125 of the Code, or evidence showing compliance
8 with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless
9 the plan is intended to provide adequate information under § 1125(f)(1). If the plan
10 is intended to provide adequate information under § 1125(f)(1), it shall be so
11 designated, and Rule 3017.1 shall apply as if the plan is a disclosure statement.

12 * * * * *

13 (d) STANDARD FORM SMALL BUSINESS DISCLOSURE
14 STATEMENT AND PLAN. In a small business case or a case under subchapter V
15 of title 11, the court may approve a disclosure statement and may confirm a plan
16 that conform substantially to the appropriate Official Forms or other standard forms
17 approved by the court.

COMMITTEE NOTE

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (b) of the rule is amended to reflect that under § 1181(b) of the Code, § 1125 does not apply to subchapter V cases (and thus a disclosure statement is not required) unless the court for cause orders otherwise. Subdivision (d) is amended to include subchapter V cases as ones in which Official Forms are available for a reorganization plan and, when required, a disclosure statement.

III. Proposed Form Amendments

The Subcommittee proposes amendments to seven Official Forms in response to the enactment of SBRA. They are discussed below.

1. Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy).

Part 3, line 13 of the form seeks information to determine if the debtor is a small business debtor. Consistent with the Subcommittee’s recommendation regarding amending Rule 1020(a), it recommends that line 13 be amended to provide space for a debtor that claims small-business status to indicate whether it elects to proceed under subchapter V of chapter 11.

Line 13 of Official Form 101 currently appears as follows:

<p>13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a small business debtor?</p> <p><i>For a definition of small business debtor, see 11 U.S.C. § 101(51D).</i></p>	<p><i>If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).</i></p> <p><input type="checkbox"/> No. I am not filing under Chapter 11.</p> <p><input type="checkbox"/> No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.</p> <p><input type="checkbox"/> Yes. I am filing under Chapter 11 and I am a small business debtor according to the definition in the Bankruptcy Code.</p>
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A fourth check box should be added that says, “Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I choose to proceed under Subchapter V of Chapter 11.” In order to avoid requiring a small business debtor to check more than one box, the third box should be amended to read, “Yes. I am filing under Chapter 11, I am a small business according to the definition in the Bankruptcy Code, and I do not choose to proceed under Subchapter V of Chapter 11.”

The instruction regarding the attachment of documents is still correct. Under new § 1187(b), a debtor in a subchapter V case must comply with § 1116(1), which requires attaching to the petition the debtor’s most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or a statement made under penalty of perjury that such documents do not exist.

COMMITTEE NOTE

Part 2, line 13 is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Line 13 is amended to add a check box for a small business debtor to indicate that it is making that choice, and the existing check box for small business debtors is amended to allow the debtor to indicate that it is not electing to proceed under subchapter V.

2. Official Form 201 (Voluntary Petition for Non-Individuals Filing for Bankruptcy). The Subcommittee recommends that a similar change be made to line 8 of this form. It currently says:

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

Chapter 7

Chapter 9

Chapter 11. Check all that apply:

Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625 (amount subject to adjustment on 4/01/22 and every 3 years after that).

The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

A plan is being filed with this petition.

Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.

The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

After the second check box under Chapter 11, the Subcommittee recommends that a new box be inserted that says, “The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and it chooses to proceed under Subchapter V of Chapter 11.”

COMMITTEE NOTE

Line 8 of the form is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under

subchapter V of chapter 11. Line 8 is amended to provide a check box for a small business debtor to indicate that it is making that choice.

3. Official Form 309E (Notice of Chapter 11 Bankruptcy Case—For Individuals or Joint Debtors). This form contains explanations about filing a chapter 11 bankruptcy case and the discharge of debts that will no longer be completely accurate after SBRA takes effect. Line 9 provides as follows regarding a chapter 11 case:

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate the debtor’s business.

The last sentence is not accurate for subchapter V cases because there will generally be both a trustee and a debtor in possession.

Because this is just a brief, very general statement about chapter 11, the Subcommittee thought that any amendment should take account of subchapter V without going into too much detail. It recommends that the last sentence be amended as follows: “~~Unless a trustee is serving,~~ **The** debtor will **generally** remain in possession of the property and ~~may~~ continue to operate the debtor’s business.”

Line 10 provides an explanation about the discharge of debts. It says:

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of a debt. See 11 U.S.C. § 1141(d). However, unless the court orders otherwise, the debts will not be discharged until all payments under the plan are made. A discharge means that creditors may never try to collect the debt from the debtors personally except as provided in the plan. If you believe that a particular debt owed to you should be excepted from the discharge under 11 U.S.C. § 523 (a)(2), (4), or (6), you must file a complaint and pay the filing fee in the bankruptcy clerk’s office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1141 (d)(3), you must file a

complaint and pay the filing fee in the clerk’s office by the first date set for the hearing on confirmation of the plan. The court will send you another notice telling you of that date.

The sentence following the citation to § 1141(d) is not correct for subchapter V cases. If the plan in such a case is confirmed consensually, the debtor will receive a discharge upon confirmation. If it is confirmed non-consensually—that is, under § 1191(b)—the debtor will receive a discharge “as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix.” § 1192.

The Subcommittee recommends amending the second sentence as follows: “However, ~~unless the court orders otherwise,~~ in some cases the debts will not be discharged until all or a substantial portion of payments under the plan are made. See 11 U.S.C. §§ 1141(d)(5) and 1192.”

The Committee Note would then explain as follows:

COMMITTEE NOTE

Lines 9 and 10 of the form are amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The last sentence of Line 9 is amended to delete the introductory clause, “Unless a trustee is serving,” in recognition of the fact that in subchapter V cases there will generally be both a trustee and a debtor in possession. Line 10 is amended to reflect that in subchapter V cases a discharge may be granted either upon confirmation or after the payments due during the first three years of the plan have been made.

4. Official Form 309F (Notice of a Chapter 11 Bankruptcy Case—For Corporations and Partnerships). Issues similar to those just discussed are presented by lines 10 and 11 of this form. The Subcommittee recommends that the last sentence of line 10 (Filing a Chapter 11

bankruptcy case) should be amended in the same way as the last sentence in line 9 of Official Form 309E: “~~Unless a trustee is serving, the~~ The debtor will generally remain in possession of the property and ~~may~~ continue to operate the debtor’s business.”

This form’s explanation about a discharge, which appears at line 11, does not discuss the possibility of a discharge after payments have been made, since the form does not apply to individuals. The Subcommittee recommends adding a sentence so that the first two sentences of line 11 would read:

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). However, in some cases a discharge may not be granted until a substantial portion of payments due under the plan have been made. See 11 U.S.C. § 1192.

The Committee Note would then explain as follows:

COMMITTEE NOTE

Lines 10 and 11 of the form are amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The last sentence of Line 10 is amended to delete the introductory clause, “Unless a trustee is serving,” in recognition of the fact that in subchapter V cases there will generally be both a trustee and a debtor in possession. Line 11 is amended to reflect that in some subchapter V cases a discharge will not be granted until the payments due during the first three years of the plan have been made.

5. Official Form 314 (Ballot for Accepting or Rejecting Plan of Reorganization).

The form begins with several statements that refer to a disclosure statement. However, in cases under subchapter V of chapter 11, there will generally be no disclosure statement. New Code § 1181(b) provides, “Unless the court for cause orders otherwise, . . . section[] . . . 1125 of this title do[es] not apply to a case under this subchapter.”

Because this ballot form is designed for various situations, it includes some language in brackets that does not apply in all cases. The Subcommittee suggests that a similar approach be used in response to SBRA. To avoid confusion, braces would be used to surround the references to a disclosure statement that would usually not be included in the ballot in a subchapter V case.

The beginning of Form 314 would be revised as follows:

[Proponent] filed a plan of reorganization dated [Date] (the Plan) for the Debtor in this case. {The Court has [conditionally] approved a disclosure statement with respect to the Plan (the Disclosure Statement). The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy from [name, address, telephone number and telecopy number of proponent/proponent’s attorney.]}

{Court approval of the disclosure statement does not indicate approval of the Plan by the Court.}

You should review {the Disclosure Statement and} the Plan before you vote.

A Committee Note, as shown below, would explain this change:

COMMITTEE NOTE

This form is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The first three paragraphs of the form are amended to place braces around all references to a disclosure statement. Section 1125 of the Code does not apply to subchapter V cases unless the court for cause orders otherwise. See Code § 1181(b). Thus, in most chapter V cases there will not be a disclosure statement, and the language in braces on the form should not be included on the ballot.

6. Official Form 315 (Order Confirming Plan). This form for confirmation orders in chapter 11 cases requires only a minor amendment in response to SBRA. The sentence declaring the plan confirmed needs two additional citations. The Subcommittee recommends amending it to read, “It having been determined after hearing on notice that the requirements for confirmation

set forth in 11 U.S.C. § 1129(a) [or, if appropriate, 11 U.S.C. § 1129(b), [1191\(a\)](#), or [1191\(b\)](#)] have been satisfied;” The following Committee Note would explain the change:

COMMITTEE NOTE

This form is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Citations to the statutory provisions governing confirmation in such cases are added to the form for the court to include as appropriate.

7. Official Form 425A (Plan of Reorganization for Small Business Under Chapter 11). This illustrative form was promulgated in response to § 433 of BAPCPA. That provision required the Judicial Conference to prescribe “official standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between— (1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and (2) economy and simplicity for debtors.”

While there is not a similar command in SBRA, the Subcommittee concluded that an illustrative plan form would be equally useful for small business debtors that choose to proceed under subchapter V as for those that do not. It recommends that Form 425A be amended to indicate the need to include additional provisions if the plan is for a case under subchapter V. New Code § 1190 requires a plan filed in such a case to include “(A) a brief history of the business operations of the debtor; (B) a liquidation analysis; and (C) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization.” The provisions of the disclosure statement form (Official Form 425B) that address these matters could be added to Official Form 425A with an indication that they are required to be in a plan

only if the case is under subchapter V. Those provisions appear in Official Form 425B as follows:

II. Background

A. Description and History of the Debtor's Business

The Debtor is a [corporation, partnership, etc.]. Since [insert year operations commenced], the Debtor has been in the business of [redacted]. [Describe the Debtor's business].

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as *Exhibit E*.

2. Ability to make future plan payments and operate without further reorganization

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments and operate the debtor's business.

The Plan Proponent has provided projected financial information. Those projections are listed in *Exhibit G*.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$

[redacted].

The final Plan payment is expected to be paid on [redacted].

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience. Explain why such assumptions should now be made.]

You should consult with your accountant or other financial advisor if you have any questions pertaining to these projections.

The Committee Note would provide as follows:

COMMITTEE NOTE

This form is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Because there will generally not be a disclosure statement in subchapter V cases, § 1190 of the Code provides that plans in those cases must include a brief history of the debtor's business operations, a liquidation analysis, and projections of the debtor's ability to make payments under the plan. Those provisions are added to Part ___ of the form with an indication that they are to be included in plans only in subchapter V cases.

The Subcommittee decided that amendments are not required for Official Forms 425B (Disclosure Statement for Small Business Under Chapter 11) and 425C (Monthly Operating Report for Small Business Under Chapter 11). The titles of both forms are sufficiently broad to cover subchapter V cases. Furthermore, Form 425B will generally not be needed in subchapter V cases, but when a disclosure statement is ordered, no wording changes to the form are needed. Because debtors in subchapter V cases will have the same obligation to make monthly operating reports as small business debtors currently do, Form 425C will be applicable to such cases.

IV. Procedure for Implementation

In order to have rules in effect by the effective date of SBRA—next February 19—the Advisory Committee will need to initiate a process leading to the adoption of interim rules. The process used after the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) can provide guidance to the Committee. This topic will be discussed in greater detail at the Advisory Committee meeting, but the following is a list of the key steps in the process:

- At the fall meeting, the Advisory Committee will review and approve on an interim basis rule amendments to conform to SBRA.
- It will seek approval from the Standing Committee and Judicial Conference to issue interim rules. (If we give courts and commercial publishers the same 60-day or so notice of the interim rules and forms we gave in 2005, we would need to distribute them mid-to-late December 2019.)
- The Advisory Committee could ask permission to publish the proposed rule amendments for a short period in the fall to get feedback on them before issuance. Alternatively or in

addition, the Committee could solicit comments through outreach to organized bankruptcy groups.

- If the Committee decides that it wants a short public comment period, that period would probably need to be complete by the end of October. That would give the reporters a week or so to make final recommendations, which the Advisory Committee and Standing Committee could consider in early November by email vote.
- The Advisory Committee would then ask the Executive Committee of the Judicial Conference to allow the Standing Committee and the Advisory Committee to post and distribute to the courts the interim rules.
- With that approval, chief judges of the district courts and bankruptcy courts would be asked to adopt the interim rules as local rules to take effect on February 19, 2020.
- The Advisory Committee would then start the process for approval of permanent rules, seeking publication of the interim rules, with any needed revisions, for public comment next August. Following the normal process would lead to an effective date of the rules of December 1, 2022.

