ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

September 12, 2024

AGENDA
Meeting of the Advisory Committee on Bankruptcy Rules
September 12, 2024 | Washington, DC

1. Greetings, Introductions (Judge Connelly)

Tab 1 Committee Roster 6
Subcommittee Liaisons 14
Chart Tracking Proposed Rules Amendments 15
Pending Legislation Chart 21
Federal Judicial Center Research Projects 27

2. Approval of minutes of April 11, 2024, meeting (Judge Connelly)

Tab 2 Draft minutes 36

3. Oral reports on meetings of other committees:

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

Tab 3A1 Draft minutes of the Standing Committee meeting 65
Tab 3A2 September 2024 Standing Committee Report to the Judicial Conference (appendices omitted) 95

B. Advisory Committee on Appellate Rules – Pending, October 9, 2024. No report.

C. Advisory Committee on Civil Rules – Pending, October 10, 2024. No report.

D. Bankruptcy Committee – June 13-14, 2024 (Judge Isicoff)

4. Intercommittee items.

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

Tab 4A August 21, 2024, memo by Tom Byron 118

B. Report on Unified Bar Admissions (Professor Struve)

Tab 4B August 21, 2024, memo by Professor Struve 127

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

Tab 4C August 21, 2024, memo by Professor Struve 156

AGENDA

Meeting of the Advisory Committee on Bankruptcy Rules

September 12, 2024 | Washington, DC

5. Report of the Consumer Subcommittee (Judge Harner)

   A. Report on suggestion 24-BK-G from Rebecca Garcia to amend Bankruptcy Rule 2003 as it pertains to the timing and location of section 341 meetings of creditors.

Tab 5A August 13, 2024, memo by Professor Gibson. 171

6. Report of the Forms Subcommittee (Judge Kahn)

   A. Recommendation to amend Official Forms 122A-2, and 122C-2, lines 8 and 9a, to conform to recent terminology changes for Local Housing and Utility Standards in Connecticut.

Tab 6A August 5, 2024, memo by Scott Myers...180
Official Forms 122A-2 and 122C2 181

   B. Recommendation concerning suggestion 24-BK-I from Clerk Mark Neal (BK-MD) to clarify that question 4 on Official Form 101 requires that individual debtors report only EINs issued to them as employers, and to not report the EIN of an entity that they work for.

Tab 6B August 10, 2024, memo by Professor Bartell....................................187
Official Form 1 and Committee Note 188

   C. Discuss drafting instructions for Rule 3002.1.

Tab 6C August 12, 2024, memo by Professor Gibson 192

   D. Recommendation concerning suggestion 24-BK-F from Unclaimed Funds Taskforce to add a notice to the discharge forms about the possibility of unclaimed funds in the case.

Tab 6D August 10, 2024, memo by Professor Bartell....................................194

   E. Report concerning suggestion 24-BK-H from Rebecca Garcia to amend Form 106C to include a total amount of assets being claimed exempt.

Tab 6E August 12, 2024, memo by Profession Gibson.................................197

F. Recommendation to endorse conforming changes to Director's Form 2000 addressing the abrogation of Official Form 423.

Tab 6F August 5, 2024, memo by Scott Myers..204
Director's Form 2000...205

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

A. Recommendation concerning suggestion 22-BK-I to redact the *entire* SSN from public court filings, including the last four digits of the number.

Tab 7A August 10, 2024, memo by Professor Bartell.................................211
Exhibits...217

B. Consider suggestion 23-BK-D (supported by 23-BK-J) to amend Rule 2002(o) to require captions modeled on Official Form 416B (short caption) for most Rules 2002 notices.

Tab 7B July 30, 2024, memo by Professor Bartell 290
Proposed Rule 2002(o) and Committee Notes included.
Exhibit. 293

8. Report of the Business Subcommittee (Judge McEwen)

A. Report regarding suggestion 24-BK-B from the Creditor's Rights Coalition to propose a rule requiring random assignment of mega bankruptcy cases within a particular district.

Tab 8A August 6, 2024, memo by Professor Gibson..................................304

B. Report concerning suggestion 24-BK-A to allow masters in bankruptcy cases and proceedings.

Tab 8B August 6, 2024, memo by Professor Gibson..................................307

9. New business.

10. Future meetings: The next meeting will be on April 3, 2025, location to be determined.

11. Adjourn.

TAB 1

RULES COMMITTEES — CHAIRS AND REPORTERS

Committee on Rules of Practice and Procedure (Standing Committee)

Chair

Honorable John D. Bates
United States District Court
Washington, DC

Reporter

Professor Catherine T. Struve
University of Pennsylvania Law School
Philadelphia, PA

Secretary to the Standing Committee

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

Advisory Committee on Appellate Rules

Chair

Honorable Jay S. Bybee
United States Court of Appeals
Las Vegas, NV

Reporter

Professor Edward Hartnett
Seton Hall University School of Law
Newark, NJ

Advisory Committee on Bankruptcy Rules

Chair

Honorable Rebecca B. Connelly
United States Bankruptcy Court
Harrisonburg, VA

Reporter

Professor S. Elizabeth Gibson
University of North Carolina at Chapel Hill
Chapel Hill, NC

Associate Reporter

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

Advisory Committee on Civil Rules

Chair

Honorable Robin L. Rosenberg
United States District Court
West Palm Beach, FL

Reporter

Professor Richard L. Marcus
University of California
Hastings College of the Law
San Francisco, CA

Associate Reporter

Professor Andrew Bradt
University of California, Berkeley
Berkeley, CA

Advisory Committee on Criminal Rules

Chair

Honorable James C. Dever III
United States District Court
Raleigh, NC

Reporter

Professor Sara Sun Beale
Duke University School of Law
Durham, NC

Associate Reporter

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

Advisory Committee on Evidence Rules

Chair

Honorable Patrick J. Schiltz
United States District Court
Minneapolis, MN

Reporter

Professor Daniel J. Capra
Fordham University School of Law
New York, NY

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair	Reporter
Honorable Rebecca B. Connelly United States Bankruptcy Court Harrisonburg, VA	Professor S. Elizabeth Gibson University of North Carolina at Chapel Hill Chapel Hill, NC
	Associate Reporter
	Professor Laura B. Bartell Wayne State University Law School Detroit, MI

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

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Liaisons

Ramona D. Elliott, Esq.
(*U.S. Trustees*)
Executive Office for U.S. Trustees
Washington, DC

Honorable Laurel M. Isicoff
(*Committee on the Administration of the Bankruptcy System*)
United States Bankruptcy Court
Miami, FL

Liaisons

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

Clerk of Court Representative

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

Advisory Committee on Bankruptcy Rules

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

Principal Staff: Scott Myers, 202-502-1820

* Ex-officio - Deputy Assistant Attorney General, Tax Division

RULES COMMITTEE LIAISON MEMBERS

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

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
Staff

Office of the General Counsel – Rules Committee Staff
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE, Washington, DC 20544
Main: 202-502-1820

Chief Counsel

H. Thomas Byron III, Esq.

Counsel

Allison A. Bruff, Esq.
(Civil, Criminal)

Bridget M. Healy, Esq.
(Appellate, Evidence)

S. Scott Myers, Esq.
(Bankruptcy)

Other Staff

Shelly Cox
Management Analyst

Rakita Johnson
Administrative Analyst

FEDERAL JUDICIAL CENTER
Staff

Federal Judicial Center
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE, Washington, DC 20544

Director

Hon. John S. Cooke

Research Associates

Carly E. Giffin, Esq.
Research Associate
(Bankruptcy)

Laural L. Hooper, Esq.
Senior Research Associate
(Criminal)

Timothy T. Lau, Esq.
Research Associate
(Evidence)

Marie Leary, Esq.
Senior Research Associate
(Appellate)

Dr. Emery G. Lee
Senior Research Associate
(Civil)

Tim Reagan, Esq.
Senior Research Associate
(Standing)

ADVISORY COMMITTEE ON BANKRUPTCY RULES
SUBCOMMITTEES
(2023–2024)

Appeals and Cross Border Insolvency Subcommittee	**Business Subcommittee**
Judge Daniel A. Bress, Chair Judge Jeffery P. Hopkins Judge Catherine Peek McEwen Damian S. Schaible, Esq. David Hubbert, Esq., ex officio Ramona D. Elliott, Esq., EOUST liaison Carly Giffin, Esq., FJC	Judge Catherine Peek McEwen, Chair Judge Daniel A. Bress Judge Benjamin Kahn Judge Joan H. Lefkow Judge J. Paul Oetken Damian S. Schaible, Esq. Jeremy L. Retherford, Esq. Ramona D. Elliott, Esq., EOUST liaison Kenneth S. Gardner, clerk representative Carly Giffin, Esq., FJC
Consumer Subcommittee Judge Michelle M. Harner, Chair Judge George H. Wu Judge Jeffery P. Hopkins Nancy Whaley, Esq. Professor Scott Norberg Jenny L. Doling, Esq. Ramona D. Elliott, Esq., EOUST liaison Kenneth S. Gardner, clerk representative Carly Giffin, Esq., FJC	**Forms Subcommittee** Judge Benjamin Kahn, Chair Judge George H. Wu Jeremy L. Retherford, Esq. Jenny L. Doling, Esq. Nancy Whaley, Esq. David Hubbert, Esq., ex officio Ramona D. Elliott, Esq., EOUST liaison Kenneth S. Gardner, clerk representative Carly Giffin, Esq., FJC
Technology, Privacy, and Public Access Subcommittee Judge J. Paul Oetken, Chair Judge Joan H. Lefkow Judge Jeffery P. Hopkins Judge Michelle M. Harner Judge Benjamin Kahn Professor Scott Norberg Ramona D. Elliott, Esq., EOUST liaison Carly Giffin, Esq., FJC	**Unified Bar Admission Joint Subcommittee** Judge J. Paul Oetken, Chair Judge Andre Birotte Judge Michelle M. Harner Judge M. Hannah Lauck David Burman, Esq. Catherine Recker, Esq. Carmelita Shinn, Clerk Rep. Carly Giffin, Esq., FJC
Appellate Rules Liaison: Judge Daniel A. Bress	**Bankruptcy Committee Liaison:** Judge Michelle M. Harner
Civil Rules Liaison: Judge Catherine Peek McEwen	

* Include FJC Liaison on confirmed meeting/call invitations. It is not necessary to poll for their availability as they will join if they are able.

Updated January 31, 2024

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2024

Current Step in REA Process:
- Transmitted to Congress (Apr 2024)

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

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

Revised August 12, 2024

Effective (no earlier than) December 1, 2024

Current Step in REA Process:
- Transmitted to Congress (Apr 2024)

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

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

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2025

Current Step in REA Process:

- Approved by Standing Committee (June 2024 unless otherwise noted)

REA History:

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

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

Revised August 12, 2024

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2025

Current Step in REA Process:

- Approved by Standing Committee (June 2024 unless otherwise noted)

REA History:

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

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

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2026

Current Step in REA Process:
- Published for public comment (Aug 2024 – Feb 2025 unless otherwise noted)

REA History:
- Approved for publication by Standing Committee (Jan and June 2024 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 29	The proposed amendments to Rule 29 relate to amicus curiae briefs. The proposed amendments, among other things, would require all amicus briefs to include a concise description of the identity, history, experience, and interests of the amicus curiae, together with an explanation of how the brief and the perspective of the amicus will help the court. In addition, they would require an amicus that has existed for less than 12 months to state the date the amicus was created. With regard to the relationship between a party and an amicus, two new disclosure requirements would be added. Also, the proposed amendments would retain the member exception in the current rule, but limit the exception to those who have been members for the prior 12 months. Finally, the proposed amendments would require leave of court for all amicus briefs, not just those at the rehearing stage.	Rule 32; Appendix
AP 32	The proposed amendments to Rule 32 would conform to the proposed amendments to Rule 29.	Rule 29
AP Appendix	The proposed amendments to the Appendix would conform to the proposed amendments to Rule 29.	Rule 29
AP Form 4	The proposed amendments to Form 4 would simplify Form 4, with the goal of reducing the burden on individuals seeking in forma pauperis status (IFP) while providing the information that courts of appeals need and find useful when deciding whether to grant IFP status.	
BK 1007	The proposed amendments to Rule 1007(c)(4) eliminate the deadlines for filing certificates of completion of a course in personal financial management. The proposed amendments to Rule 1007(h) clarify that a court may require a debtor to file a supplemental schedule to report postpetition property or income that comes into the estate under § 115, 1207, or 1306 of the Bankruptcy Code.	
BK 3018	The proposed amendment to subdivision (c) would allow for more flexibility in how a creditor or equity security holder may indicate acceptance of a plan in a chapter 9 or chapter 11 case.	
BK 5009	The proposed amendments to Rule 5009(b) would provide an additional reminder notice to the debtors that the case may be closed without a discharge if the debtor's certificate of completion of a personal financial management course has not been filed.	
BK 9006	The proposed amendments conform to the proposed amendments to Rule 1007.	
BK 9014	The proposed amendment to Rule 9014(d) relaxes the standard for allowing remote testimony in contested matters to "cause and with appropriate safeguards." The current standard, imported from the trial standard in Civil Rule	

Effective (no earlier than) December 1, 2026

Current Step in REA Process:
- Published for public comment (Aug 2024 – Feb 2025 unless otherwise noted)

REA History:
- Approved for publication by Standing Committee (Jan and June 2024 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
	43(a), which is applicable across bankruptcy (in both contested matters and adversary proceedings) is cause "in compelling circumstances and with appropriate safeguards."	
BK 9017	The proposed amendment to Rule 9017 removes the reference to Civil Rule 43 leaving the proposed amendment to Rule 9014(d) to govern the standard for allowing remote testimony in contested matters, and Rule 7043 to govern the standard for allowing remote testimony in adversary proceedings.	
BK 7043	Rule 7043 is new and works with proposed amendments to Rules 9014 and 9017. It would make Civil Rule 43 applicable to adversary proceedings (though not to contested matters	
BK Official Form 410S1	The proposed changes would conform the form the pending amendments to Rule 3002.1 that are on track to go into effect on **December 1, 2025,** and would go into effect on the same date as the rule change.	
EV 801	The proposed amendment to Rule 801(d)(1)(A) would provide that all prior inconsistent statements admissible for impeachment are also admissible as substantive evidence, subject to Rule 403.	

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

Ordered by most recent legislative action; most recent first

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Closing Bankruptcy Loopholes for Child Predators Act of 2024	**H.R. 8077** *Sponsor:* Ross (D-NC) *Cosponsor:* Tenney (R-NY)	BK 2004, 9018	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr8077/BILLS-118hr8077ih.pdf **Summary:** Would directly amend BK 2004 and 9018 to provide additional procedures in cases related to the alleged sexual abuse of a child.	• 04/18/2024: H.R. 8077 introduced in House; referred to Judiciary Committee
Bankruptcy Threshold Adjustment Extension Act	**S. 4150** *Sponsor:* Durbin (D-IL) *Cosponsors:* 5 bipartisan cosponsors	BK 1020; BK Forms 101 & 201	**Most Recent Bill Text:** https://www.congress.gov/118/bills/s4150/BILLS-118s4150is.pdf **Summary:** Would extend the CARES Act definition of debtor in Section 1182(1) with its $7.5m subchapter V debt limit for a further two years.	• 04/17/2024: S. 4150 introduced in Senate; referred to Judiciary Committee
Bankruptcy Venue Reform Act **SHOP Act**	**H.R. 1017** *Sponsor:* Lofgren (D-CA) *Cosponsors:* 7 Democratic & 2 Republican cosponsors **S. 4095** *Sponsor:* McConnell (R-KY) *Cosponsors:* Cotton (R-AR) Tillis (R-NC)	BK	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr1017/BILLS-118hr1017ih.pdf https://www.congress.gov/118/bills/s4095/BILLS-118s4095is.pdf **Summary:** Would require the Supreme Court to prescribe rules through the Rules Enabling Act process to allow government attorneys to appear and intervene in Title 11 proceedings without charge, and without meeting any requirement under any local court rule relating to attorney appearances or the use of local counsel, before any bankruptcy court, district court, or bankruptcy appellate panel.	• 04/10/2024: S. 4095 introduced in Senate; referred to Judiciary Committee • 02/14/2023: H.R. 1017 introduced in House; referred to Judiciary Committee

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

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Supreme Court Ethics, Recusal, and Transparency Act of 2023	**H.R. 926** *Sponsor:* Johnson (D-GA) *Cosponsors:* 136 Democratic cosponsors **S. 359** *Sponsor:* Whitehouse (D-RI) *Cosponsors:* 43 Democratic or Democratic-caucusing cosponsors	AP, BK, CV, CR	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr926/BILLS-118hr926ih.pdf https://www.congress.gov/118/bills/s359/BILLS-118s359rs.pdf **Summary:** Would require the Supreme Court and JCUS to issue and prescribe—through an expedited Rules Enabling Act process— (a) codes of conduct for justices and judges; (b) rules of procedure requiring certain disclosures by parties and amici; and (c) rules of procedure for prohibiting or striking an amicus brief that would result in disqualification of a justice, judge, or magistrate judge.	• 09/05/2023: S. 359 placed on Senate Legislative Calendar under General Orders • 07/20/2023: S. 359 reported with an amendment from Senate Judiciary Committee • 02/09/2023: S. 359 introduced in Senate; referred to Judiciary Committee • 02/09/2023: H.R. 926 introduced in House; referred to Judiciary Committee
Government Surveillance Transparency Act of 2023	**H.R. 5331** *Sponsor:* Lieu (D-CA) *Cosponsor:* Davidson (R-OH)	CR 41	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr5331/BILLS-118hr5331ih.pdf **Summary:** Would amend CR 41(f)(1)(B) by adding that an inventory shall disclose whether the provider disclosed to the government any electronic data not authorized by the court and whether the government searched persons or property without court authorization. Would provide for public access to docket records for certain criminal surveillance orders in accordance with rules promulgated by JCUS.	• 09/01/2023: H.R. 5331 introduced in House; referred to Judiciary Committee
Protecting Our Democracy Act	**H.R. 5048** *Sponsor:* Schiff (D-CA) *Cosponsors:* 160 Democratic cosponsors	CR 6; CV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr5048/BILLS-118hr5048ih.pdf **Summary:** Would require the Supreme Court and JCUS to prescribe rules—through an expedited Rules Enabling Act process—to ensure the expeditious treatment of a civil action brought to enforce a congressional subpoena. Would preclude any interpretation of CR 6(e) to prohibit disclosure to Congress of certain grand-jury materials related to individuals pardoned by the President.	• 07/27/2023: H.R. 5048 introduced in House; referred to Oversight & Accountability, Judiciary, Administration; Budget, Transportation & Infrastructure, Rules, Foreign Affairs, Ways & Means, and Intelligence Committees