The process for adopting conforming Official Forms is simpler. Although the rule changes would be presented as interim rules, any form changes could be adopted by the Advisory Committee with later approval by the Standing Committee and notice to the Judicial Conference. The Advisory Committee's final approval could be sought after publication and/or outreach this fall.

Alternatively, the Advisory Committee could follow a version of the normal process and seek approval of the form amendments first by the Standing Committee and then by the Executive Committee when it considers the issuance of the interim rules. The Advisory

Committee could nevertheless seek comment on the form changes in August 2020 when the proposed permanent rule changes are published, and it could revise the forms after that if appropriate.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

SUBJECT: ADDITIONAL SUGGESTIONS FOR AMENDMENTS IN RESPONSE TO
THE SMALL BUSINESS REORGANIZATION ACT OF 2019

DATE: SEPTEMBER 2, 2019

After the Subcommittee on Business Issues met and its memo to the Advisory Committee on the Small Business Reorganization Act of 2019 (“SBRA”) was prepared, Judge Tom Small (retired) (Bankr. E.D.N.C.) reviewed the Subcommittee’s recommended rule and form amendments and offered suggestions for amendments to four additional rules, as well as comments on the amendments proposed by the Subcommittee. Because these proposed amendments and comments have not been reviewed by the Subcommittee, this memorandum discussing them comes from the reporter.

Additional Rule Amendments

(1) Rule 1007(b)(5) requires “an individual debtor in a chapter 11 case” to file a statement of current monthly income, using Official Form 122-B. That rule provision was promulgated in response to the 2005 Amendments, which added § 1129(a)(15) to the Code. Subsection (a)(15) generally requires individual debtors in chapter 11 cases to devote their projected disposable income, as defined by § 1325(b)(2), to the reorganization plan. As so defined, “projected disposable income” is based on current monthly income.

Section 2(a) of SBRA makes Code § 1129(a)(15) inapplicable to subchapter V cases. While SBRA provides that, when subchapter V plans are confirmed nonconsensually, the debtor must devote its projected disposable income to the plan, new Code § 1191(d) defines “projected

(2) **Rule 2003** addresses meetings of creditors or equity security holders. Subdivision (a) of the rule specifies the timing of such meetings:

- Chapter 7 – 21 to 40 days after the order for relief;
- Chapter 11 – 21 to 40 days after the order for relief;
- Chapter 12 – 21 to 35 days after the order for relief;
- Chapter 13 – 21 to 50 days after the order for relief.

Judge Small has raised the question whether subchapter V cases should have the shorter timeframe of chapter 12 cases rather than the one for chapter 11.

The 1991 Committee Note to Rule 2003 explains that the “amendment to subdivision (a) relating to the calling of the meeting of creditors in a chapter 12 case is consistent with the expedited procedures of chapter 12.” Subchapter V of chapter 11 is based in part on chapter 12. Like § 1221, new § 1189 provides that in subchapter V cases the debtor generally must file a plan within 90 days after the order for relief. However, subchapter V does not have a provision that parallels § 1224, which requires the confirmation hearing to be concluded no later than 45 days after the filing of the plan.

I am not sure whether an exception to the chapter 11 timeframe for the meeting of creditors is needed. But if the Advisory Committee decides that the interim rules should be published for comment this fall, proposing such a change is more likely to draw comments on whether a shortened timeframe is appropriate than the failure to propose a change would.

Therefore I recommend that the following amendment to Rule 2003(a) be proposed:

- 1 **Rule 2003. Meeting of Creditors or Equity Security Holders**
2 (a) DATE AND PLACE. Except as otherwise provided in § 341(e) of the
3 Code, in a chapter 7 ~~liquidation~~ or a chapter 11 ~~reorganization~~ case (other than

4 under subchapter V), the United States trustee shall call a meeting of creditors to
5 be held no fewer than 21 and no more than 40 days after the order for relief. In a
6 case under subchapter V of chapter 11 or chapter 12 ~~family farmer debt adjustment~~
7 ~~case~~, the United States trustee shall call a meeting of creditors to be held no fewer
8 than 21 and no more than 35 days after the order for relief. In a chapter 13
9 ~~individual's debt adjustment~~ case, the United States trustee shall call a meeting of
10 creditors to be held no fewer than 21 and no more than 50 days after the order for
11 relief. If there is an appeal from or a motion to vacate the order for relief, or if there
12 is a motion to dismiss the case, the United States trustee may set a later date for the
13 meeting. The meeting may be held at a regular place for holding court or at any
14 other place designated by the United States trustee within the district convenient
15 for the parties in interest. If the United States trustee designates a place for the
16 meeting which is not regularly staffed by the United States trustee or an assistant
17 who may preside at the meeting, the meeting may be held not more than 60 days
18 after the order for relief.

19 * * * * *

COMMITTEE NOTE

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (a) of the rule is amended to include such cases. The meeting of creditors in a subchapter V case generally must held within 21 to 35 (rather than 40) days after the order for relief because of the shortened time period for the debtor to file a plan.

(3) Rule 3010(b) generally precludes the distribution of very small payments in chapter 12 and chapter 13 cases. Judge Small has raised the question whether subchapter V cases should

COMMITTEE NOTE

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. To avoid the undue cost and inconvenience of distributing small payments, the title and subdivision (b) are amended to include subchapter V cases.

(4) Rule 3011 governs the treatment of unclaimed funds at the end of chapters 7, 12, and 13 cases. It implements § 347(a) of the Code, which provides that trustees in cases under those chapters must stop payment on any check that remains unpaid 90 days after the final distribution and pay any remaining property of the estate into the court. Section 4(a)(5) of SBRA amends § 347(a) to include cases under subchapter V of chapter 11.

Judge Small has raised the question whether Rule 3011 should be made applicable to subchapter V cases, and I agree that it should, given the amendment to § 347(a). As amended, the rule would read:

1 **Rule 3011. Unclaimed Funds in Cases Under Chapter 7 Liquidation,**
2 **Subchapter V of Chapter 11, Chapter 12 Family Farmer's Debt Adjustment,**
3 **and Chapter 13 Individual's Debt Adjustment Cases**

4 The trustee shall file a list of all known names and addresses of the entities
5 and the amounts which they are entitled to be paid from remaining property of the
6 estate that is paid into court pursuant to § 347(a) of the Code.

COMMITTEE NOTE

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The rule is amended to include such cases because § 347(a) of the Code now applies to them.

Comments on Amendments Proposed by the Subcommittee

(1) Rule 1020. Judge Small has raised the question whether the proposed amendments to this rule—which require a small business debtor to indicate on the petition or in a statement in response to an involuntary petition whether it chooses to proceed under subchapter V of chapter 11—will preclude debtors in chapter 11 cases pending on the effective date of SBRA from opting to proceed under subchapter V.

The effective date provision of SBRA says that it “shall take effect 180 days after the date of enactment.” Because its applicability is not limited to cases *filed* on or after the effective date, the Act appears to permit the situation raised by Judge Small. I do not believe, however, that Rule 1020, as proposed for amendment, precludes post-effective-date elections to proceed under subchapter V. The rule prescribes what debtors must do in their petitions (or statements), but if petitions have already been filed when SBRA becomes effective, the rule is inapplicable. No rule addresses the procedure for post-effective-date elections in pending cases, so I think that a small business debtor in such a case should initiate the election to proceed under subchapter V by filing a motion in accordance with Rule 9013. That procedure would allow responses and an opportunity for the court to determine whether the debtor satisfied the requirements of small-business-debtor status and whether the pending case had proceeded too far to allow such an election.

If the Advisory Committee decides that an interim rule provision (that would not become permanent) should be issued to cover this situation, a new subdivision of Rule 1020 could be drafted. I believe, however, that it is not needed.

(2) Proposed amendments to Rules 2009, 2012, 2015, and 3016. Judge Small stated that he agreed with the proposed amendments to these rules.

(3) Official Form 425A. Judge Small observed that “after there has been some experience with plans under subchapter V, it might be good to modify the standard form to reflect some of the more common plans and provisions. I can envision all sorts of plans being filed and can anticipate that a debtor may want to file two plans—one a plan for consensual approval and one for cramdown if consent cannot be achieved.”

Fill in this information to identify your case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (if known): _____ Chapter you are filing under:

- Chapter 7
- Chapter 11
- Chapter 12
- Chapter 13

Check if this is an amended filing

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy

02/20

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, “Do you own a car,” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
<p>1. Your full name</p> <p>Write the name that is on your government-issued picture identification (for example, your driver’s license or passport).</p> <p>Bring your picture identification to your meeting with the trustee.</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p> <p>_____</p> <p>Suffix (Sr., Jr., II, III)</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p> <p>_____</p> <p>Suffix (Sr., Jr., II, III)</p>
<p>2. All other names you have used in the last 8 years</p> <p>Include your married or maiden names.</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p> <p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p> <p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p>
<p>3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)</p>	<p>XXX – XX – _____</p> <p>OR</p> <p>9 XX – XX – _____</p>	<p>XXX – XX – _____</p> <p>OR</p> <p>9 XX – XX – _____</p>

About Debtor 1:

About Debtor 2 (Spouse Only in a Joint Case):

4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years

Include trade names and doing business as names

I have not used any business names or EINs.

Business name

Business name

EIN

EIN

I have not used any business names or EINs.

Business name

Business name

EIN

EIN

5. Where you live

Number Street

City State ZIP Code

County

If your mailing address is different from the one above, fill it in here. Note that the court will send any notices to you at this mailing address.

Number Street

P.O. Box

City State ZIP Code

If Debtor 2 lives at a different address:

Number Street

City State ZIP Code

County

If Debtor 2's mailing address is different from yours, fill it in here. Note that the court will send any notices to this mailing address.

Number Street

P.O. Box

City State ZIP Code

6. Why you are choosing this district to file for bankruptcy

Check one:

I have lived in this district longer than in any other district.

I have another reason. Explain. (See 28 U.S.C. § 1408.)

Four horizontal lines for explanation.

Check one:

I have lived in this district longer than in any other district.

I have another reason. Explain. (See 28 U.S.C. § 1408.)

Four horizontal lines for explanation.

Part 2: Tell the Court About Your Bankruptcy Case

7. The chapter of the Bankruptcy Code you are choosing to file under

Check one. (For a brief description of each, see Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)). Also, go to the top of page 1 and check the appropriate box.

- Chapter 7
Chapter 11
Chapter 12
Chapter 13

8. How you will pay the fee

- I will pay the entire fee when I file my petition. Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
I need to pay the fee in installments. If you choose this option, sign and attach the Application for Individuals to Pay The Filing Fee in Installments (Official Form 103A).
I request that my fee be waived (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the Application to Have the Chapter 7 Filing Fee Waived (Official Form 103B) and file it with your petition.

9. Have you filed for bankruptcy within the last 8 years?

- No
Yes. District When Case number
District When Case number
District When Case number

10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?

- No
Yes. Debtor Relationship to you
District When Case number, if known
Debtor Relationship to you
District When Case number, if known

11. Do you rent your residence?

- No. Go to line 12.
Yes. Has your landlord obtained an eviction judgment against you?
No. Go to line 12.
Yes. Fill out Initial Statement About an Eviction Judgment Against You (Form 101A) and file it as part of this bankruptcy petition.

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

- No. Go to Part 4.
Yes. Name and location of business

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

Name of business, if any
Number Street
City State ZIP Code

Check the appropriate box to describe your business:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
Stockbroker (as defined in 11 U.S.C. § 101(53A))
Commodity Broker (as defined in 11 U.S.C. § 101(6))
None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a small business debtor?

For a definition of small business debtor, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

- No. I am not filing under Chapter 11.
No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.
Yes. I am filing under Chapter 11, I am a small business according to the definition in the Bankruptcy Code, and I do not choose to proceed under Subchapter V of Chapter 11.
Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I choose to proceed under Subchapter V of Chapter 11.

Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

- No
Yes. What is the hazard?

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

If immediate attention is needed, why is it needed?

Where is the property?
Number Street

City State ZIP Code

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling

15. Tell the court whether you have received a briefing about credit counseling.

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

I am not required to receive a briefing about credit counseling because of:

Incapacity. I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

Disability. My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.

Active duty. I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):

You must check one:

I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

I am not required to receive a briefing about credit counseling because of:

Incapacity. I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

Disability. My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.

Active duty. I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have? 16a. Are your debts primarily consumer debts? 16b. Are your debts primarily business debts? 16c. State the type of debts you owe that are not consumer debts or business debts.

17. Are you filing under Chapter 7? Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

18. How many creditors do you estimate that you owe? 1-49, 50-99, 100-199, 200-999, 1,000-5,000, 5,001-10,000, 10,001-25,000, 25,001-50,000, 50,001-100,000, More than 100,000

19. How much do you estimate your assets to be worth? \$0-\$50,000, \$50,001-\$100,000, \$100,001-\$500,000, \$500,001-\$1 million, \$1,000,001-\$10 million, \$10,000,001-\$50 million, \$50,000,001-\$100 million, \$100,000,001-\$500 million, \$500,000,001-\$1 billion, \$1,000,000,001-\$10 billion, \$10,000,000,001-\$50 billion, More than \$50 billion

20. How much do you estimate your liabilities to be? \$0-\$50,000, \$50,001-\$100,000, \$100,001-\$500,000, \$500,001-\$1 million, \$1,000,001-\$10 million, \$10,000,001-\$50 million, \$50,000,001-\$100 million, \$100,000,001-\$500 million, \$500,000,001-\$1 billion, \$1,000,000,001-\$10 billion, \$10,000,000,001-\$50 billion, More than \$50 billion

Part 7: Sign Below

For you I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct. If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11, 12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7. If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b). I request relief in accordance with the chapter of title 11, United States Code, specified in this petition. I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

X Signature of Debtor 1 Executed on MM / DD / YYYY X Signature of Debtor 2 Executed on MM / DD / YYYY

Debtor 1

First Name Middle Name Last Name

Case number (if known) _____

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

X

Signature of Attorney for Debtor Date
MM / DD / YYYY

Printed name

Firm name

Number Street

City State ZIP Code

Contact phone _____ Email address _____

Bar number State

For you if you are filing this bankruptcy without an attorney

If you are represented by an attorney, you do not need to file this page.

The law allows you, as an individual, to represent yourself in bankruptcy court, but **you should understand that many people find it extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, you are strongly urged to hire a qualified attorney.**

To be successful, you must correctly file and handle your bankruptcy case. The rules are very technical, and a mistake or inaction may affect your rights. For example, your case may be dismissed because you did not file a required document, pay a fee on time, attend a meeting or hearing, or cooperate with the court, case trustee, U.S. trustee, bankruptcy administrator, or audit firm if your case is selected for audit. If that happens, you could lose your right to file another case, or you may lose protections, including the benefit of the automatic stay.

You must list all your property and debts in the schedules that you are required to file with the court. Even if you plan to pay a particular debt outside of your bankruptcy, you must list that debt in your schedules. If you do not list a debt, the debt may not be discharged. If you do not list property or properly claim it as exempt, you may not be able to keep the property. The judge can also deny you a discharge of all your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Individual bankruptcy cases are randomly audited to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined and imprisoned.**

If you decide to file without an attorney, the court expects you to follow the rules as if you had hired an attorney. The court will not treat you differently because you are filing for yourself. To be successful, you must be familiar with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of the court in which your case is filed. You must also be familiar with any state exemption laws that apply.

Are you aware that filing for bankruptcy is a serious action with long-term financial and legal consequences?

- No
- Yes

Are you aware that bankruptcy fraud is a serious crime and that if your bankruptcy forms are inaccurate or incomplete, you could be fined or imprisoned?

- No
- Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out your bankruptcy forms?

- No
- Yes. Name of Person _____

Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

By signing here, I acknowledge that I understand the risks involved in filing without an attorney. I have read and understood this notice, and I am aware that filing a bankruptcy case without an attorney may cause me to lose my rights or property if I do not properly handle the case.

x

Signature of Debtor 1

Date _____
MM / DD / YYYY

Contact phone _____

Cell phone _____

Email address _____

x

Signature of Debtor 2

Date _____
MM / DD / YYYY

Contact phone _____

Cell phone _____

Email address _____

Committee Note

Part 2, line 13 is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Line 13 is amended to add a check box for a small business debtor to indicate that it is making that choice, and the existing check box for small business debtors is amended to allow the debtor to indicate that it is not electing to proceed under subchapter V.

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Fill in this information to identify the case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (if known): _____ Chapter _____

Check if this is an amended filing

Official Form 201

Voluntary Petition for Non-Individuals Filing for Bankruptcy

02/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name

2. All other names debtor used in the last 8 years

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN)

____ - ____ - _____

4. Debtor's address

Principal place of business

Mailing address, if different from principal place of business

Number Street

Number Street

P.O. Box

City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

County

Number Street

City State ZIP Code

5. Debtor's website (URL)

6. Type of debtor

- Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))
- Partnership (excluding LLP)
- Other. Specify: _____

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes> .

____ _

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9

Chapter 11. Check all that apply:

- Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625 (amount subject to adjustment on 4/01/22 and every 3 years after that).
- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and it chooses to proceed under Subchapter V of Chapter 11.
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11 (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

- Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

- No

- Yes. District _____ When _____ Case number _____
MM / DD / YYYY
- District _____ When _____ Case number _____
MM / DD / YYYY

If more than 2 cases, attach a separate list.

Debtor _____
Name

Case number (if known) _____

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

No

Yes. Debtor _____ Relationship _____

District _____ When _____
MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known _____

11. Why is the case filed in this district?

Check all that apply:

Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (Check all that apply.)

It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? _____

It needs to be physically secured or protected from the weather.

It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

Other _____

Where is the property? _____

Number Street

City

State ZIP Code

Is the property insured?

No

Yes. Insurance agency _____

Contact name _____

Phone _____

Statistical and administrative information

13. Debtor's estimation of available funds

Check one:

Funds will be available for distribution to unsecured creditors.

After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

14. Estimated number of creditors

1-49

1,000-5,000

25,001-50,000

50-99

5,001-10,000

50,001-100,000

100-199

10,001-25,000

More than 100,000

200-999

Debtor _____
Name

Case number (if known) _____

- 15. Estimated assets**
- | | | |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million | <input type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000 | <input type="checkbox"/> \$10,000,001-\$50 million | <input type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000 | <input type="checkbox"/> \$50,000,001-\$100 million | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion |

- 16. Estimated liabilities**
- | | | |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million | <input type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000 | <input type="checkbox"/> \$10,000,001-\$50 million | <input type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000 | <input type="checkbox"/> \$50,000,001-\$100 million | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion |

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
MM / DD / YYYY

X

Signature of authorized representative of debtor

Printed name

Title

18. Signature of attorney

X

Signature of attorney for debtor

Date _____
MM / DD / YYYY

Printed name

Firm name

Number Street

City State ZIP Code

Contact phone

Email address

Bar number

State

Committee Note

Line 8 of the form is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Line 8 is amended to provide a check box for a small business debtor to indicate that it is making that choice.

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Information to identify the case:Debtor 1 _____
First Name Middle Name Last Name

Last 4 digits of Social Security number or ITIN _____

EIN _____

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

Last 4 digits of Social Security number or ITIN _____

EIN _____

United States Bankruptcy Court for the: _____ District of _____
(State)[Date case filed for chapter 11 _____] OR
MM / DD / YYYY

Case number: _____

[Date case filed in chapter _____]
MM / DD / YYYYDate case converted to chapter 11 _____
MM / DD / YYYY**Official Form 309E (For Individuals or Joint Debtors)****Notice of Chapter 11 Bankruptcy Case**

02/20

For the debtors listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors and debtors, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

Confirmation of a chapter 11 plan may result in a discharge of debt. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 10 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

	About Debtor 1:	About Debtor 2:
1. Debtor's full name		
2. All other names used in the last 8 years		
3. Address		If Debtor 2 lives at a different address:
4. Debtor's attorney Name and address		Contact phone _____ Email _____
5. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov .		Hours open _____ Contact phone _____

For more information, see page 2 ►

6. Meeting of creditors

Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend.
Creditors may attend, but are not required to do so.

_____ at _____
Date Time

Location:

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

7. Deadlines

The bankruptcy clerk’s office must receive these documents and any required filing fee by the following deadlines.

File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:

You must file a complaint:

- if you assert that the debtor is not entitled to receive a discharge of any debts under 11 U.S.C. § 1141(d)(3) or
- if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6).

First date set for hearing on confirmation of plan. The court will send you a notice of that date later.

Filing deadline for dischargeability complaints: _____

Deadline for filing proof of claim:

[Not yet set. If a deadline is set, the court will send you another notice.] or
[date, if set by the court]

A proof of claim is a signed statement describing a creditor’s claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk’s office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed*, *contingent*, or *unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed*, *contingent*, or *unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk’s office or online at www.pacer.gov.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

Deadline to object to exemptions:

The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.

Filing deadline: 30 days after the conclusion of the meeting of creditors

8. Creditors with a foreign address

If you are a creditor receiving mailed notice at a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

9. Filing a Chapter 11 bankruptcy case

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. **The debtor will generally remain in possession of the property and may continue to operate the debtor’s business.**

10. Discharge of debts

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of a debt. See 11 U.S.C. § 1141(d). **However, in some cases the debts will not be discharged until all or a substantial portion of payments under the plan are made. See 11 U.S.C. §§ 1141(d)(5) and 1192.** A discharge means that creditors may never try to collect the debt from the debtors personally except as provided in the plan. If you believe that a particular debt owed to you should be excepted from the discharge under 11 U.S.C. § 523 (a)(2), (4), or (6), you must file a complaint and pay the filing fee in the bankruptcy clerk’s office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1141 (d)(3), you must file a complaint and pay the filing fee in the clerk’s office by the first date set for the hearing on confirmation of the plan. The court will send you another notice telling you of that date.

11. Exempt property

The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors, even if the case is converted to chapter 7. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk’s office or online at www.pacer.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk’s office must receive the objection by the deadline to object to exemptions in line 7.

Committee Note

Lines 9 and 10 of the form are amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The last sentence of Line 9 is amended to delete the introductory clause, “Unless a trustee is serving,” in recognition of the fact that in subchapter V cases there will generally be both a trustee and a debtor in possession. Line 10 is amended to reflect that in subchapter V cases a discharge may be granted either upon confirmation or after the payments due during the first three years of the plan have been made.

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Information to identify the case:

Debtor _____ Name	EIN _____
United States Bankruptcy Court for the: _____ District of _____ (State)	[Date case filed for chapter 11 _____ MM / DD / YYYY] OR
Case number: _____	[Date case filed in chapter _____ MM / DD / YYYY]
	Date case converted to chapter 11 _____ MM / DD / YYYY

Official Form 309F (For Corporations or Partnerships)**Notice of Chapter 11 Bankruptcy Case**

02/20

For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor's full name

2. All other names used in the last 8 years

3. Address

4. Debtor's attorney

Name and address

Contact phone _____

Email _____

5. Bankruptcy clerk's office

Documents in this case may be filed at this address.

You may inspect all records filed in this case at this office or online at www.pacer.gov.

Hours open _____

Contact phone _____

6. Meeting of creditors

The debtor's representative must attend the meeting to be questioned under oath.

Creditors may attend, but are not required to do so.

_____ at _____
Date Time

Location: _____

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

For more information, see page 2 ►

7. Proof of claim deadline

Deadline for filing proof of claim:

[Not yet set. If a deadline is set, the court will send you another notice.] or

[date, if set by the court]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed*, *contingent*, or *unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed*, *contingent*, or *unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at www.pacer.gov.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

8. Exception to discharge deadline

The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.

If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below.

Deadline for filing the complaint: _____

9. Creditors with a foreign address

If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Filing a Chapter 11 bankruptcy case

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. **The debtor will generally remain in possession of the property and may continue to operate the debtor's business.**

11. Discharge of debts

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). **However, in some cases a discharge may not be granted until a substantial portion of payments due under the plan have been made. See 11 U.S.C. § 1192.** A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.

Committee Note

Lines 10 and 11 of the form are amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The last sentence of Line 10 is amended to delete the introductory clause, “Unless a trustee is serving,” in recognition of the fact that in subchapter V cases there will generally be both a trustee and a debtor in possession. Line 11 is amended to reflect that in some subchapter V cases a discharge will not be granted until the payments due during the first three years of the plan have been made.

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[Caption as in 416A]

Class [] Ballot for Accepting or Rejecting Plan of Reorganization

[Proponent] filed a plan of reorganization dated [Date] (the Plan) for the Debtor in this case. {The Court has [conditionally] approved a disclosure statement with respect to the Plan (the Disclosure Statement). The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy from [name, address, telephone number and telecopy number of proponent/proponent's attorney.]}

{Court approval of the disclosure statement does not indicate approval of the Plan by the Court.}

You should review {the Disclosure Statement and} the Plan before you vote. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan. Your [claim] [equity interest] has been placed in class [] under the Plan. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.

If your ballot is not received by [name and address of proponent's attorney or other appropriate address] on or before [date], and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan.

If the Plan is confirmed by the Bankruptcy Court, it will be binding on you whether or not you vote.