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Back the Blue Act of 2023	**H.R. 355** *Sponsor:* Bacon (R-NE) *Cosponsors:* 19 Republican cosponsors **H.R. 3079** *Sponsor:* Bacon (R-NE) *Cosponsors:* 21 Republican cosponsors **S. 1569** *Sponsor:* Cornyn (R-TX) *Cosponsors:* 41 Republican cosponsors	§ 2254 Rule 11	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr355/BILLS-118hr355ih.pdf https://www.congress.gov/118/bills/hr3079/BILLS-118hr3079ih.pdf https://www.congress.gov/118/bills/s1569/BILLS-118s1569is.pdf **Summary:** Would amend Rule 11 of the Rules Governing Section 2254 Cases by adding: "Rule 60(b)(6) of the Federal Rules of Civil Procedure shall not apply to a proceeding under these rules in a case that is described in section 2254(j) of title 28, United States Code."	• 05/11/2023: S. 1569 introduced in Senate; referred to Judiciary Committee • 05/05/2023: H.R. 3079 introduced in House; referred to Judiciary Committee • 01/13/2023: H.R. 355 introduced in House; referred to Judiciary Committee
Restoring Artistic Protection (RAP) Act of 2023	**H.R. 2952** *Sponsor:* Johnson (D-GA) *Cosponsors:* 33 Democratic cosponsors	EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2952/BILLS-118hr2952ih.pdf **Summary:** Would amend the Federal Rules of Evidence by adding a new Rule 416 to limit the admissibility of evidence of a defendant's creative or artistic expression against such defendant.	• 04/27/2023: Introduced in House; referred to Judiciary Committee
Sunshine in the Courtroom Act of 2023	**S. 833** *Sponsor:* Grassley (R-IA) *Cosponsors:* Klobuchar (D-MN) Durbin (D-IL) Blumenthal (D-CT) Markey (D-MA) Cornyn (R-TX)	CR 53	**Most Recent Bill Text:** https://www.congress.gov/118/bills/s833/BILLS-118s833is.pdf **Summary:** Would permit district court cases to be photographed, electronically recorded, broadcast, or televised, notwithstanding any other provision of law, after JCUS promulgates guidelines.	• 03/16/2023: Introduced in Senate; referred to Judiciary Committee

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

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Election Day Holiday Act of 2024 **Election Day Act** **Freedom to Vote Act**	**H.R. 7329** *Sponsor:* Eshoo (D-CA) **H.R. 6267** *Sponsor:* Fitzpatrick (R-PA) **H.R. 11** *Sponsor:* Sarbanes (D-MD) **S.1; S. 2344** *Sponsor:* Klobuchar (D-MN) Each bill has several Democratic or Democratic-caucusing cosponsors.	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr7329/BILLS-118hr7329ih.pdf https://www.congress.gov/118/bills/hr6267/BILLS-118hr6267ih.pdf https://www.congress.gov/118/bills/hr11/BILLS-118hr11ih.pdf https://www.congress.gov/118/bills/s1/BILLS-118s1is.pdf https://www.congress.gov/118/bills/s2344/BILLS-118s2344is.pdf **Summary:** Would make Election Day a federal holiday.	• 02/13/2024: H.R. 7329 introduced in House • 11/07/2023: H.R. 6267 introduced in House • 07/25/2023: S. 1 introduced in Senate • 07/18/2023: S. 2344 introduced in Senate • 07/18/2023: H.R. 11 introduced in House • Among others, house bills referred to Oversight & Accountability Committee; senate bills referred to Committee on Rules & Administration
Indigenous Peoples' Day Act	**H.R. 5822** *Sponsor:* Torres (D-AL) *Cosponsors:* 86 Democratic cosponsors **S. 2970** *Sponsor:* Heinrich (D-NM) *Cosponsors:* 13 Democratic or Democratic-caucusing cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr5822/BILLS-118hr5822ih.pdf https://www.congress.gov/118/bills/s2970/BILLS-118s2970is.pdf **Summary:** Would replace the term "Columbus Day" with the term "Indigenous Peoples' Day" as a legal public holiday.	• 09/28/2023: H.R. 5822 introduced in House; referred to Oversight & Accountability Committee • 09/28/2023: S. 2970 introduced in Senate; referred to Judiciary Committee
Patriot Day Act	**H.R. 5366** *Sponsor:* Fitzpatrick (R-PA) *Cosponsors:* Gottheimer (D-NJ) Malliotakis (R-NY)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr5366/BILLS-118hr5366ih.pdf **Summary:** Would make Patriot Day a federal holiday.	• 09/08/2023: Introduced in House; referred to Oversight & Accountability Committee

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Diwali Day Act	**H.R. 3336** *Sponsor:* Meng (D-NY) *Cosponsors:* 15 Democratic & 1 Republican cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr3336/BILLS-118hr3336ih.pdf **Summary:** Would make Diwali (a/k/a Deepavali) a federal holiday.	• 05/15/2023: Introduced in House; referred to Oversight & Accountability Committee
September 11 Day of Remembrance Act	**H.R. 2382** *Sponsor:* Lawler (R-NY) *Cosponsors:* 4 Democratic & 2 Republican cosponsors **S. 1472** *Sponsor:* Blackburn (R-TN) *Cosponsor:* Wicker (R-MS)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2382/BILLS-118hr2382ih.pdf https://www.congress.gov/118/bills/s1472/BILLS-118s1472is.pdf **Summary:** Would make September 11 Day of Remembrance a federal holiday.	• 05/04/2023: S. 1472 introduced in Senate; referred to Judiciary Committee • 03/29/2023: H.R. 2382 introduced in House; referred to Oversight & Accountability Committee
Workers' Memorial Day	**H.R. 3022** *Sponsor:* Norcross (D-NJ) *Cosponsors:* 11 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2382/BILLS-118hr2382ih.pdf **Summary:** Would make Workers' Memorial Day a federal holiday.	• 04/28/2023: Introduced in House; referred to Oversight & Accountability Committee
St. Patrick's Day Act	**H.R. 1625** *Sponsor:* Fitzpatrick (R-PA) *Cosponsor:* Lawler (R-NY)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr1625/BILLS-118hr1625ih.pdf **Summary:** Would make St. Patrick's Day a federal holiday.	• 03/17/2023: Introduced in House; referred to Oversight & Accountability Committee
Lunar New Year Day Act	**H.R. 430** *Sponsor:* Meng (D-NY) *Cosponsors:* 58 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr430/BILLS-118hr430ih.pdf **Summary:** Would make Lunar New Year Day a federal holiday.	• 01/20/2023: Introduced in House; referred to Oversight & Accountability Committee
Rosa Parks Day Act	**H.R. 308** *Sponsor:* Sewell (D-AL) *Cosponsors:* 115 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr308/BILLS-118hr308ih.pdf **Summary:** Would make Rosa Parks Day a federal holiday.	• 01/12/2023: Introduced in House; referred to Oversight & Accountability Committee

Date: August 12, 2024

To: Advisory Committees on Rules of Practice and Procedure

From: Tim Reagan (Research)
Maureen Kieffer (Education)
Christine Lamberson (History)
Federal Judicial Center

Re: Federal Judicial Center Research and Education

This memorandum summarizes efforts by the Federal Judicial Center relevant to federal-court practice and procedure. Center researchers attend rules committee, subcommittee, and working-group meetings and provide empirical research as requested. The Center also conducts research to develop manuals and guides; produces education programs for judges, court attorneys, and court staff; and provides public resources on federal judicial history.

RESEARCH

Completed Research for Rules Committees

Local-Counsel Requirements for Practice in Federal District Courts

Prepared for the Standing Rules Committee's subcommittee on admissions to the district courts' bars, this report summarizes when and where federal district courts require local counsel to participate in litigation and attorney admissions (www.fjc.gov/content/385779/local-counsel-requirements-practice-federal-district-courts).

Fees for Admission to Federal Court Bars

Prepared for the Standing Rules Committee's subcommittee on admissions to the district courts' bars, this report summarizes fees charged for admission to federal court bars, including admission fees, pro hac vice fees, and fees charged by state and territory bars for certificates of good standing (www.fjc.gov/content/385023/fees-admission-federal-court-bars).

Current Research for Rules Committees

Broadcasting Criminal Proceedings

The Center is providing the Criminal Rules Committee with research support as it studies whether the proscription on remote public access to criminal proceedings should be amended.

Remote Participation in Bankruptcy Contested Matters

The Center is providing the Bankruptcy Rules Committee with research support as it studies remote participation in contested matters.

Prior Convictions as Impeachment Evidence for Criminal Defendants

At the request of the Evidence Rules Committee, the Center is conducting research on prior felony convictions as impeachment evidence against testifying criminal defendants.

Intervention on Appeal

At the request of the Appellate Rules Committee, the Center is conducting research on interventions on appeal.

The Need for Redacted Social Security Numbers in Bankruptcy Cases

In light of proposals to fully redact Social Security numbers in public filings, rather than all but the last four digits, the Bankruptcy Rules Committee asked the Center to survey bankruptcy trustees and others on the need for partial Social Security numbers in public filings.

Bankruptcy Judges' Use of "Special Masters"

At the request of the Bankruptcy Rules Committee, the Center will be gathering information from bankruptcy judges on how and whether they would use "special masters" if they had the authority to do that. It is acknowledged that there are concurrent proposals to discontinue use of the word "master" because of the word's historical association with involuntary servitude.

Default and Default-Judgment Practices in the District Courts

At the request of the Civil Rules Committee, the Center studied district-court practices with respect to the entry of defaults and default judgments under Civil Rule 55. Of particular interest was under what circumstances they are entered by clerks rather than judges. A completed report will be presented to the committee at its October 2024 meeting.

Complex Criminal Litigation Website

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

Completed Research for Other Judicial Conference Committees

Unredacted Social Security Numbers in Federal Court PACER Documents

At the request of the Committee on Court Administration and Case Management, as part of the Center's ongoing privacy study, the Center identified unredacted Social Security numbers in public filings apparently out of compliance with Federal Rules of Practice and Procedure: Appellate

Rule 25(a)(5), Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1. The Center found 22,391 unredacted Social Security numbers in a sample of 4.7 million filed documents (www.fjc.gov/content/387587/unredacted-social-security-numbers-federal-court-pacer-documents). Of those, 22% were exempt from the redaction requirement, and 6% belonged to pro se filers who waived the rules' privacy protection by disclosing their own Social Security numbers.

Current Research for Other Judicial Conference Committees

The Privacy Study: Unredacted Sensitive Personal Information in Court Filings

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

Remote Public Access to Court Proceedings

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

Case Weights for Bankruptcy Courts

The Center is collecting data for updated research on bankruptcy-court case weights. Case weights are used in the computation of weighted caseloads, which in turn are used when assessing the need for judgeships. The research was requested by the Committee on Administration of the Bankruptcy System.

Other Completed Research

Enhancing Efforts to Coordinate Best Workplace Practices Across the Federal Judiciary

This report, and the study of federal-judiciary workplace practices on which it is based, were undertaken by the Center and the National Academy of Public Administration pursuant to a House Committee recommendation under the Consolidated Appropriations Act of 2023 (www.fjc.gov/content/388247/enhancing-efforts-coordinate-best-workplace-practices-across-federal-judiciary).

JUDICIAL GUIDES

Completed

Mutual Legal Assistance Treaties and Letters Rogatory: Obtaining Evidence and Assistance from Foreign Jurisdictions

This guide, now in its second edition, provides an overview of the statutory schemes and procedural matters that distinguish mutual legal assistance treaties and letters rogatory (www.fjc.gov/content/386124/mutual-legal-assistance-treaties-letters-rogatory). It also discusses legal issues that arise when the prosecution, the defense, or a civil litigant seek to obtain evidence from abroad as part of a criminal or civil proceeding.

In Preparation

Manual for Complex Litigation

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

Reference Manual on Scientific Evidence

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

Manual on Recurring Issues in Criminal Trials

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

Benchbook for U.S. District Court Judges

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

HISTORY

Summer Institute for Teachers

In June 2024, the Center collaborated with the ABA to present a week-long professional-development conference for teachers focusing on three famous historical trials: The *Amistad* trial, *United States v. Guiteau*, and *United States v. Rosenberg*. The Center presents information about these and other famous federal trials on its website (www.fjc.gov/history/cases/famous-federal-trials).

Spotlight on Judicial History

Since 2020, the Center has posted twenty-two short essays about judicial history on a variety of topics (www.fjc.gov/history/spotlight-judicial-history).

Recent posts include "*Chy Lung v. Freeman*: Anti-Chinese Sentiment and the Supremacy of Federal Immigration Law" (www.fjc.gov/history/spotlight-judicial-history/chinese-immigration-restriction), "Eighth Amendment Prison Litigation" (www.fjc.gov/history/spotlight-judicial-history/eighth-amendment-prison-litigation), "The Certificate of Division" (www.fjc.gov/history/spotlight-judicial-history/certificate-division), and "NFL Television Broadcasting" (www.fjc.gov/history/spotlight-judicial-history/nfl-television-broadcasting).

A User Guide to the History of the Federal Judiciary Website

The Center recently added to its History website a user guide that provides brief descriptions of resources of interest to specific audiences, including the general public, judges and court staff, educators, students, and researchers (www.fjc.gov/history/user-guide).

Snapshots of Federal Judicial History, 1790–1990

The Center recently added to its History website extensive exhibits presenting data about the federal judiciary at various points in its evolution (www.fjc.gov/history/exhibits/snapshots-federal-judicial-history-1790-1990).

EDUCATION

Specialized Workshops

FJC–Center for Law, Brain & Behavior Workshop on Science-Informed Decision-Making

Participants at this three-day, in-person workshop on the incorporation of behavioral science into decisions made in criminal cases were judges and probation and pretrial services officers.

Judicial Seminar on Emerging Issues in Neuroscience

A two-day, in-person judicial seminar explored developments in neuroscience and the role that neuroscience can play in legal determinations, such as decisions about criminal culpability and the admissibility of evidence. The seminar was cosponsored by the American Association for the Advancement of Science and funded by a grant from the Dana Foundation.

Electronic Discovery Seminar

A two-day, in-person judicial workshop explored technologies, rules, and legal requirements related to the retrieval of electronically stored information. It was cosponsored by the Electronic Discovery Institute.

Employment Law Workshop

A two-day, in-person judicial workshop explored issues arising in employment-law litigation, including the use of experts, electronic discovery, case management, retaliation, implicit bias, big data, and the role of the whistleblower. The New York University School of Law's Institute of Judicial

Administration and Center for Labor and Employment Law cosponsored the program.

Ronald M. Whyte Intellectual Property Seminar

A four-day, in-person judicial workshop addressed the basics of patent, copyright, and trademark law; patent case management; and emerging issues in intellectual property law. It was cosponsored by the Berkeley Center for Law and Technology.

Antitrust Judicial Law and Economics Institute for Federal Judges

A three-day, in-person judicial workshop focused on antitrust law and economics fundamentals in the context of various procedural issues, including pleading an antitrust case after the Supreme Court's decision in *Bell Atlantic Corporation v. Twombly*; antitrust injury; class certification; and the use of experts at class certification, during damages analysis, and throughout trial. The program was a collaboration of the Center, the American Bar Association's Antitrust Section, the University of Chicago, and the University of California at Berkeley.

Distance Education

Court Web

A monthly webcast included as recent episodes "Generative AI and the Future of Legal Practice" (featuring Middle District of Florida Magistrate Judge Anthony Porcelli and Southern District of California Magistrate Judge Allison Goddard), "Election Litigation Update" (featuring Professors Richard Hasen and Derek Muller), "Hot Topics in Federal Sentencing" (featuring Northern District of Ohio Judge Benita Pearson and Alan Dorhoffer, director of the U.S. Sentencing Commission's Office of Education and Sentencing Practice), "Finding the Ripcords: Top Ten 'Safe Landing' Federal Practice Cases" (featuring attorney Jim Wagstaffe and discussing recent appellate cases addressing jurisdictional issues), "Best Practices for Serving Unrepresented Litigants in the Federal Courts" (featuring Northern District of California Judge Jacqueline Scott Corley and Western District of Missouri Judge Willie Epps), and "Below the Radar: Vital Civil Procedure Developments You Might Not Know" (featuring attorney Jim Wagstaffe and highlighting the most recent developments in federal jurisdiction and civil procedure).

Term Talk

The Center has presented periodic webcasts with the nation's top legal scholars discussing what federal judges need to know about the U.S. Supreme Court's most impactful decisions. Recent episodes include "*Turkiye Halk Bankasi v. United States*; *Pugin v. Garland*" (discussing subject-matter jurisdiction over criminal prosecutions against foreign sovereigns) and "*Biden v. Nebraska*; *United States v. Texas*" (discussing state standing to sue

for losses suffered by a third party and standing to seek vacation of immigration guidelines).

Consumer Case-Law Update for Bankruptcy Judges

This quarterly webcast features retired Western District of Tennessee Bankruptcy Judge William H. Brown discussing the latest consumer-bankruptcy case-law updates.

Business Case-Law Update for Bankruptcy Judges

This quarterly webcast features Professor Bruce Markell (a retired bankruptcy judge).

Interactive Orientation for Federal Judicial Law Clerks

The Center provides term law clerks with online interactive training resources.

Customer Service in the Courts

Launched in 2023, this e-learning course discusses working with self-represented litigants, among other topics. The course objectives are to provide information and address concerns without crossing into legal advice.

General Workshops

National Leadership Conference for Chief Judges of United States District and Bankruptcy Courts

This is an annual conference. In addition to updates from various Judicial Conference committees, the 2024 workshop included a session on the evaluation of the interim recommendations of the Cardone Report.

National Workshop for U.S. District Court Judges

These three-day workshops are held in even-numbered years. Among the topics examined at the 2024 workshop were scientific evidence, artificial intelligence, employment-discrimination litigation, deferred sentencing, restorative justice, and managing mass litigation.

National Workshop for U.S. Magistrate Judges

These three-day workshops are held annually. Among the topics examined at the 2024 workshop were the impact of ChatGPT on court filings, including those by self-represented litigants, and the impact of "deepfakes" on evidence and procedure.