Acceptance or Rejection of the Plan

[At this point the ballot should provide for voting by the particular class of creditors or equity holders receiving the ballot using one of the following alternatives:]

[If the voter is the holder of a secured, priority, or unsecured nonpriority claim:]

The undersigned, the holder of a Class [] claim against the Debtor in the unpaid amount of Dollars (\$)

[or, if the voter is the holder of a bond, debenture, or other debt security:]

The undersigned, the holder of a Class [] claim against the Debtor, consisting of Dollars (\$) principal amount of [describe bond, debenture, or other debt security] of the Debtor (For purposes of this Ballot, it is not necessary and you should not adjust the principal amount for any accrued or unmatured interest.)

[or, if the voter is the holder of an equity interest:]

The undersigned, the holder of Class [] equity interest in the Debtor, consisting of _____ shares or other interests of [describe equity interest] in the Debtor

[In each case, the following language should be included:]

Check one box only

Accepts the plan

Rejects the plan

Dated: _____

Print or type name: _____

Signature: _____ Title (if corporation or partnership) _____

Address: _____

Return this ballot to:

[Name and address of proponent's attorney or other appropriate address]

Committee Note

This form is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The first three paragraphs of the form are amended to place braces around all references to a disclosure statement. Section 1125 of the Code does not apply to subchapter V cases unless the court for cause orders otherwise. See Code § 1181(b). Thus, in most chapter V cases there will not be a disclosure statement, and the language in braces on the form should not be included on the ballot.

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[Caption as in 416A]

Order Confirming Plan

The plan under chapter 11 of the Bankruptcy Code filed by _____, on _____ [if applicable, as modified by a modification filed on _____], or a summary thereof, having been transmitted to creditors and equity security holders; and

It having been determined after hearing on notice that the requirements for confirmation set forth in 11 U.S.C. § 1129(a) [or, if appropriate, 11 U.S.C. § 1129(b), 1191(a), or 1191(b)] have been satisfied;

IT IS ORDERED that:

The plan filed by _____, on _____, [if appropriate, include dates and any other pertinent details of modifications to the plan] is confirmed. [If the plan provides for an injunction against conduct not otherwise enjoined under the Code, include the information required by Rule 3020.]

A copy of the confirmed plan is attached.

MM / DD / YYYY

By the court: _____
United States Bankruptcy Judge

Committee Note

This form is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Citations to the statutory provisions governing confirmation in such cases are added to the form for the court to include as appropriate.

Fill in this information to identify the case:

Debtor Name _____
United States Bankruptcy Court for the: _____ District of _____
(State)
Case number: _____

Check if this is an amended filing

Official Form 425A

Plan of Reorganization for Small Business Under Chapter 11

02/20

[Name of Proponent]’s Plan of Reorganization, Dated [Insert Date]

[If this plan is for a small business debtor under Subchapter V, 11 U.S.C. § 1190 requires that it include “(A) a brief history of the business operations of the debtor; (B) a liquidation analysis; and (C) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization.” The Background section below may be used for that purpose. Otherwise, the Background section can be deleted from the form, and the Plan can start with “Article 1, Summary”]

Background for Cases Filed Under Subchapter V

A. Description and History of the Debtor’s Business

The Debtor is a [corporation, partnership, etc.]. Since [insert year operations commenced], the Debtor has been in the business of _____. [Describe the Debtor’s business].

B. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to the Plan as Exhibit ____.

C. Ability to make future plan payments and operate without further reorganization

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments and operate the debtor’s business.

The Plan Proponent has provided projected financial information as Exhibit ____.

The Plan Proponent’s financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$ _____.

The final Plan payment is expected to be paid on _____.

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience. Explain why such assumptions should now be made.]

You should consult with your accountant or other financial advisor if you have any questions pertaining to these projections.

Article 1: Summary

This Plan of Reorganization (the *Plan*) under chapter 11 of the Bankruptcy Code (the *Code*) proposes to pay creditors of [insert the name of the Debtor] (the *Debtor*) from [Specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income].

This Plan provides for: classes of priority claims;
 classes of secured claims;
 classes of non-priority unsecured claims; and
 classes of equity security holders.

Non-priority unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately cents on the dollar. This Plan also provides for the payment of administrative and priority claims.

All creditors and equity security holders should refer to Articles 3 through 6 of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

Article 2: Classification of Claims and Interests

2.01 **Class 1** All allowed claims entitled to priority under § 507(a) of the Code (except administrative expense claims under § 507(a)(2), ["gap" period claims in an involuntary case under § 507(a)(3),] and priority tax claims under § 507(a)(8)).

[Add classes of priority claims, if applicable]

2.02 **Class 2** The claim of , to the extent allowed as a secured claim under § 506 of the Code.

[Add other classes of secured creditors, if any. *Note:* Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).]

2.03 **Class 3** All non-priority unsecured claims allowed under § 502 of the Code.

[Add other classes of unsecured claims, if any.]

2.04 **Class 4** Equity interests of the Debtor. [If the Debtor is an individual, change this heading to *The interests of the individual Debtor in property of the estate.*]

Article 3: Treatment of Administrative Expense Claims, Priority Tax Claims, and Quarterly and Court Fees

3.01 **Unclassified claims** Under section § 1123(a)(1), administrative expense claims, ["gap" period claims in an involuntary case allowed under § 502(f) of the Code,] and priority tax claims are not in classes.

3.02 **Administrative expense claims** Each holder of an administrative expense claim allowed under § 503 of the Code, [and a "gap" claim in an involuntary case allowed under § 502(f) of the Code,] will be paid in full on the effective date of this Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

3.03 **Priority tax claims** Each holder of a priority tax claim will be paid [Specify terms of treatment consistent with § 1129(a)(9)(C) of the Code].

3.04 **Statutory fees** All fees required to be paid under 28 U.S.C. § 1930 that are owed on or before the

effective date of this Plan have been paid or will be paid on the effective date.

3.05 **Prospective quarterly fees**

All quarterly fees required to be paid under 28 U.S.C. § 1930(a)(6) or (a)(7) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code.

Article 4: Treatment of Claims and Interests Under the Plan

4.01 **Claims and interests shall be treated as follows under this Plan:**

Class	Impairment	Treatment
Class 1 - Priority claims excluding those in Article 3	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of priority claims in this Class, including the form, amount and timing of distribution, if any. For example: "Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan, or the date on which such claim is allowed by a final non-appealable order. Except: [_____]"] [Add classes of priority claims if applicable]
Class 2 – Secured claim of [Insert name of secured creditor.]	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of secured claim in this Class, including the form, amount and timing of distribution, if any.] [Add classes of secured claims if applicable]
Class 3 – Non-priority unsecured creditors	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of unsecured creditors in this Class, including the form, amount and timing of distribution, if any.] [Add administrative convenience class if applicable]
Class 4 - Equity security holders of the Debtor	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of equity security holders in this Class, including the form, amount and timing of distribution, if any.]

Article 5: Allowance and Disallowance of Claims

5.01 **Disputed claim**

A *disputed claim* is a claim that has not been allowed or disallowed [by a final non-appealable order], and as to which either:

- (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or
- (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

5.02 **Delay of distribution on a disputed claim**

No distribution will be made on account of a disputed claim unless such claim is allowed [by a final non-appealable order].

5.03 **Settlement of disputed claims**

The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

Article 6: Provisions for Executory Contracts and Unexpired Leases

6.01 **Assumed executory contracts and unexpired leases**

(a) The Debtor assumes, and if applicable assigns, the following executory contracts and unexpired leases as of the effective date:

[List assumed, or if applicable assigned, executory contracts and unexpired leases.]

(b) Except for executory contracts and unexpired leases that have been assumed, and if applicable assigned, before the effective date or under section 6.01(a) of this Plan, or that are the subject of a pending motion to assume, and if applicable assign, the Debtor will be conclusively deemed to have rejected all executory contracts and unexpired leases as of the effective date.

A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than _____ days after the date of the order confirming this Plan.

Article 7: Means for Implementation of the Plan

[Insert here provisions regarding how the plan will be implemented as required under § 1123(a)(5) of the Code. For example, provisions may include those that set out how the plan will be funded, including any claims reserve to be established in connection with the plan, as well as who will be serving as directors, officers or voting trustees of the reorganized Debtor.]

Article 8: General Provisions

8.01 Definitions and rules of construction

The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions:

[Insert additional definitions if necessary].

8.02 Effective date

The effective date of this Plan is the first business day following the date that is 14 days after the entry of the confirmation order. If, however, a stay of the confirmation order is in effect on that date, the effective date will be the first business day after the date on which the stay expires or is otherwise terminated.

8.03 Severability

If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.04 Binding effect

The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

8.05 Captions

The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

[8.06 Controlling effect

Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of _____ govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.]

[8.07 Corporate governance

[If the Debtor is a corporation include provisions required by § 1123(a)(6) of the Code.]

[8.08 Retention of Jurisdiction

Language addressing the extent and the scope of the bankruptcy court's jurisdiction

after the effective date of the plan.]

Article 9: Discharge

Check one box.

9.01 **Discharge if the Debtor is an individual and § 1141(d)(3) is not applicable.** Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

Discharge if the Debtor is a partnership and § 1141(d)(3) is not applicable. On the effective date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in § 1141(d)(1)(A) of the Code. The Debtor will not be discharged from any debt imposed by this Plan.

Discharge if the Debtor is a corporation and § 1141(d)(3) is not applicable. On the effective date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt:
(i) imposed by this Plan; or
(ii) to the extent provided in § 1141(d)(6).

No discharge if § 1141(d)(3) is applicable. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

Article 10: Other Provisions

[Insert other provisions, as applicable.]

Respectfully submitted,

x _____
[Signature of the Plan Proponent] [Printed Name]

x _____
[Signature of the Attorney for the Plan Proponent] [Printed Name]

Committee Note

This form is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Because there will generally not be a disclosure statement in subchapter V cases, § 1190 of the Code provides that plans in those cases must include a brief history of the debtor's business operations, a liquidation analysis, and projections of the debtor's ability to make payments under the plan. Those provisions are added to a new Background section of the form with an indication that they are to be included in plans only in subchapter V cases.

TAB 6

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TAB 6A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: SUBCOMMITTEE ON CONSUMER ISSUES
SUBJECT: SUGGESTIONS FOR AMENDMENTS TO RULE 3002.1
DATE: AUGUST 28, 2019

As was discussed at the spring 2019 meeting, the Advisory Committee has received suggestions 18-BK-G and 18-BK-H from the National Association of Chapter Thirteen Trustees and the American Bankruptcy Institute's Commission on Consumer Bankruptcy regarding amendments to Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence). The suggestions, which were referred to this Subcommittee, are made in response to the two groups' perception that there is an insufficient degree of compliance with the current rule, as well as a need for a more streamlined and familiar procedure for determining the status of a mortgage claim in a chapter 13 case.

Among the suggested amendments are the following:

- new provisions in subdivision (b) governing notice of payment changes for home equity lines of credit;
- specification of the effective date of a payment change if the claim holder's notice is untimely;
- the requirement of a midcase, as well as end-of-case, review of the status of the mortgage claim;
- use of a motion, rather than a notice, procedure for determining the status of the mortgage claim;

- specification of the content of a trustee’s motion, the claim holder’s response, and the court order regarding the status of the mortgage claim; and
- the creation of additional sanctions for the claim holder’s failure to respond to the trustee’s motion to determine the status of the mortgage claim.

Judge Goldgar appointed a working group to review the suggestions and make a recommendation to the Subcommittee. The working group met telephonically several times during the summer and presented a discussion draft of a revised Rule 3002.1 to the Subcommittee. The Subcommittee began its review and discussion of the draft during its August 20, 2019, conference call and will continue its work on the draft this fall.

In addition to considering the content of the suggestions and the language and organization of the draft, the Subcommittee is considering several overarching issues presented by the suggested amendments to Rule 3002.1. They include (1) whether requiring the delay of the effective date of a payment change due to an untimely notice is consistent with the Rules Enabling Act and the Bankruptcy Code; (2) whether Official Forms should be created to implement any new provisions; (3) which, if any, additional enforcement provisions should be proposed; and (4) whether the rule should be divided into two rules to make it easier to read.

The Subcommittee anticipates making a recommendation to the Advisory Committee at the spring 2020 meeting.