National Workshop for U.S. Bankruptcy Judges

These three-day workshops are held annually. Among the topics discussed in 2024 were sealing court records and healthcare bankruptcies.

Circuit Workshops for U.S. Appellate and District Judges

In 2023, the Center put on two- or three-day workshops for Article III judges in the Second, Ninth, and Eleventh Circuits.

National Conference for Appellate Staff Attorneys

The Center puts on biennial three-day educational conferences for appellate staff attorneys, now in odd-numbered years.

Wm. Matthew Byrne, Jr., Judicial Clerkship Institute for Career Law Clerks

Held in collaboration with Pepperdine University Caruso School of Law, this annual two-day program offers sessions on managing pro se litigation, bankruptcy appeals, and jurisdictional issues.

Federal Defender Capital Habeas Unit National Conference

This annual three-day conference is designed for attorneys, paralegals, investigators, and mitigation specialists.

National Seminar for Federal Defenders

This annual three-day seminar is designed for assistant federal defenders who have been practicing criminal law for a minimum of three years.

Orientation Programs

Orientation Programs for Judges

The Center invites newly appointed judges to attend two one-week conferences focusing on skills unique to judging. The first phase includes sessions on trial practice, case management, judicial ethics, and opinion writing. In addition, district judges learn about the sentencing process, magistrate judges learn about search warrants, and bankruptcy judges learn about the bankruptcy code. The second phase includes sessions on such topics as civil-rights litigation, employment discrimination, case management, security, self-represented litigants, relations with the media, and ethics. Recent orientation programs for district judges have included updates on the Cardone Committee's recommendations and evaluation. Orientation programs for circuit judges include a program at New York University School of Law for both state and federal appellate judges.

Orientation Seminar for Assistant Federal Defenders

This week-long seminar is held every year.

TAB 2

Draft – May 29, 2024

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 11, 2024
Denver, CO and on Microsoft Teams

The following members attended the meeting in person:

Circuit Judge Daniel A. Bress
Bankruptcy Judge Rebecca Buehler Connelly
Jenny Doling, Esq.
Bankruptcy Judge Michelle M. Harner
David A. Hubbert, Esq.
Bankruptcy Judge Benjamin A. Kahn
District Judge Joan H. Lefkow
Bankruptcy Judge Catherine Peek McEwen
Professor Scott F. Norberg
District Judge J. Paul Oetken
Jeremy L. Retherford, Esq.
Nancy Whaley, Esq.
District Judge George H. Wu

The following members attended the meeting remotely:

District Judge Jeffery P. Hopkins
Damien S. Schaible, Esq.

The following persons also attended the meeting in person:

Professor S. Elizabeth Gibson, Reporter
Professor Laura B. Bartell, Associate Reporter
Senior District Judge John D. Bates, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Professor Catherine T. Struve, reporter to the Standing Committee
Ramona D. Elliott, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
Kenneth S. Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Bankruptcy Judge Sarah Hall, acting as liaison to the Committee on the Administration of the Bankruptcy System
H. Thomas Byron III, Administrative Office
Shelly Cox, Administrative Office
Allison A. Bruff, Administrative Office
Rakita Johnson, Administrative Office
Zachary Hawari, Rules Law Clerk
Carly E. Giffin, Federal Judicial Center

Draft

Rebecca Garcia, National Association of Chapter Thirteen Trustees
Susan Steinman, American Association for Justice
John Rabiej, Rabiej Litigation Center

The following persons also attended the meeting remotely:

Professor Daniel R. Coquillette, consultant to the Standing Committee
Bridget M. Healy, Administrative Office
S. Scott Myers, Esq., Administrative Office
Susan Jensen, Administrative Office
Tim Reagan, Federal Judicial Center
Circuit Judge William J. Kayatta, liaison from the Standing Committee
Christopher Coyle, Sussman Shank LLP
Crystal Williams
Daniel Steen, Lawyers for Civil Justice
John Hawkinson, freelance journalist
Kathleen McLeroy, Calton Fields
Mathew Hindman
Lauren O'Neil Funseth, Wells Fargo
Alice Whitten, Wells Fargo
Sai
Sylvia Mayer, Mayer Law
Kaiya Lyons, American Association for Justice

Discussion Agenda

1. **Greetings and Introductions**

Judge Rebecca Connelly, chair of the Advisory Committee, welcomed the group and thanked everyone for joining this meeting, including those attending virtually. She thanked the members of the public attending in person or remotely for their interest. She welcomed Rakita Johnson to the administrative team.

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

Draft

She then introduced Andrew Henderson and Jesus Cardona of the Judicial Security Division, and Mr. Henderson provided a brief security announcement.

Scott Myers reviewed the status of all pending rules and legislation. The Supreme Court has adopted all rules submitted by all advisory committees and sent them to Congress. The restyled bankruptcy rules, amendments to Bankruptcy Rules 1007(b)(7) and related rules (eliminating the financial management course certificate); and 70001 (exempting from the list of adversary proceedings a proceeding by an individual debtor to recover tangible personal property under § 542(a)) and new Bankruptcy Rule 8023.1 (substitution of parties) with are among those rules. Zachary Hawari noted that the status of legislation that directly or effectively amends the federal rules appears in the agenda book.

2. **Approval of Minutes of Meeting Held on Sept. 14, 2023**

The minutes were approved with the correction of one reference to "Professor Harner" to "Judge Harner."

3. **Oral Reports on Meetings of Other Committees**

(A) ***Jan. 4, 2024, Standing Committee Meeting***

Judge Connelly gave the report.

(1) **Joint Committee Business**

(a) ***Joint Subcommittee on Attorney Admission***

Professor Catherine Struve gave a report on the work of the Joint Subcommittee and will be giving a similar report to the Advisory Committee at this meeting.

(b) ***Pro Se Electronic-Filing Project***

Professor Catherine Struve provided the Standing Committee a status report on the discussions of the working group considering filing methods for self-represented litigants and will be giving a similar report to the Advisory Committee at this meeting.

(c) ***Presumptive Deadline for Electronic Filing***

The E-Filing Deadlines Joint Subcommittee reported that the Appellate, Bankruptcy, Civil, and Criminal Rules Advisory Committees all endorsed the recommendation of the E-

Draft

Filing Joint Subcommittee to take no action on the suggestion to amend the national time-computation rules to set a presumptive electronic-filing deadline earlier than midnight.

(2) **Bankruptcy Rules Committee Business**

Approval for Publication for Public Comment

The Standing Committee approved for publication Rule 1007(h) (Interests in Property Acquired or Arising After a Petition Is Filed); Rule 3018 (Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case); and Official Form 410S1 (Notice of Mortgage Payment Change). Because additional comments were provided on Rule 3018 after the meeting, Judge Connelly decided to bring back the revised rule to the Standing Committee with a renewed request for publication at the June meeting.

Information Items

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

(a) Report on the Advisory Committee's reconsideration of the proposed sanctions provision in Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence).

(b) Update concerning suggestion to remove redacted social security numbers from filed documents made by Sen. Ron Wyden.

(c) Update on suggestions to eliminate requirement that all notices given under Rule 2002 comply with the caption requirements in Rule 1005.

(d) Update on proposed amendments to Rules 9014 and 9017 and creation of a new Rule 7043 dealing with remote testimony in contested matters.

(e) Update on consideration of proposed amendments to Director's Form 1340 by which applicants may seek payment of unclaimed funds.

(f) Update on consideration of suggestion regarding contempt proceedings.

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

The Advisory Committee on Appellate Rules met on April 10, 2024. Judge Bress provided the report.

Draft

The Appellate Committee gave final approval to the proposed amendments to Appellate Rule 6, dealing with appeals in bankruptcy cases. It also gave final approval to an amendment to Appellate Rule 39 on taxation of costs.

The Appellate Committee approved for publication amendments to Appellate Rule 29 on amicus briefs after extensive discussion. Appellate Form 4, dealing with in forma pauperis status, was also discussed. Other matters were referred to appropriate subcommittees.

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

The Advisory Committee on Civil Rules met on Oct. 17, 2023, and April 9, 2024. Judge McEwen provided the report.

The Civil Committee gave final approval to proposed amendments to Civil Rules 16(b)(3) and 26(f)(3) on privilege logs. The proposed amendments require the parties to discuss the timing and method for complying with Rule 26(a)(5) on information that is privileged or subject to protection as trial-preparation material, and if there is disagreement, the issue should be raised at a pretrial conference. The proposed amendments will be referred to the Standing Committee to consider for publication. Civil Rules 16 and 26 apply in adversary proceedings in bankruptcy cases under Bankruptcy Rules 7016 and 7026 (Civil Rule 16 and Civil Rule 26(f) are not automatically adopted by reference in Bankruptcy Rule 9014 for contested matters but are subject to application by court order).

The Discovery Subcommittee noted that it is still considering a concern expressed to the Civil Committee (as well as the Bankruptcy Rules Committee) by Judge Catherine McEwen, as liaison to the Civil Rules Committee, on the manner of service of a subpoena under Civil Rule 45. The Discovery Subcommittee will be considering eliminating the requirement for in-person service in every instance. The current sketch of the proposed amendment adopts certain parts of Rule 4 (4(d), 4(e), 4(f), 4(h) and 4(i)) as permissible methods of service. Whether to include the *Mullane* language "reasonably calculated to give actual notice" in the rule or perhaps in the Advisory Committee Notes is still under consideration. In addition, the subcommittee has expanded its review of Civil Rule 45 to consider the requirement and method of delivering a witness fee as well as the amount of advance notice that should be required when documents are subpoenaed for deposition or trial. The expanded scope appeared to be well received by the full committee. Civil Rule 45 applies to adversary proceedings and contested matters in bankruptcy cases under Bankruptcy Rule 9016.

The Discovery Subcommittee is also considering proposed amendments to Civil Rule 26(c)(4) and Civil Rule 5(d)(5) dealing with filing under seal. The variations in scenarios to which sealing may be sought and applied pose a challenge to constructing proposed amendments. Both of these rules apply in adversary proceedings in bankruptcy cases. (Civil

Draft

Rule 5(d)(5) does not apply in contested matters under Bankruptcy Rule 9014, but Civil Rule 26(c)(4) does). The subcommittee has more work to do on the issue.

The Rule 41 Subcommittee reported on its work considering amendments to Civil Rule 41 dealing with the scope of a voluntary dismissal and expects to bring a proposal to the full committee in October. Lawyers generally want a rule change to clarify that dismissal of a party or single claim rather than the entire "action" is permitted. Other tweaks to Rule 41 may include an earlier deadline for unilateral dismissal and a limit on who needs to sign a stipulation for dismissal. As a historical aside, the apparent original intent of the use of the word "action" in Rule 41 supports the contention that it was meant to be a cause of action, now known as a claim, and not the entire lawsuit. Civil Rule 41 applies to adversary proceedings in bankruptcy under Bankruptcy Rule 7041 and to contested matters under Bankruptcy Rule 9014.

The Rule 7.1 Subcommittee reported on its work considering whether the current disclosure requirement in Civil Rule 7.1 adequately informs judges of beneficial ownership interests in a corporate party. The Appellate Committee provided feedback, especially on whether the disclosure rule should incorporate subsidiary ownership disclosure. Bankruptcy Rule 7007.1 deals with corporate ownership statements in bankruptcy cases and is modeled on Civil Rule 7.1. The subcommittee noted the new guidance provided by the recently updated Codes of Conduct Advisory Opinion 57, which includes consideration of the subject matter of litigation if the judge is invested in industry-specific assets or mutual funds and the industry is the subject of the litigation. Another issue posing a challenge is a company's shifting ownership interests over time. The subcommittee intends to propose language to examine at the October meeting.

A Cross-Border Discovery Subcommittee was formed after the October 2023 meeting. At the April meeting, it reported on its discussions so far. It will undertake a listening tour of affected parties to determine what problems exist and how they are manifesting.

Other information items were presented to the Civil Committee: (1) a proposal to adopt a rule requiring random case assignment, (2) proposed amendments to Civil Rule 45(c) dealing with remote testimony, and (3) use of the term "master" in Civil Rule 53 and other rules and replacing it with "court-appointed neutral."

Regarding random case assignment, given the March 12, 2024, guidance memo from the Committee on Court Administration and Case Management (CACM), which is not binding on the district courts, the Civil Committee wants to monitor how the districts respond. Further, the reporters are still researching whether the Rules Enabling Act and its supersession clause would even permit rulemaking on the issue. The issue will remain on the agenda.

The proposed amendments to Rule 45(c)(1)'s subpoena power would permit, under a new subsection (C), compelled appearance at a deposition or trial remotely so long as the point of transmission is within the geographical confines of Rule 45(c)(1)(A) and (B). However, the amendment should not conflict, for purposes of a subpoena for trial, with Rule 43(a) and its requirement that remote trial testimony is appropriate only under compelling circumstances. Consequently, the amendment compelling appearance by subpoena remotely may include a

Draft

limitation by cross-reference to Rule 43. Civil Rule 43 currently applies to bankruptcy cases under Bankruptcy Rules 9014(d) and 9017 (although the Bankruptcy Rules Committee is considering amendments to those rules).

The proposed nomenclature change concerning masters would affect a number of rules and statutory provisions. There is some precedent for a global nomenclature change in the rules, such as when they went gender neutral. The Civil Committee seemed to prefer "court-appointed adjunct officer" instead of "court-appointed neutral." The issue will remain on the agenda.

There were also brief reports on joint committee or working group matters – redaction of social security numbers (SSNs), e-filing by self-represented litigants, and unified bar admission in federal courts. As to the SSNs, the Committee may ask the Standing Committee to appoint a joint committee or let another committee take the lead. On e-filing, the joint committee will work on a proposal over the summer. On unified admissions the general sentiment appeared to be to leave it to the local level (state bars) to regulate the conduct of its members.

The amendment to Civil Rule 12(a) will become effective absent Congressional action on December 1, 2024. The change clarifies that a federal statute specifying a time for serving a responsive pleading supersedes the response times otherwise set by any subpart of Civil Rule 12(a). Bankruptcy Rule 7012 does not adopt by reference subsection (a) of Civil Rule 12. Absent any unexpected change by Congress, the Bankruptcy Committee may wish to consider a like change by grafting the exception language into Bankruptcy Rule 7012(a).

(D) ***December 7-8, 2023, Meeting of the Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee")***

Judge Sarah Hall provided the report.

Ther December 2023 meeting was the first meeting for the new liaison from this committee, Judge Harner, and new chair, Judge William Osteen. The Committee appreciated Judge Harner's thoughtful contributions. And Judge Osteen has hit the ground running as chair, picking up right where Judge Darrow left off. The next meeting will be held in June in Salt Lake City, Utah.

<u>Legislative Proposal Regarding Emergency Authority and Proposed Rule 9038</u>

Over the past several years, the Bankruptcy Committee has been regularly updated on the status of Rule 9038, the rule to address emergency measures that may be taken by the courts, which became effective on December 1, 2023. The Bankruptcy Committee appreciates the Rules Committee's work on this important effort.

Judge Isicoff previously reported that, in parallel with the Bankruptcy Rules Committee's work on Rule 9038, the Bankruptcy Committee was considering a broader legislative proposal,

Draft

one that would have provided a permanent grant of authority to extend statutory deadlines and toll statutory time periods during an ongoing emergency and could enable bankruptcy courts to respond more quickly to future emergency or major disaster declarations.

The Bankruptcy Committee researched this issue in depth and solicited feedback from relevant stakeholders. Based on this research and feedback, at the December 2023 meeting, the Bankruptcy Committee ultimately determined not to recommend that the Judicial Conference pursue it in Congress. So, this proposal will not be moving forward.

Legislative Proposal Regarding Chapter 7 Debtors' Attorney Fees

One proposal that has been adopted by the Judicial Conference on recommendation of the Bankruptcy Committee pertains to chapter 7 debtors' attorney fees. As Judge Isicoff has reported at previous meetings, this proposal would amend the Bankruptcy Code to (1) except from discharge chapter 7 debtors' attorney fees due under any agreement for payment of such fees; (2) add an exception to the automatic stay to allow for post-petition payment of chapter 7 debtors' attorney fees; and (3) provide for judicial review of fee agreements at the beginning of a chapter 7 case to ensure reasonable chapter 7 debtors' attorney fees. This legislative proposal seeks to address concerns about access to justice and access to the bankruptcy system related to the compensation of chapter 7 debtors' attorneys.

As Judge Isicoff previously reported, the administrative office (AO) transmitted the legislative proposal to Congress most recently in July 2023 to coincide with the start of the new Congressional session. The proposal continues to be reviewed by Congressional staff and several bankruptcy judges and AO staff have met with members of Congress to answer questions raised in connection with this proposal. If Congress enacts amendments to the Code based on this position, at a minimum conforming changes to the Bankruptcy Rules would be required. The Bankruptcy Committee will continue to update the Rules Committee on any progress in this area.

Remote Public Access to Bankruptcy Proceedings

The Bankruptcy Committee continues to monitor the status of the work of CACM on remote public access to court proceedings.

In September, the Judicial Conference approved judges presiding over civil and bankruptcy cases to provide the public live audio access to non-trial proceedings that do not involve witness testimony. CACM recommended this revised policy change with the endorsement of the Bankruptcy Committee and the Committee on the Administration of the Magistrate Judges System. To the extent this change necessitates any revision to the Bankruptcy Rules, the Bankruptcy Committee stands ready to assist.

Draft

The Bankruptcy Committee and the CACM Committee are continuing to collaborate in considering other potential changes to the Conference's remote access policy that could affect the bankruptcy system.

Remote Testimony in Bankruptcy Contested Matters

At its December meeting, the Bankruptcy Committee reviewed suggested amendments to the Bankruptcy Rules concerning remote testimony in bankruptcy contested matters, with a focus on whether those amendments conflict with the Conference remote public access policy just referenced.

After discussion, the Bankruptcy Committee determined that the proposed amendments concerning remote testimony in bankruptcy contested matters do not conflict with existing Judicial Conference policy regarding remote access and remote proceedings. It then communicated this view, through staff, to the CACM Committee. The CACM Committee chair later sent a letter to Judge Connelly conveying the views of the two committees. The Bankruptcy Committee will continue to monitor the status of this suggestion.

Special Masters in Bankruptcy Cases

The suggestion to allow appointment of special masters in bankruptcy cases is an area in which the Bankruptcy Committee was historically very engaged.

If the Advisory Committee or the Standing Committee is interested in working with Bankruptcy Committee to evaluate this issue at any stage, the Bankruptcy Committee would be honored and happy to assist.

Judge Connelly commented that the Rules Committee has a great working relationship with the Bankruptcy Committee.

4. **Intercommittee Items**

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

Tom Byron gave the report.

He noted that the memo describing the working group progress is included in the agenda book. The group has met a couple of times to consider Senator Wyden's suggestion about removing redacted social security numbers from filed documents and related issues concerning the privacy rules. The working group has tentatively concluded that any amendments to the Civil and Criminal Rules concerning the redaction of SSNs should not be considered in isolation but

Draft

should be part of a more considered review of the privacy rules, including the pending Bankruptcy Rules Committee work.

The recommendation is to broaden the focus of the working group to include, for example, Criminal Rule 49.1 on the use of initials of a known minor instead of the minor's name. All Committees have received a suggestion to replace those initials with a pseudonym to be more protective. The Criminal Rules Committee will take the lead on this suggestion.

The working group might also look at how the current privacy rules are operating given that it is 20 years since the Rules Committees initially considered them. For example, the exemptions from the redaction requirements in subdivision (b) of each of the privacy rules includes language that could be ambiguous or overlapping, and the waiver provision in subdivision (h) might warrant clarification.

The working group would be interested in any suggestions the Rules Committees might make to guide the scope of its work.

Two related issues: First, the mandatory report to Congress required to be made every two years on the privacy rules is underway, and the Administrative Office has been working the CACM committee staff to produce a draft that will be shared with the Standing Committee at its June meeting. Second, the FJC study to update its privacy report is also progressing, with the first phase expected to be completed in time to be shared with the Standing Committee at the June meeting as well. There will be subsequent phases of that report in the future.

(B) ***Report on Unified Bar Admissions***.

Professor Struve gave the report.

The Subcommittee consists of members of the Criminal, Civil and Bankruptcy Rules Committee (Judge J. Paul Oetken representing the Bankruptcy Rules Committee and chairs that Subcommittee), and it has been tasked with considering the proposal by Alan Morrison and others for adoption of national rules concerning admission to the bars of the federal district courts which has been docketed as a suggestion before all three Committees. Most districts require admission to the bar to the state as a condition to admission to the district court in that state. This is time-consuming, expensive, and creates inappropriate hurdles to outside lawyers.

The suggestion that there be a national rule that would create a national "Bar of the District Court for the United States" administered by the Administrative Office of the U.S. Courts was rejected by the Subcommittee. In addition to its practical challenges, the Subcommittee was concerned that the Rules Enabling Act may not authorize a rule to create a new bar. The Standing Committee supported the Subcommittee's decision.

Other approaches may be more promising, including a rule that would bar U.S. district courts from having a local rule requiring (as a condition to admission to the district court's bar)

Draft

that the applicant reside in, or be a member of the bar of, the state in which the district court is located.

The Subcommittee believes that there may also be other models to consider, including a extending the approach of Appellate Rule 46. The Standing Committee provided a lot of valuable feedback on the suggestion at its meeting in January. Tim Reagan of the Federal Judicial Center and Zachary Hawari have provided valuable research support. Many more comments were made at the Civil Rules Committee meeting on April 9.

The Subcommittee will continue to consider the suggestion, keeping in mind the importance of providing access to attorneys without undue time and expense, the interest of the district courts in controlling who may practice before them in order to maintain the quality and integrity of the district court bar, and the effect any approach may have on court revenue.

(C) ***Report on the Work of the Pro-Se Electronic Filing Working Group***

Professor Struve gave the report.

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

5. **Report by the Consumer Subcommittee**

(A) ***Recommendation of Approval of Proposed Amendments to Rule 3002.1***

Judge Harner and Professor Gibson provided the report.

Proposed amendments to Rule 3002.1 were republished for comment last August. Ten sets of comments were submitted. The Subcommittee recommended making the following changes to the published amendments:

(1) In Subdivision (a), dealing with the scope of the rule, delete the word "contractual" before the word "payment" and modify the clause to read "for which the plan provides for the trustee or debtor to make payment on the debt."

This change would allow the rule to pick up home mortgage payments that are paid according to the plan but not strictly in accordance to the terms of the contract. The Subcommittee does not think this change requires republication.

Draft

Other comments made on the republished rule were rejected which would require republication that would expand the applicability of the rule to more transactions.

The Subcommittee also recommends deleting the word "installment" to clarify that the rule applies to reverse mortgages on which there are no installment payments. The Committee Note was expanded to make the reason for this change more clear.

(2) In Subdivision (b), dealing with the required notice of payment changes by the holder of the claim, the Subcommittee recommends stating in subdivision (b)(3)(B) that a payment decrease is effective on the actual payment due date, even if that date is in the past to give the debtor the benefit of a payment decrease on a retroactive basis.

The National Bankruptcy Conference also suggested a conforming change to the related Official Form, and the change had already been made.

(3) The Subcommittee declined to make any changes to Subdivision (e) dealing with the deadline for filing a challenge to changes in fees, expenses and charges. Some commentors wanted the period to be longer and others wanted it shorter, so the Subcommittee decided not to change it.

(4) In Subdivision (f), dealing with requests for status of the mortgage and responses to those requests, the Subcommittee recommends making two changes. First, in (f)(2) it recommends extending the deadline for responding to a trustee's or debtor's motion from 21 days to 28 days. Second, the Subcommittee agreed to insert the phrase "and enter an appropriate order" at the end of the sentence for consistency.

Other comments were considered but the Subcommittee decided not to modify the rule in response.

(5) In Subdivision (g), dealing with the trustee's end-of-case notice, the Subcommittee recommends that in the title and in subdivision (g)(1) the words "payments" and "paid" be changed to "disbursements" and "disbursed." This terminology better reflects the role of the chapter 13 trustee. The Subcommittee also recommends deleting two uses of "contractual" in (g)(1)(B) to be consistent with the recommended change to subdivision (a).

In subdivision (g)(1)(A) the Subcommittee recommends deleting "if any" after "what amount" to avoid suggesting that a trustee who makes no disbursements need not file an end-of-case notice. An addition will be made to the Committee Note to give direction on what should be reflected on the notice in such a case.

The Subcommittee also recommends that the first sentence of (g)(4)(A) be rewritten to make a 45-day deadline applicable to that situation as well as to when the claim holder does not respond to the notice.

Draft

In subdivision (g)(4)(B), the Subcommittee recommends that the time for the claimholder to response to the motion be changed from 21 to 28 days, consistent with the proposed change to (f)(2).

(6) The Subcommittee recommends no change to subdivision (h) dealing with sanctions after considering the comments on that subdivision suggesting importing sanctions for contempt. This is not violation of a court order.

The Subcommittee recommends conforming changes to the Committee Note to reflect any of the changes recommended above that are approved by the Advisory Committee.

Judge Harner again noted that the Subcommittee believes that these changes do not require republication.

Judge Kahn noted that Civil Rule 37 has a contempt remedy, and the discharge injunction under Section 524(i) of the Bankruptcy Code creates a contempt remedy. He views Rule 3002.1 as functionally the same as Section 524 in that it is aimed at protecting the discharge and expressed the view that the contempt remedy should also be available. He admitted that there may be Rules Enabling Act issues.

Professor Gibson said that in Civil Rule 37 there is a court order that is being violated, and under Rule 3002.1 the court does not enter an order. Judge Kahn remains concerned about whether we are undermining the fresh start if we don't have an enforcement mechanism. Section 524(i) gives the court contempt powers even without court order. But Professor Gibson noted that Congress can give that power where the rules do not. Judge Harner agreed with Professor Gibson's analysis on this issue. Without an order, Rule 3002.1 should not go that far. Professor Gibson noted that we are not changing the current rule on this issue.

The Advisory Committee gave final approval to the amended Rule 3002.1 and the Committee Note and directed their submission to the Standing Committee for approval.

6. Report by the Forms Subcommittee

(A) *Reconsideration of Proposed Amendments to Official Forms 309A and 309B*

Judge Kahn and Professor Gibson provided the report.

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

Draft

Because the Consumer Subcommittee was considering whether the deadline in Rule 1007(c)(4) for filing the certificate of course completion should be eliminated, the Advisory Committee did not seek publication of the amended Forms for public comment in June 2023. The Consumer Subcommittee has now recommended, and the Advisory Committee has approved, amendments to Rule 1007(c)(4) eliminating a deadline for filing the certificate. The Subcommittee considered whether there should be an amended notice to the debtor reminding the debtor of the requirement for completing the course, or rather to just withdraw the previously-approved amendments to the Forms. The Subcommittee recommends the latter approach.

The Advisory Committee concurred in this recommendation.

(B) ***Recommendation for Final Approval of New Official Forms related to Proposed Rule 3002.1 Amendments***

Judge Kahn and Professor Gibson provided the report.

Last August the Standing Committee published for comment six new official forms that were proposed to implement proposed amendments to Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence). Ten sets of comments concerning these forms were submitted. The Subcommittee held two meetings to consider the comments and recommended several changes to the Forms and Committee Note as a result.

Professor Gibson discussed each change proposed to be made to each of the motion forms (Official Forms 410C13-M1 and 410C13-M2), the motion response forms (Official Forms 410C13-M1R and 410C13-M2R), the Truste's Notice (Official Form 410C13-N), the response to notice (Official Form 410C13-NR) and the Committee Note.

1. Motion Forms. The Subcommittee recommends that the following changes be made to both of these forms from the published versions:

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

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

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

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

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

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

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

Nancy Whaley suggested inserting the bracketed section 5 in the forms of response as well as the forms of motion. No suggestions were made for changes to the motion forms.

2. <u>Response Forms.</u>

On the response forms, the Subcommittee recommends the following changes from the published versions of the forms:

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

- In Part 2, create separate responses for prepetition and postpetition arrearages to correspond with the breakdown of those amounts in the motion.

- Also in Part 2, Change the direction to "Check all that apply" since now more than one statement could be asserted.

- Put all three check boxes at the beginning of Part 3, and make that section subpart (a).

- Move the direction to attach a payoff statement to subpart (b) of Part 3, along with the seven items of information to be supplied. These changes respond to the comments that a payoff statement and the information requested are needed

Draft

in situations in which the claimholder says that the debtor is not current, as well as when current.

• Delete “contractual” before “payments” in Part 3(a) for the reason previously stated.

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

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

Professor Gibson suggested inserting bracketed section 5 language from the motion forms into the response forms as Nancy Whaley suggested. Judge Kahn suggested putting it at the end as a new Part 5.

Scott Myers noted that the instructions have not yet been drafted, and will be drafted over the summer. They do not need to be approved by the Standing Committee. These forms are on track for an effective date of Dec. 1, 2025.

Judge McEwen expressed her view that some of the lines on postpetition arrearages in Part 2 seem to cover the same payments and are confusing. Judge Kahn said the attached payoff schedule will provide the payoff number, and the rest of the form includes various elements that go into that number. Judge McEwen remained concerned that the lines don’t add up to the third box under Part 2. Judge Connelly said some companies would not count postpetition fees, taxes and other charges as arrearages.

Judge Kahn suggested moving the substance of the second sentence of the third box in Part 3(a) to become 3(b)(viii) and eliminating it in 3(a). The new (viii) would read “viii. Total amount of fees, charges, expenses, negative escrow amounts, or costs remaining unpaid: $____________.” The Subcommittee was supportive of this change.

Jenny Doling suggested adding a date for the payoff number. Judge Kahn responded that the attached payoff statement will show the date. Judge McEwen continued to express the view that the postpetition arrearages should be broken down. Judge Harner said that she wanted the form to be simple enough that claim holders would be encourages to file it. Judge Kahn said that he thinks Part 2 has adequate information. The payoff statement will have the date and the amount. Judge McEwen wants them to be able to see why they are not current. Judge Harner thinks the form will not help them if they do not know it.

Draft

3. Trustee's Notice

On the trustee's notice, the Subcommittee has approved the following changes to the published version:

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

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

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

- Delete the request for "Allowed amount of postpetition arrearage, if any." Also delete the question asking whether the debtor has cured all arrearages. If the debtor has been making direct payments, the trustee may not be aware of this.

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

- Delete the words "if any" in Part 3(a) and (c). (This change was erroneously not reflected in the version of the notice in the agenda book.)

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

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

Since the meeting of the Subcommittee, Judge Connelly suggested that 4(b) should be deleted. This is a statement made after the final disbursement has cleared. In that 45 days after the debtor completes all payments due to the trustee when the trustee must file this notice under Rule 3002.1(g), another mortgage payment may become due and the trustee may not know whether the debtor is current when the trustee notice is sent. Existing (c) will be redesignated as (b).

Judge McEwen asked whether payments should be changed to disbursements in Part 4. Judge Connelly thinks payments is the correct term here. This is not the action of the trustee as in Part 3. However, the suggestion was made to change the word "made" to "disbursed" in 4(a) and the language before 4(a).

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

Draft

might have been paid by the debtor. Add a statement explaining that future payments are the debtor's responsibility.

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

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

Professor Gibson asked Nancy Whaley whether the open-ended bracketed language was needed in trustee's notice. Ms. Whaley said this could be addressed in the instructions inviting additional information in any area.

4. Response to Trustee's Notice.

As to the response to the trustee's notice, the Subcommittee recommends the following changes to the published version of the form:

- In the title, change "Payments" to "Disbursements" to be consistent with the proposed change to the title of the notice.

- In the first line, correct the citation. Change to Rule 3002.1(g)(3).

- Change the title of Part 2 to "Arrearages" to correspond with Part 3 of the notice.

- Add at the beginning of Part 2: "The total amount received to cure any arrearages as of the date of this response is $_________________." This will capture amounts paid by both the trustee and the debtor.

- In Part 3, delete "contractual" for the reason previously stated.

- Put all three check boxes at the beginning of Part 3 and make that section subpart (a). Move the direction to attach a payoff statement to subpart (b), along with the seven items of information to be supplied. These changes respond to the comments that a payoff statement and the information requested are needed in situations in which the claim holder says that the debtor is not current, as well as when current.

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

- In the third bullet point of Part 4, change "assessed to the mortgage" to "that the claim holder asserts are recoverable against the debtor or the debtor's

Draft

principal residence." This language tracks the language of Rule 3002.1(c) and is clearer.

Professor Struve suggests making the same change in Part 3 as made in the response to notice forms by moving the substance of the language in the second sentence in the third box to create a new (b)(viii). This suggestion was accepted. The new clause viii would read "Total amount of fees, charges, expenses, negative escrow amounts, or costs remaining unpaid: $_________________."

Jenny Doling suggested there be someplace in the signature block to put the title of the person who is filing the response and the organization name like on the proof of claim form. The suggestion was also accepted.

Changes to the Committee Note reflect the changes to the Forms.

Judge Kahn noted that Nancy Whaley, Deb Miller and Tara Twomey provided a great deal of assistance on these forms.

The Advisory Committee gave final approval to the six forms as they appeared in the agenda book with the following changes:

- Forms 410C13-M1R and M2R -- add a new bracketed Part 5 to allow additional information
- Forms 410C13-M1R, M2R and NR – Remove 2nd sentence in 3d bullet point in Part 3(a) and move to Part 4 under new romanette (viii), with categorical language restated
- Form 410C13-N – delete "if any" in Part 3(a) and (c), change "paid" to "disbursed" in two places in Part 4, delete paragraph b in the 3d box of Part 4 and change designation of current c to b
- Form 410C13-NR -- in Part 5, add title of person executing response by using signature block used on proof of claim

(C) ***Consider Technical Amendments to Conform Certain Bankruptcy Forms to the Restyled Bankruptcy Rules***

Judge Kahn and Professor Bartell provided the report.

The amendments to the Federal Rules of Bankruptcy Procedure to reflect the restyling project are scheduled to become effective on Dec. 1, 2024. Because certain of the Official Forms and Director's Forms and their instructions explicitly quote or refer to Bankruptcy Rules that have been restyled, conforming changes need to be made to those forms and instructions. Mock-ups of the revised forms and instructions are attached. Amendments are proposed to Official Form 410 (Proof of Claim) and to the instructions to Official Forms 309A-I (Notice of Case), 312 (Order and Notice for Hearing on Disclosure Statement), 313 (Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan), 314 (Ballot

Draft

for Accepting or Rejecting Plan), 315 (Order Confirming Plan), 318 (Discharge of Debtor in a Chapter 7 Case), and 420A (Notice of Motion or Objection), and to Director's Forms 1040 (Adversary Proceeding Cover Sheet) and 2630 (Bill of Costs) and to the instructions for Forms 2070 (Certificate of Retention of Debtor in Possession), 2100A/B (Transfer of Claim Other Than For Security and Notice of Transfer of Claim Other Than for Security), 2300A (Order Confirming Chapter 12 Plan) and 2500E (Summons to Debtor in Involuntary Case).

The Advisory Committee gave final approval to those amendments to the forms and instructions.

(D) ***Recommendation Concerning Proposed Amendment to Official Form 410 Regarding Uniform Claim Identifier***

Judge Kahn and Professor Bartell provided the report.

A proposed amendment to Official Form 410 based on a suggestion from Dana C. McWay, Chair of the Administrative Office of the U.S. Courts' Unclaimed Funds Expert Panel, was published in August 2023. The amendment would modify Part 1, Box 3 to eliminate the phrase "for electronic payments in chapter 13" when referring to the uniform claim identifier (UCI) so that it is can be used for paper checks as well as electronic payments without regard to chapter.

There were no comments on the published amendment, other than a general comment from the Minnesota State Bar Association supporting all proposed amendments published in 2023.

The Advisory Committee gave final approval to the amendments to Official Form 410.

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

(A) ***Continued Consideration of Suggestions 22-BK-I, 23-BK-D, and 23-BK-J Concerning SSN Redaction in Bankruptcy Filings and the Elimination of Truncated SSNs in Some Form Captions***

Judge Oetken and Professor Bartell provided the report.

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

A suggestion was made by the Clerk of Court for the Bankruptcy Court for the District of Minnesota, in which clerks of court for eight other bankruptcy courts in the eighth Circuit joined,

Draft

suggesting that Rule 2002(n) (restyled Rule 2002(o)) be amended to eliminate the requirement that the caption of every notice given under Rule 2002 comply with Rule 1005. The Bankruptcy Clerks Advisory Group submitted a second suggestion supporting the first one.