TAB 6B

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: CONSUMER SUBCOMMITTEE

SUBJECT: 19-BK-F – Rule 3002(c)(6)

DATE: AUG. 24, 2019

We have received a suggestion from George Weiss of Potomac, MD, 19-BK-F, with respect to Fed. R. Bankr. P. 3002(c)(6)(A). Rule 3002 requires creditors to file proofs of claim for their claims to be allowed, and specifies, in Rule 3002(c), the deadline for filing those proofs of claim in cases filed under chapter 7, 12 and 13. Rule 3002(c) then provides certain exceptions. Among those is that described in Rule 3002(c)(6) which provides:

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

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

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

Mr. Weiss suggests that the language of Rule 3002(c)(6)(A), read literally, allows a court to extend the time for filing a proof of claim to a domestic creditor only if the debtor failed to timely file the list of creditors' names and addresses provided under Rule 1007(a). This, Mr. Weiss states, is "probably not what the committee meant." He notes that courts have read the rule literally, denying relief to creditors who actually did not get notice either because they were omitted from the matrix or were listed with an improper address. He asserts that it is arbitrary to treat creditors who do not receive notice differently merely because they were or were not listed on the Rule 1007(a) list, and that the rule should be amended accordingly.

History of Rule 3002(c)(6)

Prior to December 1, 2017, Rule 3002(c)(6) provided a more limited exception that was substantively identical to current clause (B). The amendment to Rule 3002(c)(6) originated with the Chapter 13 Plan Working Group (composed of Judge Elizabeth L. Perris, John Rao, and Prof. Troy A. McKenzie) in 2012 as it began its work on a national Chapter 13 plan. The Working

Group proposed that Rule 3002(a) be modified to require secured creditors to file proofs of claim, and that Rule 3002(c) be amended to shorten the time periods for filing proofs of claim so that the filing deadline would occur before plan confirmation hearing dates under § 1324(b) and § 1221 of the Code.

The Working Group reported to the Advisory Committee at the September 2012 meeting as follows:

“The Working Group did not initially suggest any amendment to the exceptions to the deadline set out in Rule 3002(c). After further consideration, however, the Working Group has proposed a limited exception for creditors who were not timely listed in the mailing list required by Rule 1007(a)(1) to contain the name and address of creditors included or to be included in the debtor’s schedules.”

The language proposed by the Working Group for the amended Rule 3002(c)(6) was as follows:

(6) If the debtor fails to include a creditor on the list required by Rule 1007(a)(1), filed with the petition, or if notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days from the date of the court’s determination if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

The minutes of the Sept. 2012 Advisory Committee meeting do not indicate that there were any comments on the draft language of Rule 3002(c)(6). However, by the time of the next Advisory Committee meeting in April 2013, the Working Group stated that it had “refined the language of the draft that provides an explicit exception to the bar date when the debtor fails to file a timely list of creditors’ names and addresses under Rule 1007(a)(1).” No longer did a creditor who was excluded from the Rule 1007(a)(1) list of creditors have a right to seek extension of the deadline for filing a proof of claim. Instead, creditors could seek an extension only if the debtor failed to timely file the required list of creditors. The record does not identify the source of the change or the reasons for it. The revised version read as follows:

(6) If the debtor fails to timely file the list required by Rule 1007(a) containing the name and address of a creditor included or to be included on Schedules D, E, F, G, and H as prescribed by the Official Forms, or if notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days from the date of the court’s determination if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

Again, the minutes of the April 2013 Advisory Committee meeting do not indicate any comments on this language, but when the Rule was presented to the Standing Committee in June 2013 to seek authorization for publication, it had been amended to read as follows:

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

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

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

The changes may have been the result of restyling.

The Committee Note with respect to this paragraph read as follows (and was not modified from the original draft of the amendment presented to the Advisory Committee in April 2013):

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

The amendments to Rule 3002(c) were published in 2013 and again in 2014 with the proposed chapter 13 plan. There were several comments on Rule 3002(c)(6) made during each publication period.

- Bankruptcy Judge Joe Lee of the E.D. Ky. found the amendments to Rule 3002(c)(6) “sufficiently ambiguous that practitioners and even some courts could reasonably misinterpret the amendment . . . to settle the long-running dispute over whether bankruptcy courts may allow late-filed, tardily scheduled claims.” He proposed that the proposed rule be modified to make it clear whether it intended to permit extensions for creditors who receive insufficient notice because an incomplete list of creditors was filed.
- Judge S. Martin Teel, Jr. also pointed out that the proposed Rule 3002(c)(6) “fails to address the creditor whose name and address was not included on the list of creditors or was erroneously listed on that list” or who was listed on an amended list and does not get

timely notice. He recommended that all creditors be permitted an extension if the notice was insufficient “to give the creditor a reasonable time to file a proof of claim.”

- Henry E. Hildebrand III also called the draft Rule 3002(c)(6) “potentially ambiguous when a debtor has timely filed a list of creditors but the list omits a creditor.” He suggested changing the language to read “because the debtor failed to file a list of creditors’ names and addresses that complied with Rule 1007(a).”
- The National Conference of Bankruptcy Judges called the provisions of Rule 3002(c)(6) and (7) unclear “whether they provide the exclusive bases for granting extensions” and recommended adding the word “only” before the words “if the court finds that.” The NCBJ supported this limitation, stating that “Historically, the grounds for permitting extensions have been limited, and the better policy is to limit litigation about timeliness to disputes over what is critical to ensure procedural fairness.”
- The Pennsylvania Bar Association expressed its concern that the amendment “could be misinterpreted to resolve the dispute over the authority of bankruptcy courts to allow late-filed, tardily scheduled claims.” They opposed the amendment.
- The States’ Association of Bankruptcy Attorneys said that the proposed amendment “does not adequately cover the potential scenarios” when a creditor is omitted from the list, or lists a creditor with an incorrect address, and recommended revisions to permit extensions under these circumstances.
- David S. Yen, of Chicago, IL, recommended further time limits on late filing of proofs of claim by those permitted to file under proposed Rule 3002(c)(6), suggesting an outside limit of 180 days from the filing date (as well as other limitations).
- The National Conference of Bankruptcy Judges suggested that the standard for extending the deadline for filing proofs of claim that is applicable to foreign creditors (if the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim) should be equally applicable to domestic creditors.
- Ryan W. Johnson, Clerk of the Bankruptcy Court for the N.D. W. Va., opposed the amendments to Rule 3002(c)(6) in their entirety because “extensions of the time to timely file a proof of claim . . . unnecessarily creates legal and practical uncertainty to the process for the allowance and payment of claims under all chapters.” He also read the proposed amendments to Rule 3002(c)(6) and (7) as “illustrative examples” rather than “limiting examples” because the introductory language states that the “motion may be granted” rather than “the motion shall only be granted.” Even if the language were intended to be limiting, he found the language ambiguous, as for example when the debtor files an amended list of creditors including a formerly omitted creditor. He noted that, if Rule 3002(c)(6) applies only when the debtor failed to file the original list of

creditors with the petition, it would be “an extremely rare case when subsection (6)(A) would apply” because “[t]he court would have to specifically order that the list not be filed with the petition and the case must survive automatic dismissal on the 45th day[] under 11 U.S.C. § 521(i).”

Despite all these comments from well-regarded individuals and organizations on Rule 3002(c)(6), there is nothing in the record that indicates that the comments were considered by the Advisory Committee or by the Standing Committee. There is no reference to any of these comments in the agendas of either committee in 2014 or 2015, and Rule 3002(c)(6) remained unchanged after publication.

Cases Applying Rule 3002(c)(6)

Since its effective date of December 1, 2017, only five published cases have applied Rule 3002(c)(6). None of the bankruptcy judges has found the Rule ambiguous, and they consistently barred non-governmental domestic creditors from seeking extensions of the time to file a proof of claim if the debtor timely filed a list of creditors under Rule 1007(a), even if the creditor was not on that original list, *see In re Fryman*, No. 18-20660, 2019 WL 2612763 (Bankr. E.D. Ky. June 25, 2019), or was on the list but had an erroneous address, *see In re Wulff*, 598 B.R. 459 (Bankr. E.D. Wis. 2019), or was on the list with an appropriate address but claimed the creditor did not receive the notice, *see In re Word*, No. 18-00639, 2019 WL 1398180 (Bankr. D.D.C. Mar. 26, 2019). *See also In re Lovo*, 584 B.R. 79 (Bankr. S.D. Fla. 2018) (failure to receive notice for reason other than specified in Rule 3002(c)(6) is not a basis for extending time to file proof of claim). The only creditor who obtained an extension was one who was listed in the bankruptcy schedules but was omitted from the list of creditors filed under Rule 1007(a), because the court concluded that the filed list did not comply with Rule 1007(a), *see In re Mazik*, 592 B.R. 812 (Bankr. E.D. Pa. 2018).

If the intent of the Rule is to limit the grounds for seeking an extension for filing a proof of claim to one, i.e., the failure of the debtor to file a list of creditors in compliance with Rule 1007(a), apparently the courts are interpreting the Rule in exactly the way it was intended.

Recommendation

A debtor who fails to file a list of creditors under Rule 1007(a) (as required by Section 521(a)(1)(A)) may see its case dismissed under Section 707(a)(3), Section 1112(b)(1) and 1112(b)(4)(F) or Section 1307(c). If the Rule was intended to extend the bar date for domestic creditors only if no list of creditors was filed at all, it will never have any practical impact. Indeed, there are no reported cases in which the debtor failed to file a list of creditors under Rule 1007(a) and, as a result, the creditor obtained an extension for filing a proof of claim.

The prior comments on proposed Rule 3002(c)(6), as well as the current suggestion of Mr. Weiss, suggest that the Advisory Committee should consider expanding the Rule. If a

An alternative approach would be to allow the court to grant an extension of the deadline to file a proof of claim only if the creditor's name or address was not included on the Rule 1007(a) list and therefore the notice was insufficient. A more limited amendment might read as follows:

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

5 (A) the notice was insufficient under the circumstances to give the
6 creditor a reasonable time to file a proof of claim because the debtor failed to
7 ~~timely file~~include the creditor's correct name or its proper address on the list of
8 creditors' names and addresses required by Rule 1007(a), or

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

12
13 Committee Note

14
15 Rule 3002(c)(6)(A) is amended to permit creditors to seek an extension of time to file a
16 proof of claim if their correct names or proper addresses were not included on the list of creditors
17 filed by the debtor under Rule 1007(a). If the list of creditors has the correct name of the creditor
18 and its proper address, the fact that the creditor did not receive notice is not a basis for a motion
19 to extend the time to file a proof of claim.
20

21
22
23
The Subcommittee has not made any recommendation as to the appropriate approach, but wishes to raise the issue with the Advisory Committee.

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TAB 7

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TAB 7A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: FORMS SUBCOMMITTEE
SUBJECT: AMENDMENTS TO FORMS 122A-1, 122B AND 122C-1
DATE: AUGUST 25, 2019

The “Honoring American Veterans in Extreme Need Act of 2019” or the “HAVEN Act” was signed by the President on August 23. This new law amends the definition of “current monthly income” in Section 101(10) of the Code to exclude:

any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

This exclusion is added to the current exclusions for social security benefits, payments to victims of war crimes or crimes against humanity, and payments to victims of international terrorism or domestic terrorism. It also limits the current inclusion of pension or retirement income.

The current inclusion of pension income and exclusions for social security benefits and other payments are recognized in lines 9 and 10 of each of Form 122A-1, Form 122B and Form 122C-1 in the statement of current monthly income under chapter 7, 11 and 13, respectively. Those lines currently reads as follows:

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.

In response to the HAVEN Act, lines 9 and 10 in each of those Forms should be amended as follows:

1 9. Pension and retirement income. Do not include any amount received that was
2 (a) a benefit under the Social Security Act, or (b) compensation, pension, pay,
3 annuity, or allowance paid by the United States Government in connection with a
4 disability, combat-related injury or disability, or death of a member of the
5 uniformed services, other than any retired pay paid under chapter 61 of title 10 to
6 the extent that such retired pay does not exceed the amount of retired pay to
7 which the recipient would otherwise be entitled if retired under any provision of
8 title 10 other than chapter 61 of that title.
9

10 10. Income from all other sources not listed above. Specify the source and
11 amount. Do not include any benefits received under the Social Security Act; ~~or~~
12 payments received as a victim of a war crime, a crime against humanity, or
13 international or domestic terrorism; or compensation, pension, pay, annuity, or
14 allowance paid by the United States Government in connection with a disability,
15 combat-related injury or disability, or death of a member of the uniformed
16 services. If necessary, list other sources on a separate page and put the total
17 below.
18
19

20 Committee Note

21
22 Official Forms 122A-1, 122B, and 122C-1 are amended in response to the enactment of the
23 Honoring American Veterans in Extreme Need Act of 2019 (the “HAVEN Act”), Pub. L. No.
24 ____, __ Stat. ____. That law modifies the definition of “current monthly income” in §
25 101(10A) to exclude certain amounts payable “in connection with a disability, combat-related
26 injury or disability or death of a member of the uniformed services.” The exclusion for
27 servicemember retired pay is limited, however, and the debtor should exclude from current
28 monthly income only that amount of retired pay that exceeds the amount that the recipient would
29 otherwise be entitled to receive had the recipient retired for a reason other than disability. Each
30 form is modified to expressly exclude these amounts from lines 9 and 10.