As reported at the last Advisory Committee meeting, the Subcommittee wishes to consider whether creditors actually need the last four numbers of the redacted SSN on all court filings where it is not statutorily required. On February 12, 2024, an ad hoc group consisting of Judge Connelly, Judge Oetken, Jenny Doling, Nancy Whaley, Dave Hubbert, Ken Gardner, and Carly Giffin met with the reporters and Scott Myers to discuss how to survey the appropriate groups to address questions bearing on the suggestions.

Subsequently Ken Gardner worked with the ad hoc committee and the reporters to develop a survey to be sent to the Clerks' Advisory Group, and Nancy Whaley and Jenny Doling worked with the ad hoc committee and the reporters to prepare a survey to be sent to a group of debtor attorneys, chapter 12/13 trustees, creditor attorneys, chapter 7 trustees, various tax authorities and representatives of the National Association of Attorneys General.

As of April 10 the clerks' survey had received 23 responses. The clerks overwhelmingly support eliminating the requirement that the caption of all Rule 2002 notices comply with Rule 1005. Their views on the inclusion of truncated SSNs on the various forms were more divided.

As of April 10 there were 75 responses to the general survey. Opinions are divided on removing the truncated SSNs from the forms, with Chapter 7 trustees less inclined to support such a move and Chapter 13 trustees and debtors' attorneys more supportive.

The Subcommittee will consider all the responses at its next meeting and decide on next steps, if any.

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

Professor Bartell provided the report.

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

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

Draft

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

The Advisory Committee supported the proposed amendments at its last meeting but agreed to the request of Judge Bates that formal approval for publication be deferred until the Advisory Committee could coordinate with CACM which is looking at the issue of remote proceedings more broadly.

On January 17, 2024, CACM sent a letter to Judge Connelly stating it and the Bankruptcy Administration Committee have concluded that "the content of the proposed amendments do [sic] not appear to create any conflict with existing Conference policy regarding remote access or remote proceedings." CACM also stated that it "did not identify problems for its continued consideration of possible changes to remote access policy" in that CACM's "focus has been on whether to provide non-case participants, such as the public and the media, with additional remote access to court proceedings." The letter concluded, "given the careful, deliberative nature of the rules development process, the timing of the publication of the proposed amendments in 2024 is unlikely to hinder work on this issue."

The Subcommittee has reaffirmed its approval of the proposed amendments and recommends the proposed amendments to the Advisory Committee for submission to the Standing Committee for publication.

Judge Bates asked whether this change might be a precursor to further changes for adversary proceedings, or whether it is the end of what will be proposed for remote proceedings. Judge Oetken said it is not intended to lead to anything more. Judge Kahn agreed that there is no intent to move beyond this. Judge Harner said that there would be concern about moving beyond this in the bankruptcy community. Professor Bartell said that if the civil rules were modified, bankruptcy would follow suit. Judge Kahn noted that the presumption is still for live testimony. Judge McEwen said that there may be pressure to expand on this proposal, but it will not come from the Committee.

Judge Bates asked whether we will be seeing suggestions to change the rules to expand remote proceedings beyond these rules, and Judge Kahn said that this is likely, but the Committee will deal with that when they are made. Judge Harner reemphasized that we will follow the lead of the civil rules on adversary proceedings. Dave Hubbert said that the new rules will put a lot of emphasis on whether a particular action is an adversary proceeding or a contested matter, and might encourage litigants to propose a large number of witnesses in contested matters to make remote proceedings unlikely. Judge Harner noted that courts are doing remote testimony now under the current rule.

The Advisory Committee approved the amendments and new rule and agreed to send them to the Standing Committee for publication for public comment.

Draft

8. **Report of the Business Subcommittee**

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

Judge McEwen and Professor Gibson provided the report.

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

At its fall meeting, the Advisory Committee approved the amendments for publication. At the January meeting of the Standing Committee, it approved the amendments, but some additional changes were subsequently suggested. Because publication would not occur until August, Judge Connelly decided that the Subcommittee and the Advisory Committee should have an opportunity to consider the additional changes before publication.

Because new subdivision (c)(1)(B) would allow an acceptance to be made by a written stipulation, as well as by an oral statement on the record, it was suggested that the heading for subdivision (c)(1)(A) (line 15) be changed from "*In Writing*" to "*By Ballot.*" This title would more accurately indicate the difference between subparagraphs (A) and (B).

The proposed conforming amendment to subdivision (a) says that the court may also "do so" as provided in (c)(1)(B). The language that "do so" currently refers to includes changing or withdrawing both acceptances and rejections, whereas (c)(1)(B) just allows changing or withdrawing rejections. Therefore, it was suggested that the first sentence in (a)(3) should delete the words "or rejection" and the last sentence should be modified to read, "The court may permit the change or withdrawal of a rejection as provided in (c)(1)(B)."

The Subcommittee recommended the modified amendments to Rules 3018(c) and 3018(a) to the Advisory Committee for publication. The Advisory Committee approved the modified amendments for publication.

(B) ***Consideration of Suggestion 24-BK-A to Allow Masters in Bankruptcy Cases and Proceedings***

Judge McEwen and Professor Gibson provided the report.

Rule 9031 (as restyled) provides: "Fed. R. Civ. P. 53 does not apply in a bankruptcy case." As declared by its title, the effect of this rule is that "Using Masters [Is] Not Authorized" in bankruptcy cases. Since the rule's promulgation in 1983, the Advisory Committee has been

Draft

asked on several occasions to propose an amendment to it to allow the appointment of masters in certain circumstances, but each time the Advisory Committee has decided not to do so. Now two new suggestions to amend Rule 9031 have been submitted to the Advisory Committee by Chief Bankruptcy Judge Michael B. Kaplan of the District of New Jersey (24-BK-A) and by the American Bar Association (ABA) (24-BK-C).

The Subcommittee discussed the suggestions at its meeting, and now asks the Advisory Committee for its input. She reviewed the history of the similar suggestions, the arguments against permitting use of masters in bankruptcy cases and proceedings, and the competing arguments made by Judge Kaplan and the ABA in response.

The first issue the Advisory Committee might consider is whether it wishes to revisit the issue of allowing the use of masters in bankruptcy cases. Although the Advisory Committee has declined to amend Rule 9031 on at least 4 occasions, the last time such a suggestion was considered was in 2009, almost 15 years ago. Much has changed during that time, including a greater use of bankruptcy to resolve mass tort litigation and the filing of some especially complex reorganization cases. Moreover, the original reason for the rule—concerns about cronyism in bankruptcy judge appointments—have largely dissipated. A decision to revisit the issue and consider the merits of Chief Judge Kaplan's and the ABA's suggestions, of course, does not necessarily mean that the Advisory Committee will end up agreeing with the suggestions, but the Subcommittee would like the views of the Advisory Committee on whether to proceed in considering the suggestions. But if the Advisory Committee sees no reason to consider the issue again, there is nothing further to discuss.

If the Advisory Committee wishes the Subcommittee to consider the suggestions, the Subcommittee seeks input on whether it should gather empirical evidence to help inform its deliberations. With the FJC's assistance, bankruptcy judges could be surveyed about whether they have desired to use a master in any of their cases and, if so, what role the master might have played and how the court proceeded without a master. The Subcommittee may also want to seek information from district judges and attorneys.

There are legal issues to consider as well, such as whether the Code authorizes the payment of masters from a bankruptcy estate and the potential inefficiencies of adding another layer of judicial review. The Subcommittee solicits the Advisory Committee's views on what other issues that should be explored.

There was a general consensus that consideration of the suggestions should continue. Judge Kahn read the ABA suggestion as suggesting not only use of masters in bankruptcy, but an expanded role for what masters do. He wants to know what the civil committee is going to do with this suggestion.

Judge Hopkins noted that the committee was split in 2009, and Eugene Wedoff opposed allowing appointment of masters because he did not want lawyers lobbying him to be appointed as a master. There is likely to be a split among the judges on the suggestions.

Draft

Judge Harner thinks that the Bankruptcy Rules Committee may have different views than the Civil Rules committee, and may want to limit use of masters to business cases, or cases of a particular size or type.

The Committee members were invited to discuss their own experience with masters. Judge Lefkow said that she has used masters for discovery, but they are rarely appointed in her district. She thinks this is probably an issue limited to districts with large cases. Professor Gibson pointed out that bankruptcy judges do not have the help of magistrate judges as do district court judges. Judge Oetken said that he had used masters only a few times, and only in connection with tricky discovery issues. He agreed that we should look at the suggestions. Judge Wu has had complicated patent cases where it might be appropriate to appoint a master. The question is how broad the authority would be.

Judge McEwen said that the consensus seems to be to gather more information and proceed to consider the suggestions. Tom Byron will coordinate with the FJC on a potential survey of judges. Ramona Elliott thinks the survey should include district court judges too. It might include questions about the expense of such appointments. Carly Giffin says the FJC is happy to help on this issue but might want to start with interviews before drafting a survey to figure out what questions to ask.

9. **Appellate Rules Subcommittee**

(A) ***Recommendation for Final Approval Concerning Proposed Amendment to Rule 8006(g)***

Judge Bress and Professor Bartell provided the report.

On August 15, 2023, the Standing Committee published an amendment to Fed. R. Bankr. P. 8006(g) suggested by Judge A. Benjamin Goldgar to make explicit what the Advisory Committee believed was the existing meaning of the Rule--that any party to an appeal may submit a request to the court of appeals to accept a direct appeal under 28 U.S.C. § 158(d)(2). The form of the amendment was developed in consultation with the Advisory Committee on Appellate Rules which was concurrently preparing an amendment to Appellate Rule 6(c) (Appeal in a Bankruptcy Case – Direct Review by Permission Under 28 U.S.C. § 158(d)(2)) to make sure the rules worked well together. Both amended rules were published at the same time. The amended Rule 8006(g) is attached.

The only comment on the published amendment was a submission from the Minnesota State Bar Association's Assembly supporting all published proposed amendments.

The Subcommittee recommended the amended rule to the Advisory Committee for final approval. The Advisory Committee gave final approval to the amended rule.

10. **New Business**

Draft

Judge McEwen asks whether we should consider an amendment to Rule 7012(a) to reflect the new amendments to Civil Rule 12(a). Scott Myers said that if it is a simple conforming change, we can decide that this is a public suggestion today and assign it to a Subcommittee for the summer meetings. After the meeting it was decided that Judge McEwen should file a suggestion because the change is not a conforming change.

11. Future Meetings

The fall 2024 meeting has been scheduled for Sept. 12, 2024, in Washington, D.C.

12. Adjournment

The meeting was adjourned at 1:40 p.m.

Draft

TAB 3

TAB 3A

TAB 3A1

MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

June 4, 2024

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

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

The following attended on behalf of the Advisory Committees:

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

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

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

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

Advisory Committee on Evidence Rules –
Judge Patrick J. Schiltz, Chair
Professor Daniel J. Capra, Reporter

Others who provided support to the Standing Committee, in person or remotely, 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; H. Thomas Byron III, Esq., Secretary to the Standing Committee; Allison A. Bruff, Esq., Bridget M. Healy, Esq., and S. Scott Myers, Esq., Rules Committee Staff Counsel; Shelly Cox and Rakita Johnson, Rules Committee Staff; Zachary Hawari, Law Clerk to the Standing Committee; Dr. Elizabeth C. Wiggins, Director, Research Division, Federal Judicial Center (FJC); and Dr. Tim Reagan, Senior Research Associate, FJC.

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

Draft

OPENING BUSINESS

Judge John Bates, Chair of the Standing Committee, called the meeting to order and welcomed everyone, including the committee members and reporters who were attending remotely. Judge Bates also welcomed members of the public and press who joined as observers.

Judge Bates expressed sorrow at the loss of Judge Gene E.K. Pratter the prior month. She completed a full term on the Civil Rules Committee before joining the Standing Committee and she will be missed.

Professor Catherine Struve honored Judge Pratter's legacy as the quintessential Philadelphia lawyer and judge—incredibly skilled in lawyering and rhetoric—and a role model in the Philadelphia legal community. She began her career in 1975 at Duane Morris LLP where she became the firm's first general counsel and expert on legal ethics. She came to teach ethics and trial advocacy at the University of Pennsylvania Law School and served on its board of overseers. Professor Struve also recalled Judge Pratter's generosity and sense of humor.

Judge D. Brooks Smith noted how shocked he had been to learn of Judge Pratter's untimely passing. He came to know her as a friend and colleague when she became a judge, and he quickly learned of her abilities as a district judge. She also contributed greatly when she sat by designation on the court of appeals. He also remarked on Judge Pratter's wonderful sense of style and humor.

Judge Bates thanked Professor Struve and Judge Brooks and added that Judge Pratter will be remembered as an excellent judge who made countless contributions to justice, the federal judiciary, and the rules process in particular.

As this was Judge Kayatta's last meeting, Judge Bates thanked him for his work and recognized that he had been a wonderful contributor to the efforts of the Standing Committee and the rules process.

Judge Bates welcomed the incoming chairs for the Advisory Committees on Appellate Rules and Evidence Rules. Judge Allison Eid, who is from the Tenth Circuit and a former member of the Appellate Rules Committee, will be succeeding Judge Jay Bybee as chair of the Appellate Rules Committee. Judge Jesse Furman from the Southern District of New York, a former member of the Standing Committee, will be succeeding Judge Patrick Schiltz as chair of the Evidence Rules Committee. Judge Bates recognized the great work that Judge Bybee and Judge Schiltz had performed as chairs of their committees, which have been amazingly productive and done excellent work throughout their tenure.

Judge Bates noted that his term as Chair of the Standing Committee had been extended for another year.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee approved the minutes of the January 4, 2024, meeting.**

Mr. Thomas Byron, Secretary to the Standing Committee, reported that the latest set of proposed rule amendments had been approved by the Supreme Court and transmitted to Congress. Those amendments will take effect on December 1, 2024, in the absence of congressional action.

Draft

Judge Bates noted that the Standing Committee's March 2024 report to the Judicial Conference begins on page 54 of the agenda book and the FJC's report on research projects begins on page 64. Dr. Tim Reagan explained that the FJC in January restarted its reports to the rules committees about work the FJC does. Because he has heard during meetings that education can be a useful alternative to rule amendments, these periodic reports now include information about the FJC's Education Division.

JOINT COMMITTEE BUSINESS

Electronic Filing by Self-Represented Litigants

Professor Struve reported that the working group hopes to bring proposals to the advisory committees in the fall.

Redaction of Social Security Numbers

Mr. Byron provided the report on several privacy issues, including redaction of social-security numbers. A memorandum from the Reporters' Privacy Rules Working Group begins on page 74 of the agenda book and outlines what the working group and Rules Committee Staff have done over the last several months. The advisory committees and their chairs were asked to provide feedback on this memorandum at their spring meetings.

As previously reported, the rules currently require filers to redact all but the last four digits of a social-security number in court filings, and Senator Ron Wyden suggested that the rules committees revisit whether to require complete redaction. A tentative draft of such an amendment appears on page 75 of the agenda book.

That draft is not being proposed as a rule amendment at this time because it makes sense to consider it in conjunction with other privacy rule proposals that have been received in the last year. As described in the memorandum, there are also other potential ambiguities and areas for clarification in the exemption and waiver provisions that may be worth addressing. The working group, with the help of the advisory committee chairs, will continue considering whether to address any of those issues—in addition to the suggestions from Senator Wyden and others—through the fall, and likely spring, meetings.

Joint Subcommittee on Attorney Admission

Professor Struve reported that there was robust discussion of the various options under consideration by the Joint Subcommittee on Attorney Admission at some of the advisory committees' spring meetings. The subcommittee will continue to consider that input as well as the feedback gathered during the Standing Committee's January meeting. The Subcommittee's consideration is also aided by the excellent research from the FJC regarding fees for admission to federal court bars as well as local counsel requirements for practice in federal district courts. Those FJC reports begin on page 78 of the agenda book. The subcommittee will next meet in July.

Draft

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Bybee and Professor Hartnett presented the report of the Advisory Committee on Appellate Rules, which last met on April 10, 2024, in Denver, Colorado. The Advisory Committee presented four action items – two for final approval and two for publication and public comment – and one information item. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 126.

Action Items

Final Approval of Proposed Amendment to Rule 39 (Costs on Appeal). Judge Bybee reported on this item. The text of the proposed amendment appears on page 184 of the agenda book, and the written report begins on page 127.

The proposed amendment to Rule 39 would address allocating and taxing costs in the courts of appeals and the district courts. "Allocate" refers to which party bears the costs, and "tax" refers to the calculation of the costs. The Advisory Committee received two favorable comments, one comment that was not relevant, and one late-filed comment. Aside from some stylistic changes, the Advisory Committee did not believe changes were needed to the published version.

A practitioner member commented that he liked the terminology, which was in response to prior feedback from the Standing Committee, that is, "allocate" when describing who is being asked to pay and "tax" when describing what should be paid. He offered a tweak to Rule 39(a) on page 184, line 3, to say, "The following rules apply to allocating taxable costs…" Adding "taxable" would introduce both concepts. Judge Bybee agreed that the addition would signal exactly what the rule was doing, and, without objection, the addition was made.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee approved the proposed amendment to Rule 39.**

Final Approval of Proposed Amendment to Rule 6 (Appeal in a Bankruptcy Case). Judge Bybee reported on this item. The text of the proposed amendment begins on page 163 of the agenda book, and the written report begins on page 129.

This extensive revision of Rule 6 concerns appeals in bankruptcy cases. First, it addresses resetting the time to appeal as a result of a tolling motion in the district court, making clear that the shorter time period used in the Bankruptcy Rules for such motions applies. Second, it addresses direct appeals to the courts of appeals that bypass review by the district court or bankruptcy appellate panel. The amendments overhaul and clarify the provisions for direct appeal, making the rule largely self-contained. Judge Bybee thanked the Bankruptcy Rules Committee for its substantial assistance. There was only one comment during the comment period, and it supported the amendment.

Judge Bates commented that on page 173, line 184, the rule says that Bankruptcy Rule 8007 "applies" to any stay pending appeal, but elsewhere the rule uses "governs." He asked if there is a reason to say "applies" rather than "governs."

Draft

Professor Hartnett could not think of one but asked if the style consultants or bankruptcy representatives had a preference. Professor Garner commented that consistency is preferable and that "governs" seems to work. Judge Bybee noted that "applies" was used in the stricken language on line 203 and that the committee note on page 182, line 433, uses "governs." The rule and the note should be made consistent regardless of which word is used.

A judge member agreed with using "governs" if Rule 8007 is all-inclusive as to what controls the appeal. If another rule contains requirements for the appeal, however, Rule 8007 would not "govern," only "apply." Judge Connelly and Professor Gibson indicated that Rule 8007 is the only rule relevant to stays pending appeal.

Professor Struve noted that she had suggested the language change to "applies to" at the spring 2023 Advisory Committee meeting but that she did not object to reverting to "governs." Judge Bates called for a vote on the proposal with the minor change from "applies to" to "governs."

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee approved the proposed amendment to Rule 6.**

Publication of Proposed Amendment to Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis (IFP)). Judge Bybee reported on this item. The text of the proposed form appears on page 213 of the agenda book, and the written report begins on page 132.

This proposal is a change to streamline the way in which Appellate Form 4 collects information for purposes of seeking leave to appeal IFP. It does not affect the standard for whether to grant IFP status. The Advisory Committee has been considering this matter since 2019 and gave the courts of appeals, which have adopted various local versions of Form 4, an opportunity to weigh in on the changes.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee gave approval to publish the proposed amendment to Form 4 for public comment.**

Publication of Proposed Amendment to Rule 29 (Brief of an Amicus Curiae). Judge Bybee reported on this item. The text of the proposed amendment appears on page 192 of the agenda book, and the written report begins on page 135.

The Advisory Committee has been considering the proposal to amend Rule 29, regarding disclosures in amicus briefs, since 2019. In 2020, the Supreme Court received inquiries from Senator Whitehouse and Representative Johnson, which were referred to the Advisory Committee.

Judge Bybee expressed the Advisory Committee's appreciation for the substantial feedback from the Standing Committee. The Advisory Committee anticipates receiving a lot of public input, which will inform whether the rule strikes the right balance. It has already received some anticipatory comments that have been docketed as additional rules suggestions.

As explained in the written report, the Advisory Committee considered three difficult issues: (1) disclosure requirements concerning the relationship between a party and the amicus,

Draft

including contributions to an amicus that were not earmarked for the preparation of a brief; (2) disclosure requirements concerning the relationship between a nonparty and the amicus; and (3) an exception in the existing rule concerning earmarked contributions by members of an amicus organization.

Judge Bates thanked Judge Bybee and Professor Hartnett for providing an extensive discussion of the rule from various perspectives, including First Amendment considerations.

Much of the Standing Committee's discussion related to concerns about a change that would require leave of the court for non-governmental entities to file an amicus brief during the initial consideration of a case on the merits.

A practitioner member questioned the decision to move away from the Supreme Court's recent rule revision permitting amicus briefs to be filed without leave of the court or the consent of the parties. The Supreme Court's rule presumably reflects the view that the value of helpful amicus briefs outweighs the burden of unhelpful briefs. He wondered if there is actually an overabundance of amicus briefs in the courts of appeals. Even if this rule reduces the number of amicus briefs, there would be more motions for leave to file. He also struggled to see why recusal is an issue for courts of appeals considering that they can strike amicus briefs. If recusal is an issue, rather than limiting the circumstances in which a party can file an amicus brief, perhaps recusal should be addressed directly in the rule (for example, by providing that any amicus brief that would cause recusal of a judge would automatically be stricken) or addressed by the Code of Conduct for United States Judges.

Judge Bates recalled that these concerns were discussed at the Advisory Committee and some unique considerations came up with respect to some appellate courts.

Professor Hartnett remarked that the Supreme Court's rule removes even the very modest filter of consent, so adopting the approach taken in the current Supreme Court rule would require a change from the current Rule 29. One concern expressed at the Advisory Committee was that this completely open rule might result in what are effectively letters to the editor being filed as amicus briefs. However, the recusal issue was a far greater concern to the Advisory Committee. A judge member on the Advisory Committee had explained that the problem is particularly acute during a court's consideration of whether to grant rehearing en banc. When an amicus brief is filed at the en banc stage, no judge is in a position to strike an amicus brief that would require automatic recusal. There is also a recusal problem at the initial panel stage to the extent that the clerk may effectively recuse a judge on the basis of an amicus brief without any judge actually deciding whether the contribution of the amicus brief outweighs the fact that the brief will cause the recusal.

Judge Bybee added that the Advisory Committee's clerk representative was satisfied that this modest change in the rule would not dramatically increase the burden on the clerk's office. He also noted that a prior draft of this proposal followed the Supreme Court's rule and that the requirement of a motion for leave was a recent addition to the proposed amendment.

Multiple members expressed concerns about the increased burden on judges, amici, and parties resulting from a rule that requires a motion for leave to accompany every amicus brief. One judge member noted that motions tend to spawn additional filings—responses, motions for

Draft

extensions of time, and replies. She also pointed out that the motion for leave to file may come before a panel is assigned or publicly disclosed. And she was not sure on what basis, other than recusal, leave to file might be denied. Amicus briefs are a way for people to express their views to the court, which is an important part of the openness of the appellate process. If the parties consented to the amicus brief being filed, she did not know why the court would need to police it.

A practitioner member commented that there was a powerful case made at the Advisory Committee meeting about automatic recusal at the en banc petition stage—at least with respect to the Ninth Circuit—because no panel was assigned to decide whether to permit the amicus brief before the en banc petition vote. His reaction as to the panel stage, however, was similar to the judge member's reaction in that recusal prior to a panel assignment was uncertain, and there would be added costs for motions. Nevertheless, he was persuaded that allowing the public to comment on this proposal would reveal whether there is a problem, and a distinction might be drawn after publication between the panel and en banc stages.

Another practitioner member had a mild negative reaction to the added cost but recognized that the reaction from appellate practitioners—and those who pay for their services—during the public comment process will inform whether this procedure is worth the cost. In practice, she always consents to the filing of an amicus brief, even if it is unfavorable to her position. A judge member agreed that she had advised clients to consent to amicus briefs when she was in private practice.

A judge member remarked that, in her circuit, amicus briefs are often circulated before the vote on the petition for rehearing en banc, and an amicus brief is rejected if it would cause a judge to be recused. That said, her circuit does not have en banc proceedings as often as the Ninth Circuit.

Judge Bates invited Judge Bybee and Professor Hartnett to respond to the concerns expressed by some members of the Standing Committee about eliminating consent at the panel stage.

Professor Hartnett suggested that the proposal be published as-is. The proposal may be changed after the comment period to treat the panel and en banc stages differently, but the current structure of the rule was not amenable to making that change during this meeting. From a process perspective, he also explained that, if there is a substantial concern about the burden that a motion requirement will impose, that will come out during the comment period with the proposal in its current form. But, if the proposal were revised (for example, to retain the option of filings on consent), the Advisory Committee could miss out on that feedback. Judge Bybee added that he does not expect judges to comment on this proposal, and that, by publishing the version of the proposal that accommodates some judges' concerns about the en banc process, the rulemakers can elicit comments from the bar.

A judge member expressed skepticism about publishing the proposal with the motion requirement, considering that the appellate judges on the Standing Committee had expressed opposition. But, if the motion requirement were to remain, it would be practically useful for the judge who is considering the motion to have those disclosures in the motion itself, not only the brief.

Draft

Judge Bybee's initial reaction was to suspect that recusal issues would be identified by the parties in the motion and that the disclosures would inform the judge about how to weigh the brief. It was also noted that this proposal does not change the current rule with respect to disclosures being contained in the briefs, not motions. The judge member responded that who was contributing money could be relevant on whether to grant leave to file. Also, it has not been an issue because there is not currently a mandatory motion process.

To address disclosures in motions, a practitioner member suggested inserting "motion and" on page 198, line 113, so that the opening of new Rule 29(b) would read "An amicus motion and brief must disclose." Another practitioner member did not think that would capture everything and suggested adding a new Rule 29(a)(3)(C), on the bottom of page 193, to add the disclosures required by Rule 29(b), (c), and (e) to the information accompanying a motion for leave to file. Professor Struve added that Rule 29(a)(4)(A) also requires corporate amici to include a disclosure statement like that required of parties by Rule 26.1. With Judge Bybee's consent, the new subparagraph was added to require those disclosures in a motion for leave.

Regarding the motion requirement issue, a judge member asked about bracketing parts of the proposed rule. A practitioner member suggested bracketing "~~the consent of the parties or~~" on page 193, lines 15–16 and "~~or if the brief states that all parties have consented to its filing~~" on lines 18–19. Judge Bybee agreed with the concept of bracketing that language to call attention to the issue, although he and Professor Hartnett noted that, if that language were restored, it would require some changes later in the rule.

Following further discussion among chairs and reporters during a break, rather than bracketing the language, Professor Hartnett proposed adding language to the report included with the Preliminary Draft, specifically inviting public comment on whether motions should always be required for amicus briefs at the panel stage and whether rehearing should be treated differently. A judge member pointed out that there is language in the proposed committee note, defending the elimination of the consent provision, that would be inconsistent with this solicitation, and Judge Bates suggested that the new report language could refer to the committee note as well as at the rule text. The Standing Committee accepted this proposal.

A few minor changes were made to the proposed rule text and committee note.

First, a judge member questioned why the amicus brief was referred to as being of "considerable help" to the court, on page 192, line 10, whereas it was simply of "help" elsewhere. A practitioner member agreed with omitting "considerable," commenting that no one would want to argue in motions about whether something is of "considerable help" and that it could be an unintentional burden. Professor Hartnett indicated that the phrase was borrowed from the Supreme Court rule, and Judge Bybee indicated no objection to removing "considerable."

Second, Judge Bates asked what is being captured in the phrase "a party, its counsel, or any combination of parties or their counsel" and whether the "or" should be "and." Professor Hartnett indicated they were trying to capture a group of parties, a group of counsel, or a group that includes some counsel and some parties. Professor Struve offered "a party, its counsel, or any combination of parties, their counsel, or both." A practitioner member observed that this provision will cause anxiety, and it is better to be specific even if a little clunky. After further discussion and

Draft

with the style consultants' and Judge Bybee's acquiescence, the Standing Committee approved Professor Struve's suggested language.

Judge Bates also asked whether it was necessary to include the clause "but must disclose the date when the amicus was created" in Rule 29(e) when it is also required in Rule 29(a)(4)(E). Judge Bybee indicated the Advisory Committee felt that the repetition was warranted because it is closing a loophole. However, for consistency, the word "when" was removed from the clause in Rule 29(e).

Conforming changes and minor corrections to citations were also made to the proposed committee note. In addition, on page 206, the parentheses around "(or pledged to contribute)" and "(or pledges)" were removed because, as a judge member noted, pledges to contribute are as relevant as actual contributions.

Several issues were also discussed that did not result in changes to the proposal.

Judge Bates asked about the scope of the term "counsel" regarding the obligations placed on parties or their counsel. Professor Hartnett noted that it was not discussed because it is in the current rule, and no one has raised any concerns about it. Judge Bates asked the practitioner members if they had any concerns, and none were offered.

With respect to the disclosure period in Rule 29(b)(4) for "the prior fiscal year," a judge member asked why the period is not the prior or current fiscal year. Professor Hartnett responded that this provision was a compromise when the Advisory Committee was considering whether to use the calendar year or the 12 months prior to filing the brief. This compromise might leave open some strange situations in which there is a dramatic change in an amicus's revenue, but the provision was designed to make administration of the disclosure requirement as simple as possible. Professor Struve added that the contribution or pledge is captured in the numerator, that is the 12 months before the brief is filed, and that the denominator is set by the prior fiscal year. Plus, the total revenue of the current fiscal year may not be knowable.

A judge member commented that some amicus briefs are filed, not to bring anything new to the court's attention, but to notify the court of their support for a position on a policy issue. He added that it was not apparent to him what additional, useful information will be uncovered by this proposal that is not disclosed under the current rule or that is not obvious from the brief. Judge Bybee responded that the Advisory Committee has been weighing that foundational question, and there were some judges who felt very strongly about having this information. Professor Hartnett added that this is a disclosure requirement, not a filing requirement, and that disclosure also serves to inform the public about who is trying to influence the judiciary.

Finally, a judge member asked if there is urgency to publishing this rule now, given the changes made during the meeting. Professor Hartnett responded that the majority of the changes were stylistic and that the most significant change was to require information provided in the brief to also be provided in the motion. No changes were made to address the most serious concerns about the proposed requirement for a motion for leave. Instead, they will flag that issue in the report. Moreover, the Advisory Committee has already started receiving preemptive comments that have been docketed as rules suggestions, and there is a strong sense from the Advisory

Draft

Committee that it is time to get formal feedback after a very long time considering this issue. Judge Bates agreed that a substantial delay in publication is not warranted given the thoroughness of the examination that has taken place.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee gave approval to publish the proposed amendment to Rule 29 for public comment.**

Publication of Proposed Amendments to Rule 32 (Form of Briefs, Appendices, and Other Papers); Appendix of Length Limits. Judge Bybee reported that the proposed amendment to Rule 29 required conforming changes to Rule 32 and the appendix on length limits. The text of the proposed amendments appears on page 210 of the agenda book.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee gave approval to publish the proposed amendments to Rule 32 and the appendix of length limits for public comment.**

Information Item

Intervention on appeal. Judge Bybee reported that the Advisory Committee continues to consider intervention on appeal, but nothing new is being proposed right now.

Judge Bates thanked Judge Bybee and Professor Hartnett for their report and thanked Judge Bybee, in particular, for his fantastic and concerted work over the years.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Connelly and Professors Gibson and Bartell presented the report of the Advisory Committee on Bankruptcy Rules, which last met on April 11, 2024, in Denver, Colorado. The Advisory Committee presented action items for final approval of two rules and seven official forms, as well as publication of several proposed rule amendments. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 237.

Action Items

Final Approval of Proposed Amendments to Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case) and Proposed New Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R. Judge Connelly reported on this item. The text of the proposed amendments begins on page 253 of the agenda book, and the written report begins on page 239.

Rule 3002.1 applies in Chapter 13 cases and addresses notices from mortgage companies concerning postpetition mortgage payments. The proposed amendment to Rule 3002.1 provides for status updates during the case and enhances the notice at the end of the case. The six accompanying forms—which consist of two motions, one notice, and responses to them—provide a uniform mechanism to do this.

Draft

The Standing Committee approved the proposal for publication last year, and the Advisory Committee received a number of helpful, constructive comments. The comments guided the Advisory Committee in making clarifying changes in the proposed rule. The Advisory Committee unanimously approved Rule 3002.1 and the accompanying forms at its spring meeting.

Following a brief style discussion, Judge Bates called for a motion on a vote for final approval for the proposed amendment to Rule 3002.1 and the adoption of the six new official forms as presented in the agenda book. Mr. Byron and Professor Gibson clarified that the effective date for the official forms related to Rule 3002.1, if approved, would be the same as the proposed changes to the rule, December 1, 2025.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee approved the proposed amendments to Rule 3002.1 and new Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R.**

Final Approval of Proposed Amendment to Rule 8006(g) (Certifying a Direct Appeal to a Court of Appeals). Judge Connelly reported on this item. The text of the proposed amendment begins on page 291 of the agenda book, and the written report begins on page 241.

The proposed amendment to Rule 8006(g) clarifies that any party to the appeal may request that the court of appeals authorize a direct appeal. The Advisory Committee received only one comment during publication, and it was supportive. This change is related to, and consistent with, Appellate Rule 6(c)(2)(A), which was given final approval during the Appellate Rules Committee's report.

Professor Hartnett noted that this small amendment to Rule 8006 drove virtually all of the revisions to Appellate Rule 6, and he thanked the Bankruptcy Rules Committee for working closely with the Appellate Rules Committee.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee approved the proposed amendment to Rule 8006(g).**

Final Approval of Proposed Amendment to Official Form 410 (Proof of Claim). Judge Connelly reported on this item. The text of the proposed amendment begins on page 327 of the agenda book, and the written report begins on page 245.

The uniform claim identifier (UCI) is a bankruptcy identifier that was developed to facilitate electronic disbursements in Chapter 13 cases to certain large creditors. Official Form 410, which is the proof of claim form used by any creditor making a claim for payment in a bankruptcy case, currently provides for the creditor's disclosure of the UCI "for electronic payments in Chapter 13 (if you use one)." The proposed amendment would eliminate that restriction, thereby expanding the disclosure of the UCI to any chapter and for nonelectronic disbursements, as well as electronic disbursements. Following publication, the Advisory Committee received one favorable comment.

Mr. Byron and Professor Gibson clarified that, unlike the official forms related to Rule 3002.1, the amendment to Official Form 410, if approved, would take effect in the normal course on December 1, 2024.

Draft

Professor Coquillette asked if this identifier could cause any privacy issues. Judge Connelly responded that use of a UCI may enhance debtor privacy, as it does not require a full account number or Social Security number. It is a unique bankruptcy identifier for creditors that use it to identify the creditor, court, and debtor's claim.

An academic member asked what would happen if someone wanted to use Official Form 410 to file a proof of claim on behalf of someone else, such as a would-be class representative filing on behalf of members of a proposed class under Rule 7023. Judge Connelly commented that this form cannot address all circumstances but that this change would not be affected by who is filing the claim. She added that only parties who represent large institutions would be likely to use an accounting system that would involve a UCI. There are also safeguards in place to address false or duplicative claims.

One additional technical change was made to Official Form 410 to conform it to the restyled Bankruptcy Rules scheduled to go into effect on December 1, 2024: The reference to Bankruptcy Rule 5005(a)(2) in Part 3 of the form was changed to Rule 5005(a)(3).

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee approved the proposed amendment to Official Form 410.**

Publication of Proposed Amendment to Rule 3018 (Chapter 9 or 11 – Accepting or Rejecting a Plan). Judge Connelly reported on this item. The text of the proposed amendment begins on page 334 of the agenda book, and the written report begins on page 245.

The Standing Committee approved this proposal for publication at its January 2024 meeting. After that meeting, Professor Struve and the Standing Committee's liaison to the Bankruptcy Rules Committee, among others, raised some concerns about the language that had been approved. The Advisory Committee considered those comments and approved some clarifying revisions at its spring meeting. It now seeks approval to publish this revised version for public comment.

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

Publication of Proposed Amendments to Rules 9014 (Contested Matters), 9017 (Evidence), and new Bankruptcy Rule 7043 (Taking Testimony). Judge Connelly reported on this item. The text of the proposed amendments begins on page 341 of the agenda book, and the written report begins on page 247.