Because the HAVEN Act went into effect immediately upon enactment, the Subcommittee recommends the form changes become effective as soon as possible under the authority that Judicial Conference granted to the Advisory Committee in March 2016 to make conforming changes to Official Forms subject to subsequent approval by the Standing Committee and notice to the Judicial Conference. A copy of the excerpt of the March 2016 JCUS report granting that authority is attached.

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**REPORT OF THE PROCEEDINGS
OF THE JUDICIAL CONFERENCE
OF THE UNITED STATES**

March 15, 2016

The Judicial Conference of the United States convened in Washington, D.C., on March 15, 2016, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Jeffrey R. Howard
Judge Paul J. Barbadoro,
District of New Hampshire

Second Circuit:

Chief Judge Robert A. Katzmann
Judge William M. Skretny,
Western District of New York

Third Circuit:

Chief Judge Theodore A. McKee
Chief Judge Leonard P. Stark,
District of Delaware

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Judge Robert J. Conrad, Jr.,
Western District of North Carolina

Fifth Circuit:

Chief Judge Carl E. Stewart
Chief Judge Louis Guirola, Jr.,
Southern District of Mississippi

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Noting the forms-driven nature of bankruptcy practice and the need to ensure that forms are accurate and up-to-date, the Committee on Rules of Practice and Procedure recommended that the Judicial Conference delegate authority to the Advisory Committee on Bankruptcy Rules to implement non-substantive, technical, or conforming amendments to the Bankruptcy Official Forms, subject to later approval by the Rules Committee and notice to the Judicial Conference. The Conference approved the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Appellate Rules 28.1, 31, and 41, and Bankruptcy Rule 3002.1. Proposed amendments to Appellate Rules 28.1 (Cross-Appeals) and 31 (Serving and Filing Briefs) extend the time period for filing a reply brief to 21 days. The proposed amendments are in response to the pending elimination of the “three-day rule” from the federal rules, which would reduce the effective time period for filing a reply brief from 17 days to 14 days. Proposed amendments to Appellate Rule 41 (Mandate: Contents; Issuance and Effective Date; Stay) are intended to (1) clarify that a court must enter an order if it wishes to stay the issuance of the court’s mandate; (2) address the standard for stays of the mandate; and (3) restructure the Rule to eliminate redundancy. Bankruptcy Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor’s Principal Residence) prescribes several noticing requirements for home mortgage creditors in chapter 13 cases. The proposed amendments are expected to be published for public comment in August 2016.

COMMITTEE ON SPACE AND FACILITIES

SPACE REDUCTION

In response to reduced congressional appropriations, the Judicial Conference adopted several space reduction policies, including a policy that the judiciary reduce its space footprint by 3 percent by the end of fiscal year 2018

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

10/19

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	\$ _____	\$ _____
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	\$ _____	\$ _____
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) a benefit under the Social Security Act, or (b) compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, other than any retired pay paid under chapter 61 of title 10 to the extent that such retired pay does not exceed the amount of retired pay to which the recipient would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

\$ \$

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; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. 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.

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.

Debtor 1 _____
First Name Middle Name Last Name

Case number (if known) _____

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.

x _____
Signature of Debtor 1

x _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

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.

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 if this is an amended filing

Official Form 122B

Chapter 11 Statement of Your Current Monthly Income

10/19

You must file this form if you are an individual and are filing for bankruptcy under Chapter 11. 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).

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.** Fill out Column A, lines 2-11.

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.

<i>Column A</i> Debtor 1	<i>Column B</i> Debtor 2
------------------------------------	------------------------------------

- | | | |
|---|----------|----------|
| 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 →
			\$ _____ \$ _____

Column A Debtor 1

Column B Debtor 2

7. Interest, dividends, and royalties

\$ _____ \$ _____

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) a benefit under the Social Security Act, or (b) compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, other than any retired pay paid under chapter 61 of title 10 to the extent that such retired pay does not exceed the amount of retired pay to which the recipient would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

\$ _____ \$ _____

1. 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; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If necessary, list other sources on a separate page and put the total below.

_____ \$ _____ \$ _____

_____ \$ _____ \$ _____

Total amounts from separate pages, if any. + \$ _____ + \$ _____

10. 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.

Boxed calculation: \$ _____ + \$ _____ = \$ _____

Total current

Part 2: Sign Below

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

X Signature of Debtor 1

X Signature of Debtor 2

Date MM / DD / YYYY

Date MM / DD / YYYY

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 as directed in lines 17 and 21:

According to the calculations required by this Statement:

- 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
- 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- 3. The commitment period is 3 years.
- 4. The commitment period is 5 years.

Check if this is an amended filing

Official Form 122C-1

Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period

10/19

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).

Part 1: Calculate Your Average Monthly Income

1. **What is your marital and filing status?** Check one only.
- Not married.** Fill out Column A, lines 2-11.
 - Married.** Fill out both Columns A and B, lines 2-11.

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.	\$ _____	\$ _____								
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. Do not include payments from a spouse. Do not include payments you listed on line 3.	\$ _____	\$ _____								
5. Net income from operating a business, profession, or farm	<table border="0" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="background-color: #e0e0e0;">Debtor 1</th> <th style="background-color: #e0e0e0;">Debtor 2</th> </tr> </thead> <tbody> <tr> <td>Gross receipts (before all deductions)</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>Ordinary and necessary operating expenses</td> <td style="text-align: right;">- \$ _____ - \$ _____</td> </tr> <tr> <td>Net monthly income from a business, profession, or farm</td> <td style="text-align: right;">\$ _____</td> </tr> </tbody> </table>		Debtor 1	Debtor 2	Gross receipts (before all deductions)	\$ _____	Ordinary and necessary operating expenses	- \$ _____ - \$ _____	Net monthly income from 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	\$ _____									
	\$ _____	\$ _____								
6. Net income from rental and other real property	<table border="0" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="background-color: #e0e0e0;">Debtor 1</th> <th style="background-color: #e0e0e0;">Debtor 2</th> </tr> </thead> <tbody> <tr> <td>Gross receipts (before all deductions)</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>Ordinary and necessary operating expenses</td> <td style="text-align: right;">- \$ _____ - \$ _____</td> </tr> <tr> <td>Net monthly income from rental or other real property</td> <td style="text-align: right;">\$ _____</td> </tr> </tbody> </table>		Debtor 1	Debtor 2	Gross receipts (before all deductions)	\$ _____	Ordinary and necessary operating expenses	- \$ _____ - \$ _____	Net monthly income from rental or 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	\$ _____									
	\$ _____	\$ _____								

Column A Debtor 1 Column B Debtor 2 or non-filing spouse

7. Interest, dividends, and royalties

\$ \$

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) a benefit under the Social Security Act, or (b) compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, other than any retired pay paid under chapter 61 of title 10 to the extent that such retired pay does not exceed the amount of retired pay to which the recipient would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

\$ \$

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; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. 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 average monthly income. Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.

\$ + \$ = \$

Total average monthly income

Part 2: Determine How to Measure Your Deductions from Income

12. Copy your total average monthly income from line 11. \$

13. Calculate the marital adjustment. Check one:

- You are not married. Fill in 0 below.
You are married and your spouse is filing with you. Fill in 0 below.
You are married and your spouse is not filing with you.

Fill in the amount of the income listed in line 11, Column B, that was NOT regularly paid for the household expenses of you or your dependents, such as payment of the spouse's tax liability or the spouse's support of someone other than you or your dependents.

Below, specify the basis for excluding this income and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page.

If this adjustment does not apply, enter 0 below.

\$
\$
+ \$

Total \$ Copy here

14. Your current monthly income. Subtract the total in line 13 from line 12. \$

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

15a. Copy line 14 here → \$ _____
Multiply line 15a by 12 (the number of months in a year). **x 12**

15b. The result is your current monthly income for the year for this part of the form. \$ _____

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

16a. Fill in the state in which you live. _____

16b. Fill in the number of people in your household. _____

16c. Fill in the median family income for your state and size of household. \$ _____
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.

17. How do the lines compare?

- 17a. Line 15b is less than or equal to line 16c. On the top of page 1 of this form, check box 1, *Disposable income is not determined under 11 U.S.C. § 1325(b)(3)*. **Go to Part 3.** Do NOT fill out *Calculation of Your Disposable Income* (Official Form 122C-2).
- 17b. Line 15b is more than line 16c. On the top of page 1 of this form, check box 2, *Disposable income is determined under 11 U.S.C. § 1325(b)(3)*. **Go to Part 3 and fill out Calculation of Your Disposable Income (Official Form 122C-2).** On line 39 of that form, copy your current monthly income from line 14 above.

Part 3: Calculate Your Commitment Period Under 11 U.S.C. § 1325(b)(4)

18. Copy your total average monthly income from line 11. \$ _____

19. Deduct the marital adjustment if it applies. If you are married, your spouse is not filing with you, and you contend that calculating the commitment period under 11 U.S.C. § 1325(b)(4) allows you to deduct part of your spouse's income, copy the amount from line 13.

19a. If the marital adjustment does not apply, fill in 0 on line 19a. — \$ _____

19b. Subtract line 19a from line 18. **\$ _____**

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

20a. Copy line 19b. \$ _____
Multiply by 12 (the number of months in a year). **x 12**

20b. The result is your current monthly income for the year for this part of the form. **\$ _____**

20c. Copy the median family income for your state and size of household from line 16c. **\$ _____**

21. How do the lines compare?

- Line 20b is less than line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 3, *The commitment period is 3 years*. Go to Part 4.
- Line 20b is more than or equal to line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 4, *The commitment period is 5 years*. Go to Part 4.

Debtor 1 _____
First Name Middle Name Last Name

Case number (if known) _____

Part 4: Sign Below

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

X _____
Signature of Debtor 1

X _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

Date _____
MM / DD / YYYY

If you checked 17a, do NOT fill out or file Form 122C-2.

If you checked 17b, fill out Form 122C-2 and file it with this form. On line 39 of that form, copy your current monthly income from line 14 above.

COMMITTEE NOTE

Official Forms 122A-1, 122B, and 122C-1 are amended in response to the enactment of the Honoring American Veterans in Extreme Need Act of 2019 (the “HAVEN Act”), Pub. L. No. _____, Stat. _____. That law modifies the definition of “current monthly income” in § 101(10A) to exclude certain amounts payable “in connection with a disability, combat-related injury or disability or death of a member of the uniformed services.” The exclusion for servicemember retired pay is limited, however, and the debtor should exclude from current monthly income only that amount of retired pay that exceeds the amount that the recipient would otherwise be entitled to receive had the recipient retired for a reason other than disability. Each form is modified to expressly exclude these amounts from lines 9 and 10.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: RESTYLING SUBCOMMITTEE

SUBJECT: RESTYLING TO PART I OF THE BANKRUPTCY RULES

DATE: AUG. 25, 2019

The Subcommittee has had two lengthy meetings by conference call and Skype to look at the restyled bankruptcy rules in Part I. Before the Subcommittee reviewed the current draft, the Reporter and Associate Reporter reviewed an initial draft and worked out many of the preliminary issues with the style consultants, which made the task of the Subcommittee much easier. The Subcommittee focused only on those matters where the reporters and the style consultants had disagreements about the drafting, or the reporters needed guidance from the Subcommittee about the appropriate approach.

We have focused our discussion on a) what the current Rule says; b) what the applicable Code provision says; and c) whether the proposed change will create confusion or inconsistency. As directed by the Advisory Committee, the Subcommittee is making every effort to comment on the restyled rules with certain over-arching principles in mind.

First, we are attempting to ensure that the changes made to the language of the rules do not alter the substance of the rules.

Second, we remain open to new approaches suggested by the style consultants, such as making references to specific forms in the rules where appropriate.

Third, we are trying to be deferential about matters of pure style, such as hyphenation of words that modify other words (such as “equity-security holder” and “credit-counseling statement”) and capitalization of the word “Chapter” throughout the rules. We still need to discuss how to handle phrases the style consultants wish to modify that are not only used in the Code but are actually defined in the Code, such as “small business case,” “small business debtor,” “health care business,” and the like. The style consultants feel very strongly that these terms should be restyled in the rules.

Fourth, we are attempting to reach a consensus on what terms and phrases are words of art or so-called sacred phrases that we believe should be retained despite the fact that they are stylistically deficient, such as “meeting of creditors.” The Subcommittee believes that such terms should be retained in the rules without modification, although the style consultants disagree.

In addition, if we note a substantive change that should be made in any rule, we are keeping a list for consideration at a later time by the Advisory Committee.