This proposal relates to the means of taking testimony in bankruptcy cases, and, if approved, would establish different standards for allowing remote testimony in bankruptcy adversary proceedings (separate lawsuits within the bankruptcy case analogous to a civil action in district court) and contested matters (a motion-based procedure that can usually be resolved

Draft

expeditiously by means of a hearing).[1] Under current Rule 9017, Civil Rule 43 applies to "cases under the Code." Civil Rule 43(a), in turn, provides that, at trial, a court may permit testimony by remote means if three criteria are present: (1) good cause, (2) appropriate safeguards, and (3) compelling circumstances. Many bankruptcy courts read Bankruptcy Rules 9014(d) and 9017 together to require that the three-part standard set forth in Civil Rule 43(a) must be met before allowing any remote testimony in a bankruptcy case, whether it is in a contested matter or an adversary proceeding.

This proposal would remove the reference to Civil Rule 43 in Rule 9017, but it would retain Rule 43(a)'s three-part standard for allowing remote testimony in adversary proceedings via a new Rule 7043. A separate amendment would be made to Rule 9014(d) that would incorporate most of the language in Civil Rule 43, but without the requirement to show "compelling circumstances" before a court could allow remote testimony in a contested matter. Good cause—now shortened by restyling to "cause"—and appropriate safeguards would continue to be required for a witness to testify remotely in contested matters.

When this proposal came before Advisory Committee during its fall 2023 meeting, it was pointed out that the Judicial Conference was considering amendments to the broadcast policy based on a recommendation—which has since been adopted—from the Committee on Court Administration and Case Management (CACM). The proposal was delayed so that the Advisory Committee could confer with the CACM Committee. A CACM subcommittee, with input from the Committee on the Administration of the Bankruptcy System, considered this bankruptcy rules proposal and indicated that the proposed amendments and their publication would not violate the new policy or interfere with the CACM Committee's ongoing work.

At the Advisory Committee's spring meeting, there was consensus to seek public comment on the proposal. There was also a question raised about whether this proposal represented a first step with the goal of allowing remote testimony more broadly in bankruptcy cases. Judge Connelly explained that it was not—and is not—the intent of the proposal to herald a broader change, although the Advisory Committee recognizes that adoption of this proposal might lead to future suggestions to adopt the less stringent standard for remote testimony beyond contested matters.

Judge Bates stated that remote proceedings and remote testimony are important issues across the judiciary, not only in the bankruptcy courts. He asked three questions. First, what is the current practice, and is remote testimony being taken already? Second, what are the expected effects of the proposed amendments? Third, what does the standard "for cause and with appropriate safeguards" mean?

As to the first question, Judge Connelly explained that she did not have hard data. Based on conversations with colleagues, she said that remote testimony has been occurring on an ad hoc

[1] Contested matters do not require the procedural formalities used in adversary proceedings, including a complaint, answer, counterclaim, crossclaim, and third-party practice or a discovery plan. They occur frequently over the course of a bankruptcy case and are often resolved on the basis of uncontested testimony. Testimony might concern, for example, the simple proffer by a debtor about the ability to make ongoing installment payments for an automobile that is the subject of a motion to lift the automatic stay. Or, as another example, testimony might be given in a commercial chapter 11 case by a corporate officer about ongoing operational costs in support of a motion to use estate assets to maintain business operations.

basis following the pandemic. Her impression was that, although not unheard-of pre-pandemic, it has become more common to allow remote testimony in contested matters in Chapter 11 cases because these cases involve parties across the country or the world and the hearings tend to be more administrative and for the purpose of gathering information. She thought that permitting remote testimony for background information in consumer cases was rare pre-pandemic but that the practice has become more common post-pandemic—although some judges have told her that they feel they can no longer take remote testimony now that the pandemic has subsided.

As to expectations concerning the proposed amendments, Judge Connelly anticipates that remote testimony will become more common in contested matters, particularly consumer matters. She noted, however, that some bankruptcy judges have expressed concern about taking remote testimony and giving increased discretion to those judges is not likely to change their practice.

Judge Connelly said that "cause and appropriate safeguards" under proposed Rule 9014(d) means what "good cause" and "appropriate safeguards" mean under Civil Rule 43, adding that under the restyled Bankruptcy Rules "good cause" is restyled to "cause." Part of the reason for the proposed change, however, was that under most of the published opinions on Civil Rule 43 courts have held that the "compelling circumstances" element in Rule 43 is almost impossible to meet. Many courts have found that distance to the courthouse and financial concerns—two big issues in bankruptcy—are not compelling circumstances that would allow for remote testimony, though they might be enough to find cause to allow remote testimony.

Judge Bates expressed some concern about the prospect that the amendments would make remote testimony more common than it is under the existing rules, and wondered if it might be expected to overtake the general rule requiring in-person testimony. Judge Connelly stated that live testimony would, of course, remain the default under the rules. A party would need to request permission to testify remotely, and a judge would need to find cause.

Professor Marcus mentioned, for context, the Civil Rule 43(a) proposal on page 527 of the agenda book. The Civil Rules Committee has referred that proposal to a subcommittee, in which Judge Kahn is participating on behalf of the Bankruptcy Rules Committee. The practitioners who have proposed the amendment to Civil Rule 43 wish to significantly expand the availability of remote testimony in proceedings under the Civil Rules. While the bankruptcy proposal does not change the standard for adversary proceedings, the Civil Rules Committee would be very interested in seeing any comments on the bankruptcy proposal.

Professor Hartnett asked how often subpoenas are required in contested matters and whether bankruptcy has the same issues as civil with respect to Civil Rule 45 distance requirements. Judge Connelly responded that subpoenas are common in adversary proceedings but less so in contested matters.

A judge member inquired if the Advisory Committee contemplated a judge making a blanket order setting remote testimony as the default for certain categories of matters. He explained that there is a new courthouse that is not yet accessible to the public for security reasons, but the bankruptcy judges were able to move in because most things are done remotely. Judge Connelly responded that the Advisory Committee did not anticipate such blanket orders. If anything, she had heard from colleagues the opposite, that is, that they would generally not approve requests to

testify remotely. There might, however, be circumstances that prevent people from being able to access the courthouse—like security, the pandemic, or weather—and being able to conduct hearings in those circumstances is valuable to the system.

Ms. Shapiro asked why the CACM Committee did not think this would interfere with its work. Mr. Byron and others explained that the CACM Committee separates the ideas of using technology for broadcasting—making the courtroom more accessible to the public—from remote participation, such as allowing witnesses to testify remotely. Because the CACM Committee is focused on broadcasting, this proposal on remote testimony in contested matters is different in kind from, and does not impede, its work. Ms. Shapiro commented that, whether intended or not, some might conflate remote testimony and remote public access because proponents of cameras in the courtroom use a similar good cause and substantial safeguards standard.

Another judge member pointed out that the committee note for Civil Rule 43 has extensive discussion of what constitutes "good cause" and says that "good cause and compelling circumstances" may be established with relative ease if all parties agree that testimony should be presented by remote transmission. She asked if there should be more detail in the bankruptcy rule's note about it. Judge Bates wondered if that supports a cross-reference in the committee note to the explanation in the committee note to Civil Rule 43 about good cause. Judge Connelly responded that a cross-reference to the Rule 43 committee note might make sense, but she explained that unlike in a two-party dispute, it would be difficult in a contested bankruptcy matter to get the consent of every affected party, which technically could include all creditors in the bankruptcy case. So, while there may be consent of all hearing participants, that might not mean the same thing as consent of all parties in a civil case in district court.

Judge Bates later observed that Civil Rule 43 has been viewed as limiting remote proceedings whereas the proposed bankruptcy rule is intended to expand access to remote proceedings. Yet, they share most of the same language, including a reference in the note to Civil Rule 43, and the only change is the removal of the language requiring compelling circumstances.

Professor Bartell responded that both rules permit remote proceedings but only under very limited circumstances. The proposed bankruptcy rule will simply permit it in slightly broader circumstances. Judge Connelly added that, under both rules, the judge still has discretion and there must be cause. Professor Bartell also noted that, in jurisdictions with a large geographic scope, in-person attendance can be a significant burden on parties, whether on the debtor or creditor side. Presumably, jurisdictions with small geographic areas will have fewer situations calling for remote testimony. Judge Bates noted that the vast area explanation also comes up in other contexts like non-random case assignment.

A judge member commented that there will always be some basis for cause—convenience or lesser expense—so, as a practical matter, dropping compelling circumstances means that this decision will be left to the judge's discretion in contested matters. Judge Connelly noted that this could be another reason to cross-reference Civil Rule 43 for the cause standard.

A practitioner member remarked that the big question is whether this is the beginning of a larger creep toward allowing remote participation in proceedings more generally, and another practitioner member wondered if this proposal should be on the same timeline as the recent

Draft

suggestion concerning Civil Rule 43. An academic member pointed out that, while coordination is generally a good idea, the Bankruptcy Rules often adapt to new technology first, and that experience in that arena can inform the other rule sets.

Judge Connelly reiterated that this proposal does not affect Civil Rule 43's application in adversary proceedings; it only affects contested matters and only by removing the need to show compelling circumstances. That is a much more limited change than what is proposed to Civil Rule 43. Delaying the bankruptcy proposal might make things more complicated.

Several committee members felt it would be helpful to add language to the committee note giving a principled reason for why contested matters are being treated differently than adversary proceedings. For example, contested matters occur with routine frequency, often require the attendance of pro se litigants, are shorter, involve more affected parties which makes consent harder to obtain, and often involve testimony where credibility is less of an issue.

Judge Bates remarked that his sense of the Standing Committee's discussion was that it is not necessary to tie the timing of this proposal to that of the proposal concerning Civil Rule 43 but that some additional explanation in the committee note would be useful.

The committee briefly discussed how to incorporate this feedback without delaying publication for another year. A practitioner member asked if this could be handled via email in the coming days, and Judge Bates commented that an email vote is only used if there is some need to resolve the matter promptly. A judge member asked if remote testimony is being permitted around the country. Judge Connelly noted that remote testimony is taking place, although it was hard to tell how often, and there is some urgency in the need to provide clarity. She offered to provide the amendment to the note very promptly. Another judge member remarked that it would be enough for him if the note captured the explanation given during the meeting and that he would like to give the Advisory Committee leadership an opportunity to provide that without derailing the process entirely. Judge Bates emphasized that this would not create a precedent, but, with no opposition from the Standing Committee, he was comfortable with handling this matter by email.

Following the meeting, Judge Connelly and Professors Gibson and Bartell prepared a revised committee note for Rule 9014 that addresses the concerns raised during the Standing Committee meeting, explaining why contested matters are different from adversary proceedings. The Advisory Committee unanimously approved the revised committee note for publication. The revised committee note was circulated to the Standing Committee, which unanimously approved it, and the revised language was included in the agenda book posted on the judiciary's public website.

By email ballot and without opposition: **The Standing Committee gave approval to publish the proposed amendments to Rules 9014 and 9017 and proposed new Rule 7043 for public comment.**

Publication of Proposed Amendments to Rules 1007 (Lists, Schedules, Statements, and Other Documents; Time to File), 5009 (Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied), and 9006 (Computing and Extending Time; Motions). The text of the proposed amendments begins on page 331 of the agenda book, and the written report begins on page 248.

Draft

By statute, most individual debtors must complete a course on personal financial management to receive a discharge. Rule 1007 provides the deadline for filing a certificate of course completion, and Rule 9006 provides for altering timelines. The proposal is to eliminate the deadline in Rule 1007 and the cross-reference in Rule 9006. The education requirement is a prerequisite for the discharge, but there is not a particular statutory deadline. But because there is a specific deadline in Rule 1007, some courts have denied a discharge even if the debtor completed the education after the deadline. The Advisory Committee seeks to publish this proposal to address the concern that the rule is making it unnecessarily difficult for debtors to obtain a discharge.

Relatedly, Rule 5009 directs the clerk to perform certain tasks, including sending a reminder notice to debtors who have not filed a certification of completion. This proposal would add a second reminder notice creating a two-tiered system with one notice early in the case when engagement is higher, and a second notice, if the certification of course completion has not been filed, before the case is closed.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee gave approval to publish the proposed amendments to Rules 1007, 5009, and 9006 for public comment.**

Information Items

In the interest of time, Judge Connelly and the reporters referred the Standing Committee to the written materials, beginning on page 250 of the agenda book, for a report on four information items. The information items pertain to suggestions to remove partially redacted social-security numbers from certain filings, suggestions to allow the use of masters in bankruptcy cases, a description of technical amendments made to certain bankruptcy forms and form instructions to reflect the restyling of the Bankruptcy Rules, and a decision not to go forward with proposed amendments to two forms.

Judge Bates thanked Judge Connelly and the Advisory Committee.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Rosenberg and Professors Marcus and Bradt presented the report of the Advisory Committee on Civil Rules, which last met on April 9, 2024, in Denver, Colorado. The Advisory Committee presented two action items and several information items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 375.

Judge Rosenberg reported that, in August 2023, proposed amendments to Rules 16 and 26, dealing with privilege log issues, and a new Rule 16.1 on multidistrict litigation (MDL) proceedings were published for public comment. Three public hearings were held on these changes in October 2023, January 2024, and February 2024, presenting the views of over 80 witnesses. The public comment period ended on February 16, 2024. On April 9, the Advisory Committee voted unanimously to seek final approval from the Standing Committee for both proposals.

Draft

Action Items

Final Approval of Proposed Amendments to Rules 16(b)(3) (Pretrial Conferences; Scheduling; Management) and 26(f)(3) (Duty to Disclose; General Provisions Governing Discovery). Judge Rosenberg reported on this item. The text of the proposed rule amendments begins, respectively, on page 530 and page 550 of the agenda book, and the written report begins on page 379.

In August 2023, amendments to Rules 26(f)(3)(D) and 16(b)(3)(B)(iv), the "privilege log" rule amendments, were published for public comment, and there was a lot of feedback from the viewpoints of both discovery "producers" and "requesters." Summaries of the testimony and written comments begin on page 391 of the agenda book. The Discovery Subcommittee recommended no change to the rule text, but it shortened the committee note considerably. The shortened committee note omitted observations about burdens, avoided language favoring either side, and took no position on controversial issues raised during the public comment process. As described in the Advisory Committee's written report, the subcommittee considered several other issues but ultimately did not recommend other changes to the proposal.

Professor Marcus emphasized that the Advisory Committee preferred an adaptable approach. Shortening the committee note was intended to allow judges to consider arguments from both sides without the note giving support to either.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee approved the proposed amendments to Rules 26(f)(3)(D) and 16(b)(3)(B)(iv).**

Final Approval of Proposed New Rule 16.1 (Multidistrict Litigation). Judge Rosenberg reported on this item. The text of the proposed new rule begins on page 533 of the agenda book, and the written report begins on page 414.

Judge Rosenberg acknowledged the long, hard work of many people on Rule 16.1, including contributions from Judge Proctor, the current chair of the MDL Subcommittee, and Judge Dow, the prior Chair of the MDL Subcommittee and the Advisory Committee. She also recognized the work of Judge Bates, the Advisory Committee members and reporters, the stylists, and the many organizations and individuals who have offered their feedback during this seven-year process.

The Advisory Committee heard from over 80 witnesses and received over 100 written comments, representing a diverse set of views and perspectives. The MDL transferee judges expressed strong, unanimous support for the proposed Rule 16.1 at the transferee judges conferences in October 2022 and 2023. In addition, the two judges who have been assigned perhaps the most MDLs and the largest MDL wrote letters in support of the version approved for public comment. The MDL Subcommittee and the full Advisory Committee weighed this feedback carefully.

As detailed in the written report, since publication, the proposed rule has been restructured to address both style and substantive feedback. The revised rule now has two lists of prompts to consider, differentiating topics calling for the parties' "initial" views, those topics where court action may be premature before leadership counsel is appointed, if that is to occur, from those

Draft

topics that frequently call for early action by the court. Additionally, the revised proposal omits a provision concerning the appointment of coordinating counsel, which generated negative feedback. Nothing in the revised rule precludes a judge from appointing coordinating or liaison counsel, but the negative public reaction to that provision resulted in its removal from the rule. The rule also highlights the need to decide early whether, and if so how, to appoint leadership counsel. The revised rule also reverses the default such that parties must address the matters listed in the rule unless the court directs otherwise.

The Advisory Committee concluded that republication was not required in light of these changes. Under the rules committees' governing procedures, republication is appropriate when an advisory committee makes substantial changes to a rule after publication unless it determines that republication would not be necessary to achieve adequate public comment and would not assist the work of the rules committees. The Advisory Committee concluded that the post-publication changes to proposed Rule 16.1 did not rise to the level of substantial changes. Moreover, the changes were discussed regularly throughout the hearings and rulemaking process, and the changes were made in light of the comments the Advisory Committee received.

Professor Marcus emphasized that the public comment period really works and that the rule proposal today is quite similar to the published version albeit rearranged after careful reconsideration. The support of the transferee judges is significant, and the alternative to something like this rule is to leave transferee judges with no indication of the parties' views going into the initial management conference. The Advisory Committee worked for seven years on this proposal, and the original MDL Subcommittee was appointed by Judge Bates when he was chair of the Advisory Committee.

Professor Bradt remarked that the process and outreach to practitioners, academics, and judges had been extraordinary. Although this rule may not include everything that any particular group would have wanted, it achieved consensus.

Professor Cooper added that this rule is discretionary, not a mandate, and is a terrific guide.

Judge Bates congratulated the Advisory Committee's current leadership, members, and predecessors for an outstanding effort in preparing this rule. It is a modest rule considering the initial proposals.

Judge Rosenberg explained that, shortly before the meeting, a judge member of the Standing Committee had suggested clarifying the term "judicial assistance" in the committee note regarding Rule 16.1(b)(3)(E). In response, Judge Rosenberg proposed the following change to the paragraph beginning on page 547, line 386:

> **Rule 16.1(b)(3)(E).** Whether or not the court has appointed leadership counsel, the court may consider measures to facilitate the resolution of some or all actions before the court ~~it may be that judicial assistance could facilitate the resolution of some or all actions before the transferee court~~. ~~Ultimately, the question of whether parties reach a settlement is just that – a decision to be made by the parties. But the court may assist the parties in efforts at resolution.~~ In MDL proceedings, in addition to mediation and other dispute resolution alternatives, focused discovery orders, timely adjudication of principal legal issues,

Draft

> selection of representative bellwether trials, and coordination with state courts may facilitate resolution. Ultimately, the question of whether parties reach a settlement is just that – a decision to be made by the parties. But the court may assist the parties in efforts at resolution.