Although the process is a lengthy one, it has been very productive, with all members of the Subcommittee able to look at a draft of the restyled rules online at the same time, comment on the draft, and see changes made in real time. We expect to complete our review of Part I of the Rules and perhaps begin our review of Part II during our next conference call in October.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON FORMS AND ON PRIVACY, PUBLIC ACCESS,
AND APPEALS

SUBJECT: CONSIDERATION OF CONFORMING AMENDMENTS TO RULE 8003
AND OFFICIAL FORM 417A

DATE: AUGUST 28, 2019

The Advisory Committee on Appellate Rules has proposed amendments to FRAP 3(c) (Contents of the Notice of Appeal), which were published for public comment this month. Along with this rule change, the Appellate Rules Committee is also proposing an amendment to Appellate Form 1, which would split the notice-of-appeal form into two forms.

The Subcommittees were asked to recommend to the Advisory Committee whether Rule 8003 (Appeal as of Right—How Taken; Docketing the Appeal) and the bankruptcy notice-of-appeal form—Official Form 417A—should similarly be amended.

Proposed Amendments to FRAP 3(c) and Appellate Form 1

FRAP 3 governs the procedure for taking an appeal as of right to a court of appeals, and subdivision (c) of that rule specifies the contents of a notice of appeal. In June the Standing Committee voted to publish a set of amendments to that subdivision, which the Appellate Rules Committee explained as follows:

The Committee has been considering a possible amendment to Rule 3, dealing with the contents of notices of appeal, since the fall of 2017 when a letter from Neal Katyal and Sean Marotta brought to the Committee's attention a troubling line of cases in one circuit. That line of cases, using an *expressio unius* rationale, would treat a notice of appeal from a final judgment that mentioned one interlocutory order but not others as limiting the appeal to that order, rather than reaching all of the interlocutory orders that merged into the judgment.

Research conducted since that time has revealed that the problem is not confined to a single circuit, but instead that there is substantial confusion both across and within circuits. In addition to a number of decisions that used an *expressio unius rationale* like the one pointed to in the Katyal and Marotta letter, there are also numerous decisions that would treat a notice of appeal that designated an order that disposed of all remaining claims in a case as limited to the claims disposed of in that order.

Moreover, there have also been cases holding that an appeal that designates an order denying a motion for reconsideration does not bring up for review the underlying judgment sought to be reconsidered.

The Supreme Court has recently described filing a notice of appeal as “generally speaking, a simple, nonsubstantive act,” and observed that filing requirements for notices of appeal “reflect that claims are . . . likely to be ill defined or unknown” at the time of filing. *Garza v. Idaho*, 139 S. Ct. 738, 745-46 (2019).

The Committee’s goal in proposing the amendments is fully in accord with *Garza*: to reduce the inadvertent loss of appellate rights caused by the phrasing of a notice of appeal.

June 2019 Standing Committee Agenda Book at 80-81.

The set of proposed amendments to FRAP 3(c) consists of four parts. First, subdivision (c)(1)(B) would be revised as follows: “(B) designate the judgment,~~—or the appealable order—~~from which the appeal is taken, or part thereof being appealed; and” The Appellate Rules Committee explained that these changes are intended

- “to highlight that the distinction between the ordinary case in which an appeal is taken from the final judgment from the less-common case in which an appeal is taken from some other order;”
- to clarify that a designated order must be appealable; that is, like a judgment, it must provide the basis for appellate jurisdiction; and
- to remove the reference to “or part thereof,” which the committee thought contributed to the interpretation problems.

To further highlight this distinction, the Appellate Rules Committee has proposed subdividing Appellate Form 1 (Notice of Appeal) into Form 1A for appeals from judgments and Form 1B for appeals from appealable orders.

Other proposed amendments to FRAP 3 would instruct on the scope of an appeal. A new paragraph (4) would state that the “notice of appeal encompasses all orders that merge for purposes of appeal into the designated judgment or appealable order. It is not necessary to designate those orders in the notice of appeal.” Paragraph (5) would be added in an effort to avoid the inadvertent loss of appellate rights when the notice of appeal designates an order disposing of all remaining claims or denying reconsideration. It would provide as follows:

(5) In a civil case, a notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Federal Rule of Civil Procedure 58, if the notice designates:

(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 4(a)(4)(A).

Finally, a new paragraph (6) would explain that an “appellant may designate only part of a judgment or appealable order by expressly stating that the notice of appeal is so limited. Without such an express statement, specific designations do not limit the scope of a notice of appeal.”

The Subcommittees’ Deliberations

Unlike FRAP 3(c), Rule 8003(a)(3) does not specify the contents of a notice of appeal. Instead it requires substantial conformity with Official Form 417A.

Part 2 of Official Form 417A provides:

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from: _____

2. State the date on which the judgment, order, or decree was entered: _____

* * * * *

Substantial compliance with this section of the form therefore requires a designation similar to that required by FRAP 3(c).¹

The reporter’s research revealed only a few bankruptcy cases in which courts held that an appeal was limited to an order designated in the notice of appeal. In *Klingman v. Levinson*, 66 B.R. 548 (N.D. Ill. 1986), *aff’d*, 831 F.2d 1292 (7th Cir. 1987), the debtor sought appellate review of both a grant of summary judgment in favor of the creditor in a dischargeability action and the dismissal of the debtor’s counterclaims. The district court held, and the Seventh Circuit agreed, that “[b]ecause Levinson did not indicate his intention to appeal the May 29, 1985 ruling [dismissing the counterclaims] in his notice of appeal, this Court is without jurisdiction to review that order under [former] Bankruptcy Rules 8001 and 8002.” *Cf. Spookyworld, Inc. v. Town of Berlin (In re Spookyworld, Inc.)*, 346 F.3d 1 (1st Cir. 2003) (applying FRAP 3 and declining to review order that was not mentioned in the notice of appeal).

Members of the Forms Subcommittee expressed concern that creating two notice-of-appeal forms for bankruptcy cases—one for appeals from judgments and the other for appeals from orders and decrees—would lead to confusion. It was pointed out that Rule 9001(7) defines “judgment” to mean “any appealable order,” so there does not seem to be a basis for creating separate notices of appeal. While the wording of existing Official Form 417A might be revised

¹ Oddly, there are decisions under former Rule 8001(a) holding that, unlike FRAP 3, the bankruptcy rule does not require a designation of the judgment or order appealed from. They seem to have overlooked the requirement of what was then Official Form 17A, which was worded similarly to the current form. *See, e.g., United States v. Arkison (In re Cascade Rds.)*, 34 F.3d 756, 761 (9th Cir. 1994) (“Unlike Rule 3(c), Rule 8001(a) does *not* require that notices of appeal to the district court ‘designate the judgment, order or part thereof appealed from.’ Rather, the bankruptcy rule requires only that a notice ‘contain the *names* of all parties to the judgment, order, or decree appealed from.’ Fed. R. Bankr. P. 8001(a) (emphasis added).”); *Nova Info. Sys. v. Premier Operations (In re Premier Operations, Ltd.)*, 290 B.R. 33, 38 (S.D.N.Y. 2003) (same).

in a manner similar to the proposed amendments to FRAP 3(c)(1)(B), the Subcommittee decided to wait until the spring to consider such changes so that it would have the benefit of the comments submitted in response to the publication of the FRAP 3(c) amendments.

The Appeals Subcommittee agreed with the Forms Subcommittee's decision to wait until spring to make a recommendation on whether to propose conforming amendments. Members of this subcommittee were not sure that the proposed amendments to Rule 8003 are needed for bankruptcy appeals. Members also noted that the matter is more complex in bankruptcy cases because of the need to determine the finality of orders in contested matters, and they feared that the proposed amendments might cause further confusion. The Subcommittee concluded that seeing the comments submitted on the FRAP amendments and learning of the likely action to be taken by the Appellate Rules Advisory Committee will help inform its decision on whether to recommend amendments to Rule 8003.

The two subcommittees will make recommendations regarding any conforming changes to Rule 8003 and Official Form 417A at the spring meeting.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND ON FORMS

SUBJECT: EXTENSION OF NATIONAL GUARD AND RESERVISTS DEBT RELIEF ACT OF 2008

DATE: AUGUST 28, 2019

In 2008 Congress enacted legislation that amended § 707(b)(2)(D) by adding a new subsection (ii) to provide a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces. The exclusion was temporary in two senses: the legislation itself was applicable only to cases filed within three years from its effective date, and the exclusion it granted only lasted for the period that the qualifying debtor was on active duty or performing a homeland defense activity, and for 540 days thereafter. In response to the legislation, Interim Rule 1007-I was issued to implement the exclusion, and Official Form 22A (now Official Forms 122A-1 and 122A-1 Supp) was amended (1) to add a checkbox for qualifying reservists and guard members to indicate that the means test was currently inapplicable to them, and (2) to add a section for qualifying debtors to claim the temporary exclusion under § 707(b)(2)(D)(ii).

In the years since the enactment of the 2008 legislation, Congress has extended the law's applicability on several occasions so that the exclusion has continued to remain in effect. On August 1 of this year, Congress passed the National Guard and Reservists Debt Relief Extension Act of 2019, which makes the exclusion applicable to bankruptcy cases filed for four more years (15 years from the effective date of the 2008 act). The President signed the legislation on August 23, thus allowing the exclusion to remain in effect.

As a result, no changes are needed for Official Forms 122A-1 and 122A-1 Supp. The only changes needed for Interim Rule 1007-I are the following changes to its footnote:

Interim Rule 1007-I has been adopted by the bankruptcy courts to implement the National Guard and Reservists Debt Relief Act of 2008, Public Law No. 110-438, as amended by Public Law No. ~~114-107~~ [116-53](#). The amended Act, which provides a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces, applies to bankruptcy cases commenced in the ~~11~~[15](#)-year period beginning December 19, 2008.

These changes have been made and posted on the U.S. courts website.

Consent Tab 1

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: LAURA B. BARTELL, ASSOCIATE REPORTER

SUBJECT: 19-BK-D – PROPOSAL REGARDING RULE 7004(h)

DATE: JUNE 13, 2019

George Weiss, an attorney in Potomac, Maryland, proposed in Suggestion 19-BK-D that Bankruptcy Rule 7004(h) should be amended by “importing the language of” Civil Rule 4(h) to replace the requirement that service be made on “an officer,” but retaining the requirement that such service be made by certified mail. Civil Rule 4(h)(1)(B) provides for service on a domestic or foreign corporation or a partnership or other unincorporated association subject to suit in a judicial district of the United States “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process” Bankruptcy Rule 7004(h) requires that service on an insured depository institution be made “by certified mail addressed to an officer of the institution” (with certain exceptions).

Mr. Weiss points out that not only is certified mail addressed to (for example) the chief executive officer of a large insured depository institution highly unlikely to provide effective notice to the institution, but that notice to the resident agent of the institution, which does provide actual notice, is not deemed effective under Bankruptcy Rule 7004(h). *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342 (4th Cir.2003); *In re Eimers*, No. 12-00692, 2013 WL 1739645, *2 (Bankr. D. Alaska Apr. 23, 2013).

Several suggestions have been made in recent years requesting amendments to Rule 7004(h), most recently in 2017, 17-BK-E, which requested inclusion of credit unions in the Rule. Bankruptcy Rule 7004(h) was enacted verbatim by Congress in Section 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106. Because, under the Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, bankruptcy rules cannot override statutory provisions, the Advisory Committee on Bankruptcy Rules lacks the authority to modify Rule 7004(h) in a manner that is inconsistent with federal statutes. Because the text of Rule 7004(h) is in fact statutory, an amendment that modifies that language in the manner suggested by Mr. Weiss is beyond the power of the Advisory Committee, whatever its substantive merits.

Perhaps anticipating this conclusion, Mr. Weiss includes a footnote in his suggestion that reads as follows:

Rule 7004(h) was amended by the Bankruptcy Reform Act of 1994 PL. 103-94 (1994) with the intent of providing for certified rather than first class, mail on depository intuitions [sic] in bankruptcy adversary matters. This suggestion does not concern the method of service currently required – certified mail – but

questions the wisdom of the working of the current rule regarding whom to serve. As the committee notes to FRBP 7004(h) state explicitly, the thrust of Congress' concern was the *method* of service, not *whom to serve*.

This argument is not persuasive. First, there is no committee note to Rule 7004(h) because it was not added by the Advisory Committee. Second, if one looks for legislative history on the provision, when Senator Helms of North Carolina introduced the bill for the addition of Rule 7004(h), he said that allowing service of process on a bank “by simply sending a letter by first class mail to a managing agent of the bank ... automatically puts a bank at a disadvantage because, first, a legal document received in the large volume of regularly delivered mail received in a bank's many branches is much less likely than certified or registered mail to receive the necessary prompt attention; and second, *the person at the bank to whom the letter is addressed often does not have sufficient authority to ensure a response within the time period required by the Bankruptcy Code.*” 139 Cong. Rec. S707–08139, Cong. Rec. S707–08 (daily ed. January 26, 1993) (statement of Sen. Helms) (emphasis supplied). The provision was intended by Senator Helms not only to specify the method of service but also the person on whom service would be made. Third, the text of the statute speaks for itself; Congress specified in Rule 7004(h) that service was to be made by certified mail addressed to an officer of the insured depository institution. All provisions in the Rule have equal status as governing law.

I recommend that the Advisory Committee take no action in response to this suggestion.

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Consent Tab 2A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 19-BK-C – REVISION TO FORM 309A

DATE: AUG. 25, 2019

We received a suggestion, 19-BK-C, from Pascal@rkfd.com proposing that Official Form 309A (Notice of Chapter 7 Filing – No Proof of Claim Deadline) (and presumably other versions of Official Form 309 applicable to individuals) be amended to include the debtor’s or debtors’ previous addresses for the three years prior to filing for bankruptcy protection, information that is included on Official Form 107 (Statement of Financial Affairs). The reason given for this suggestion is that “[w]hen a debtor has recently moved, it is likely creditors will not yet have their new address on file,” and “[i]t would be nice” to replicate this information on Official Form 309A.

The purpose for the inclusion of prior addresses on Official Form 107 is to facilitate implementation of the provisions of Bankruptcy Code § 522(b)(3)(A), which specifies the law applicable to exemptions, and §§ 522(p) and (q), added in the 2005 amendments to the Code, limiting the homestead exemption under certain circumstances. Official Form 309A and the other versions of the form providing notice of a bankruptcy filing by an individual include the full name of an individual debtor (including the middle name), all other names used in the last eight years, the current address of the debtor, and the last four digits of the debtor’s social security number. This information is sufficient to allow the creditor to correctly identify the debtor. The prior addresses of the debtor may include the address at which the creditor formerly communicated with the debtor, but it is unnecessary to identify the debtor for purposes of the bankruptcy case.

If a creditor wishes to see the debtor’s prior addresses, the creditor can access Official Form 107 from the docket. There is no reason to modify Official Form 309A (or any other version of the notice of bankruptcy filing) to include this information.

The Subcommittee recommends that no change be made to the Official Forms in response to this suggestion.

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Information to identify the case:Debtor 1 _____
First Name Middle Name Last Name

Last 4 digits of Social Security number or ITIN _____

EIN _____

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

Last 4 digits of Social Security number or ITIN _____

EIN _____

United States Bankruptcy Court for the: _____ District of _____
(State)[Date case filed for chapter 11 _____] OR
MM / DD / YYYY

Case number: _____

[Date case filed in chapter _____]
MM / DD / YYYYDate case converted to chapter 11 _____]
MM / DD / YYYY**Official Form 309E (For Individuals or Joint Debtors)****Notice of Chapter 11 Bankruptcy Case**

02/20

For the debtors listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors and debtors, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

Confirmation of a chapter 11 plan may result in a discharge of debt. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 10 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

About Debtor 1:	About Debtor 2:
1. Debtor's full name	
2. All other names used in the last 8 years	
3. Address	If Debtor 2 lives at a different address:
4. Debtor's attorney Name and address	Contact phone _____ Email _____
5. Bankruptcy Trustee (Subchapter V only) Name and address	Contact phone _____ Email _____

For more information, see page 2 ►

6. Bankruptcy clerk's office

Documents in this case may be filed at this address.
You may inspect all records filed in this case at this office or online at www.pacer.gov.

Hours open _____
Contact phone _____

7. Meeting of creditors Meeting of creditors

Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend.
Creditors may attend, but are not required to do so.

_____ at _____
Date Time

Location:

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

8. Deadlines

The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.

File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:

You must file a complaint:

- if you assert that the debtor is not entitled to receive a discharge of any debts under 11 U.S.C. § 1141(d)(3) or
- if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6).

First date set for hearing on confirmation of plan. The court will send you a notice of that date later.

Filing deadline for dischargeability complaints: _____

Deadline for filing proof of claim:

[Not yet set. If a deadline is set, the court will send you another notice.] or

[date, if set by the court]]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed, contingent, or unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed, contingent, or unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at www.pacer.gov.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

Deadline to object to exemptions:

The law permits debtors to keep certain property as exempt.

If you believe that the law does not authorize an exemption claimed, you may file an objection.

Filing deadline: 30 days after the *conclusion* of the meeting of creditors

9. Creditors with a foreign address

If you are a creditor receiving mailed notice at a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Filing a Chapter 11 bankruptcy case

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. **The debtor will generally remain in possession of the property and may continue to operate the debtor's business.**

For more information, see page 3 ►

11. Discharge of debts

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of a debt. See 11 U.S.C. § 1141(d). However, in some cases the debts will not be discharged until all or a substantial portion of payments under the plan are made. See 11 U.S.C. §§ 1141(d)(5) and 1192. A discharge means that creditors may never try to collect the debt from the debtors personally except as provided in the plan. If you believe that a particular debt owed to you should be excepted from the discharge under 11 U.S.C. § 523 (a)(2), (4), or (6), you must file a complaint and pay the filing fee in the bankruptcy clerk's office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1141 (d)(3), you must file a complaint and pay the filing fee in the clerk's office by the first date set for the hearing on confirmation of the plan. The court will send you another notice telling you of that date.

12. Exempt property

The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors, even if the case is converted to chapter 7. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at www.pacer.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 7.

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Information to identify the case:

Debtor _____ Name	EIN _____
United States Bankruptcy Court for the: _____ District of _____ (State)	[Date case filed for chapter 11 _____ MM / DD / YYYY OR
Case number: _____	[Date case filed in chapter _____ MM / DD / YYYY
	Date case converted to chapter 11 _____ MM / DD / YYYY

Official Form 309F (For Corporations or Partnerships)**Notice of Chapter 11 Bankruptcy Case**

02/20

For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor's full name	
2. All other names used in the last 8 years	
3. Address	
4. Debtor's attorney Name and address	Contact phone _____ Email _____
5. Bankruptcy Trustee Name and address (if case is filed under Chapter 11, Subchapter V)	Contact phone _____ Email _____
6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov .	Hours open _____ Contact phone _____

For more information, see page 2 ►

<p>7. Meeting of creditors</p> <p>The debtor's representative must attend the meeting to be questioned under oath. Creditors may attend, but are not required to do so.</p>	<p>_____ at _____</p> <p>Date Time</p> <p style="text-align: right;">Location:</p> <p>The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.</p>
<p>8. Proof of claim deadline</p>	<p>Deadline for filing proof of claim: [Not yet set. If a deadline is set, the court will send you another notice.] or [date, if set by the court]</p> <p>A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.</p> <p>Your claim will be allowed in the amount scheduled unless:</p> <ul style="list-style-type: none"> ■ your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>; ■ you file a proof of claim in a different amount; or ■ you receive another notice. <p>If your claim is not scheduled or if your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.</p> <p>You may review the schedules at the bankruptcy clerk's office or online at www.pacer.gov.</p> <p>Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.</p>
<p>9. Exception to discharge deadline</p> <p>The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.</p>	<p>If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below.</p> <p>Deadline for filing the complaint: _____</p>
<p>10. Creditors with a foreign address</p>	<p>If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.</p>
<p>11. Filing a Chapter 11 bankruptcy case</p>	<p>Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. The debtor will generally remain in possession of the property and may continue to operate the debtor's business.</p>
<p>12. Discharge of debts</p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). However, in some cases a discharge may not be granted until a substantial portion of payments due under the plan have been made. See 11 U.S.C. § 1192. A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.</p>

Information to identify the case:

Debtor 1 _____
First Name Middle Name Last Name

Last 4 digits of Social Security number or ITIN _____

EIN _____

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

Last 4 digits of Social Security number or ITIN _____

EIN _____

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

[Date case filed for chapter 11 _____] OR
MM / DD / YYYY

Case number: _____

[Date case filed in chapter _____]
MM / DD / YYYY

Date case converted to chapter 11 _____]
MM / DD / YYYY

Official Form 309E2 (For Individuals or Joint Debtors **under Subchapter V**)

Notice of Chapter 11 Bankruptcy Case

02/20

For the debtors listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors and debtors, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

Confirmation of a chapter 11 plan may result in a discharge of debt. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 10 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

About Debtor 1:	About Debtor 2:
1. Debtor's full name	
2. All other names used in the last 8 years	
3. Address	If Debtor 2 lives at a different address:
4. Debtor's attorney Name and address	Contact phone _____ Email _____
5. Bankruptcy Trustee	Contact phone _____ Email _____

For more information, see page 2 ►

6. Bankruptcy clerk's office

Documents in this case may be filed at this address.
You may inspect all records filed in this case at this office or online at www.pacer.gov.

Hours open _____
Contact phone _____

7. Meeting of creditors Meeting of creditors

Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend.
Creditors may attend, but are not required to do so.

_____ at _____
Date Time

Location:

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

8. Deadlines

The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.

File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:

You must file a complaint:

- if you assert that the debtor is not entitled to receive a discharge of any debts under 11 U.S.C. § 1141(d)(3) or
- if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6).

First date set for hearing on confirmation of plan. The court will send you a notice of that date later.

Filing deadline for dischargeability complaints: _____

Deadline for filing proof of claim:

[Not yet set. If a deadline is set, the court will send you another notice.] or

[date, if set by the court]]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed, contingent, or unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed, contingent, or unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at www.pacer.gov.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

Deadline to object to exemptions:

The law permits debtors to keep certain property as exempt.

If you believe that the law does not authorize an exemption claimed, you may file an objection.

Filing deadline: 30 days after the *conclusion* of the meeting of creditors

9. Creditors with a foreign address

If you are a creditor receiving mailed notice at a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Filing a Chapter 11 bankruptcy case

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. **The debtor will generally remain in possession of the property and may continue to operate the debtor's business.**

For more information, see page 3 ►

11. Discharge of debts

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of a debt. See 11 U.S.C. § 1141(d). However, in some cases the debts will not be discharged until all or a substantial portion of payments under the plan are made. See 11 U.S.C. §§ 1141(d)(5) and 1192. A discharge means that creditors may never try to collect the debt from the debtors personally except as provided in the plan. If you believe that a particular debt owed to you should be excepted from the discharge under 11 U.S.C. § 523 (a)(2), (4), or (6), you must file a complaint and pay the filing fee in the bankruptcy clerk's office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1141 (d)(3), you must file a complaint and pay the filing fee in the clerk's office by the first date set for the hearing on confirmation of the plan. The court will send you another notice telling you of that date.

12. Exempt property

The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors, even if the case is converted to chapter 7. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at www.pacer.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 7.

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Information to identify the case:

Debtor _____ Name	EIN _____
United States Bankruptcy Court for the: _____ District of _____ (State)	[Date case filed for chapter 11 _____ MM / DD / YYYY OR
Case number: _____	[Date case filed in chapter _____ MM / DD / YYYY
	Date case converted to chapter 11 _____ MM / DD / YYYY

Official Form 309F2 (For Corporations or Partnerships under Subchapter V)

Notice of Chapter 11 Bankruptcy Case

02/20

For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor's full name	
2. All other names used in the last 8 years	
3. Address	
4. Debtor's attorney Name and address	Contact phone _____ Email _____
5. Bankruptcy Trustee	Contact phone _____ Email _____
6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov .	Hours open _____ Contact phone _____

For more information, see page 2 ►

<p>7. Meeting of creditors</p> <p>The debtor's representative must attend the meeting to be questioned under oath. Creditors may attend, but are not required to do so.</p>	<p>_____ at _____</p> <p>Date Time</p> <p style="text-align: right;">Location:</p> <p>The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.</p>
<p>8. Proof of claim deadline</p>	<p>Deadline for filing proof of claim: [Not yet set. If a deadline is set, the court will send you another notice.] or [date, if set by the court]</p> <p>A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.</p> <p>Your claim will be allowed in the amount scheduled unless:</p> <ul style="list-style-type: none"> ■ your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>; ■ you file a proof of claim in a different amount; or ■ you receive another notice. <p>If your claim is not scheduled or if your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.</p> <p>You may review the schedules at the bankruptcy clerk's office or online at www.pacer.gov.</p> <p>Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.</p>
<p>9. Exception to discharge deadline</p> <p>The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.</p>	<p>If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below.</p> <p>Deadline for filing the complaint: _____</p>
<p>10. Creditors with a foreign address</p>	<p>If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.</p>
<p>11. Filing a Chapter 11 bankruptcy case</p>	<p>Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. The debtor will generally remain in possession of the property and may continue to operate the debtor's business.</p>
<p>12. Discharge of debts</p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). However, in some cases a discharge may not be granted until a substantial portion of payments due under the plan have been made. See 11 U.S.C. § 1192. A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.</p>