Judge Bates pointed out that the paragraph begins with "[w]hether or not the court has appointed leadership counsel" yet this provision is contained in a list that must wait for appointment of leadership counsel. Professor Marcus stated that Judge Bates identified a drafting challenge in that the question of leadership counsel informs a variety of other issues. A judge member suggested striking that introductory phrase, which Judge Rosenberg accepted. This change to the committee note—including the omission of "Whether or not the court has appointed leadership counsel"—was incorporated into the Rule 16.1 proposal.

With respect to proposed Rule 16.1(b)(2)(A)(iv), Judge Bates suggested adding "facilitating" before "resolution." That term reflects the language in proposed Rule 16.1(b)(3)(E) and the language in the committee note explaining that one purpose of item (iv) "is to facilitate resolution of claims." Judge Bates also suggested deleting "some of" in the committee note on page 539, line 140, because this is the only reason given for all of the items. With Judge Rosenberg's agreement and the input from the style consultants, "facilitating" was added to Rule 16.1(b)(2)(A)(iv), and the language in the committee note for Rule 16.1(b)(2) was changed to "court action on a matter ~~some of the matters~~ identified in Rule 16.1(b)(3)."

Judge Bates also commented that whether direct filings will be permitted is a threshold question for the transferee court, but the language in proposed Rule 16.1(b)(2)(D) ("how to manage the direct filing of new actions in the MDL proceedings") seems to presume that there would be direct filings. Judge Rosenberg explained that the current language served to notify the court that there will likely be actions filed directly in the transferee court in addition to those transferred as tagalongs by the Judicial Panel on Multidistrict Litigation (JPML). The use of "manage" in the rule is also intended to encourage parties to think about issues like choice of law and where a directly filed case would be remanded if less than the entire case is resolved in the MDL. Professor Bradt added that there will inevitably be actions filed directly in the transferee court even if there is no direct filing stipulation to waive venue and personal jurisdiction objections. It is the plaintiff's decision where to file in the first instance and the defendant's decision whether to challenge that decision by a Rule 12(b) motion. The current language avoids weighing in on whether a direct filing order pursuant to a defendant's stipulation is necessary, and he worried that it would create confusion if the rule were changed to suggest that the plaintiff could not file first in the MDL forum. Judge Bates said that he would defer to the Advisory Committee's judgment on the direct filing language.

A practitioner member pointed out that the transferee court may be a natural jurisdiction for trial purposes, so there will be direct filings. There could even be direct filings in MDLs involving class actions; she recalled one MDL in which over 400 class actions were filed. MDLs are inherently trans-substantive, and she was impressed by the balance that the Advisory Committee struck to give flexibility. She suggested removing "(g)" from "Rule 23(g)" on page 543, line 256, in response to a concern that she heard from antitrust and securities practitioners. They were concerned that the case management provisions in Rule 16 and 23 might be abrogated by Rule 16.1. Without objection, that change was made to the committee note.

Draft

Another practitioner member asked about the interplay of proposed Rule 16.1(b)(2)(D) and (E) and how to manage plaintiffs who file lawsuits outside the transferee court. Professor Marcus noted that such a case when filed in another federal district court is a tag-along, and it will be transferred to the transferee court unless the JPML chooses not to do so. Professor Bradt remarked that how to deal with tag-along actions is fairly regularized. The rule deals with direct filings because there is a lot of confusion that does not apply to tag-alongs. Another practitioner member added that the JPML has a set of detailed rules regarding tag-alongs, which is likely why it has not been brought up in this rule. Whether to transfer the tag-along case to the transferee district is up to the JPML, not the transferee court; so the issues that would actually come before the transferee court (rather than the JPML) are those in the categories described by (D) and (E).

Another practitioner member worried about the term "authority" in proposed Rule 16.1(b)(2)(A)(iv), referring to leadership counsel's "responsibilities and authority in conducting pretrial activities," and what it might suggest about leadership counsel's ability to bind other attorneys. Striking "and authority" would make it more consistent with the committee note, which speaks of duties and responsibilities, not authority. Professor Marcus responded that to say only "responsibilities" would leave out an important part of the appointment of leadership counsel; as proposed Rule 16.1(b)(2)(A)(vi) recognizes, a corollary to appointing leadership counsel often involves setting limits on activity by nonleadership counsel. Judge Rosenberg noted that one of her prior orders of appointment, which was based on a survey of other judges' orders, defined the "authority, duties, and responsibility" of plaintiffs' leadership.

After a review of all of the changes, Judge Bates called for a motion to approve proposed new Rule 16.1.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee approved the proposed new Rule 16.1.**

Information Items

Judge Rosenberg reported on the work of the Advisory Committee's subcommittees as well as a few other information items. These items are described in the written report beginning on page 523 of the agenda book.

Rule 41 Subcommittee. The Rule 41 Subcommittee was formed in October 2022 in response to submissions identifying a circuit split on whether Rule 41 permits a unilateral, voluntary dismissal of something less than an entire action. The subcommittee has concluded that the rule should be revised to explicitly increase its flexibility so that parties can dismiss one or more claims from the case. That is consistent with the prevailing district court practice and the policy goal of narrowing the issues in the case. The subcommittee plans to put forth proposed text at the fall Advisory Committee meeting, changing "an action" to "a claim."

Discovery Subcommittee. The Discovery Subcommittee continues to work on two items—the manner of service for subpoenas, and filing under seal—that were reported on at the January Standing Committee meeting.

Rule 7.1 Subcommittee. The Rule 7.1 Subcommittee also hopes to put forward a proposal at the fall Advisory Committee meeting. The subcommittee has been considering whether to

Draft

expand the disclosures required of non-governmental organizations. Rule 7.1 disclosures inform judges when making recusal decisions under 28 U.S.C. § 455(b)(4). The Committee on Codes of Conduct recently issued guidance providing that judges should recuse themselves when they have a financial interest in a parent company that controls a party to a case before them. Professor Bradt added that the subcommittee is working on a rule that makes it as easy as possible for judges to implement this guidance.

Cross-Border Discovery Subcommittee. Cross-border discovery is a big issue, and the subcommittee is in an early, information-gathering stage. The subcommittee decided to focus first on handling discovery for use in litigation in the United States and the application of the Hague Convention.

Rule 43/45 Subcommittee. A number of plaintiff-side attorneys have suggested resolving a split in courts about the interaction of (i) Rule 45(c)'s limitations on where a witness must appear under subpoena and (ii) the possibility of remote testimony under Rule 43(a) from an unwilling witness whose presence at a distant place of testimony can be obtained only by subpoena. A new subcommittee has been created to look at this issue.

Professor Marcus noted that there are two subcommittees looking at Rule 45. The Rule 45 aspect of this remote testimony question appears easier to solve compared to the Rule 43 part. It is possible that the Advisory Committee will consider the Rule 45 issues together in a single proposal separate from the Rule 43 remote testimony question.

Random Case Assignment. The reporters continue to research this issue and monitor the effects of new Judicial Conference guidance that encourages random assignment of cases seeking nationwide or statewide injunctive relief. Professor Bradt added that he is researching Rules Enabling Act authority for a rule and what a rule might look like. The subcommittee will focus on monitoring the uptake of the new guidance over the summer.

Use of the Word "Master" in the Rules. The American Bar Association proposed removing the word "master" from the rules, particularly Rule 53, and substituting "court-appointed neutral." The Academy of Court-Appointed Neutrals (formerly the Academy of Court-Appointed Masters) supports the proposal. The Advisory Committee would appreciate the views of the Standing Committee on whether the word "master" should be discarded in the rules and, if so, what term should replace it. The term "master" appears in at least six other rules, the Supreme Court's rules, and at least one statute. Judges also use the term in making appointments to assist in the conduct of litigation even without relying on Rule 53.

Professor Marcus sought guidance, particularly from judges. The term "master" has been used in Anglo-American jurisprudence for a very long time, but it has also been used in a very harmful way in contexts mostly unrelated to judicial proceedings. Anecdotally, from the two judges he asked, he heard opposite views about whether a change is needed.

Hearing nothing, Judge Bates noted that the Standing Committee members could reach out to Professor Marcus after the meeting and commented that the Standing Committee would look forward to the Advisory Committee's views.

Draft

Demands for Jury Trials in Removed Actions. The Advisory Committee has not yet decided how to address the verb-tense change made during the restyling of Rule 81(c)(3)(A) and the potential issues that it may be causing in removed actions.

Judge Bates thanked Judge Rosenberg and the reporters for their report.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Dever presented the report of the Advisory Committee on Criminal Rules, which last met on April 18, 2024, in Washington, D.C. The Advisory Committee presented four information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 573.

Information Items

Rule 17 and pretrial subpoena authority. The Rule 17 Subcommittee, chaired by Judge Nguyen, has been considering how information is gathered from third parties in criminal cases and has determined that there is a need to clarify the rule. The subcommittee has conducted a survey and gathered information showing that there is great disparity in actual practice regarding how Rule 17 has been interpreted by courts. The subcommittee has been working to draft language for the Advisory Committee to review and possibly to road test.

Rule 53 and broadcasting criminal proceedings. The Rule 53 Subcommittee is considering a suggestion from a consortium of media groups proposing to amend Rule 53 to give courts discretion to televise trials. The Rules Law Clerk has prepared a memorandum on the history of Rule 53, and the subcommittee is now in the process of gathering information about actual practice. Judge Michael Mosman, who joined the Advisory Committee to replace Judge Conrad after he was appointed Director of the Administrative Office of the U.S. Courts, will serve as a member of the Rule 53 Subcommittee.

The subcommittee is also coordinating with the CACM Committee. As Judge Dever commented during the discussion on remote testimony in contested bankruptcy matters, the CACM Committee draws a distinction between using technology to bring witnesses into court and using technology to expand the courtroom.

Rule 49.1 and references to minors by pseudonyms. The Advisory Committee recently received a suggestion from the Department of Justice to amend Rule 49.1 to protect the privacy of minors by using pseudonyms, instead of initials as is currently required. Judge Dever announced a new Privacy Subcommittee, headed by Judge Harvey, to consider this proposal as well as other issues under Rule 49.1, including the redaction of social-security numbers.

Ambiguities and gaps in Rule 40. Magistrate Judge Bolitho submitted a proposal to clarify Rule 40 as it applies when a defendant from outside the district is arrested for violating conditions of release. The Magistrate Judges Advisory Group recently submitted a comprehensive request concerning additional amendments to Rule 40 that would address several issues of concern, including the situation raised by Judge Bolitho. Judge Dever anticipates creating a new subcommittee.

Draft

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Schiltz and Professor Capra presented the report of the Advisory Committee on Evidence Rules, which last met on April 19, 2024, in Washington, D.C. The Advisory Committee presented one action item and three information items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 96.

Action Item

Publication of Proposed Amendment to Rule 801 (Definitions That Apply to This Article; Exclusions from Hearsay). Judge Schiltz reported on this item. The text of the proposed amendment appears on page 102 of the agenda book, and the written report begins on page 97.

This proposal is related to a witness's prior inconsistent statements, which are introduced early and often at trials. In theory, under the current Rule, prior inconsistent statements can be used only to assess the credibility of a witness—not for the substance of the statement—unless the statement was made under oath at a formal proceeding. As a practical matter, prior inconsistent statements are likely being used by jurors for substantive purposes, and the proposed amendment would allow admissible prior inconsistent statements to be used for both credibility and substance.

Aside from prosecutors using grand jury testimony, prior inconsistent statements are rarely made under oath at a formal proceeding. Judges give instructions like the following: "You heard Joe testify that the light was red. You also heard that, a few months ago, Joe told his sister that the light was green. You may use Joe's statement to his sister in deciding whether Joe was being truthful in saying the light was red, but you may not use Joe's statement to his sister in deciding whether the light was red." But many trial judges believe jurors do not understand or follow such instructions, and attorneys often do not ask for these instructions.

As a matter of hearsay law, a prior inconsistent statement cannot be admitted unless the person who made it is on the stand, under oath, and subject to cross-examination; this proposal would not change that standard and would not result in jurors hearing anything new. Rather, the proposal would bring the rule into alignment with practice and spare judges from giving jury instructions that are likely not being followed. It would further bring the treatment of prior *inconsistent* statements into alignment with prior *consistent* statements, which may be considered for both purposes (substance and credibility). This would restore the rule to the version proposed by the original Advisory Committee before Congress, in enacting the Evidence Rules, changed Rule 801's approach to prior inconsistent statements. Additionally, about half of the states have more lenient treatment than the federal rules, and around 15 states allow the use of prior inconsistent statements for any purpose.

One of the practitioner members commented that the proposal was elegant, but the deletion of the limiting language in Rule 801(d)(1)(A) would raise questions about new types of evidence coming in as substantive evidence. For example, in a criminal case, witnesses are commonly confronted with prior statements memorialized in federal agent notes such as the FBI form FD-302. But those federal agent notes are not a transcript and would not themselves be admissible. He wondered whether the rule would encompass prior statements that cannot be easily verified; what if the witness states that they cannot recall what they previously told the agent? He suggested

Draft

adding "is otherwise admissible under these rules" in the rule or clarifying it in the committee note. Another practitioner member suggested that the committee note could provide a more fulsome cross-reference to the other rules to expressly clarify that the statement would need to be otherwise admissible.

Professor Capra explained that proving a prior inconsistent statement is done with extrinsic evidence under Rule 613(b), and the statement will be admitted as substantive proof only if there is admissible evidence. Judge Schiltz noted that this is not an affirmative rule of admissibility. The proposal simply lifts the hearsay bar as is already done with prior consistent statements. Judge Schiltz and Professor Capra pointed out that judges could still monitor the use of statements through Rule 403, and authenticity rules also still apply. Nevertheless, they agreed that a new paragraph could be added to the committee note to clarify this issue, and there was some discussion about whether to make that change now or after publication.

A judge member asked why we would only make this clarification (referring to otherwise admissible evidence) as to inconsistent statements and not to consistent statements. Professor Capra agreed that was a good point. The rules do not say that the evidence must be admissible every time there is an exception to the hearsay rule. The judge member asked if there had been issues with the change to consistent statements, and Professor Capra indicated there had not. The judge member stated that she would not limit any change to inconsistent statements, and Professor Capra worried about negative inferences for every other hearsay exception. Another judge member echoed this concern.

The first practitioner member commented that it would be sufficient to address this in the committee note. He reiterated that the note's statement that "[t]he rule is one of admissibility, not sufficiency" implies something that the Advisory Committee did not mean to imply. Professor Capra proposed removing that sentence from the note. The previous judge member indicated that would be acceptable, and that sentence in the note was deleted without opposition.

The practitioner member also suggested deleting the word "timing" on line 79 because Rule 613(b) is not just a matter of timing, and Professor Capra agreed. A conforming change was made in line 79 to make "requirement" plural. For consistency, Judge Bates also suggested adding "prior" before "inconsistent statement" in line 31, which Judge Schiltz agreed was a good idea.

Another judge member thought there was a convincing argument that this proposal will not make a practical difference in most cases. However, this change would make a substantive difference in cases where the out-of-court statement is the only piece of evidence to fill a hole in the sufficiency of the evidence.

Judge Schiltz agreed that it is theoretically possible for a case to be decided on only a prior inconsistent statement, but he found it difficult to produce real-life examples of that happening. Professor Capra added that, as state practice shows, this rule change will make a difference in some cases. He also noted that, when Congress was initially considering Rule 801, a senator objected to the third subparagraph of Rule 801(d)(1) on the ground that a prior identification, not made under oath, should not serve as the sole basis of conviction. Congress, however, revised its thinking because, like an excited utterance, this is a form of hearsay exception, and hearsay exceptions can

Draft

be sufficient evidence. The Evidence Rules address admissibility, not sufficiency, of evidence; concerns about sufficiency of evidence are beyond the purview of those rules.

Another judge member offered a hypothetical where five witnesses said that the light was green, and one witness gave an out-of-court hearsay statement that the light was red but recanted at trial, saying he was mistaken and could not recall. That case would now go to a jury. Judge Schiltz agreed that the case would go to the jury, but it is unlikely that jurors would credit the inconsistent statement over the five people who testified. There are already convictions based on out-of-court statements made by people who do not testify in court, such as excited utterances by victims in domestic violence cases. Under this proposal, the person who made the prior inconsistent statement would need to be in court, under oath, and subject to cross-examination.

Ms. Shapiro commented that Judge Schiltz made a compelling argument. As she had expressed to the Advisory Committee, the prosecutor community generally opposed this proposal. First, prior inconsistent statements are definitionally hearsay and unreliable. Such statements contradict what is being said on the stand. Second, prosecutors are concerned about collateral litigation around proving statements that the witness denies ever making. Finally, limiting instructions are common, and we presume juries understand and apply these instructions. Amending this rule because jurors do not understand limiting instructions could lead to many other rule changes. On the other hand, there were some prosecutors who came from states where this proposal was the rule, and they did not have issues. The Department's civil litigators were agnostic.

Professor Capra responded that the prior inconsistent statement may or may not be credible, but the reliability is guaranteed by the person being on the stand and subject to cross-examination. With respect to collateral litigation about extrinsic evidence, that already happens when a party seeks to admit the statement for impeachment purposes, and this is no different from proving any other fact. Finally, this proposal is not an attack on all limiting instructions. This limiting instruction is particularly hard to understand, which was also true in 2014 with respect to amendments addressing prior consistent statements.

Judge Bates asked Ms. Shapiro if prosecutors had a position on the agent notes issue that was raised earlier. Ms. Shapiro explained that federal agent interview notes, such as FBI FD-302 forms, are turned over during discovery as statements of the witness, but the notes are actually the work product of the agent. When an agent is testifying and there is something potentially inconsistent in the interview notes, there can be fights over whether the statement belongs to the witness or the agent. Judge Schiltz commented that these issues exist today, and this proposal does not create new problems in this respect.

Judge Schiltz and Professor Capra also noted that prosecutors coming from state courts that allow the use of prior inconsistent statements as substantive evidence say that the rule is very valuable in certain kinds of cases, like domestic violence and gang cases, where witnesses can be intimidated before the trial. And a panel of state prosecutors in California indicated several years ago that they could not bring many cases without this rule. There is also value to the defense side, and the Advisory Committee's public defender member voted in favor of publishing this rule.

Judge Bates noted that this proposal is only for publication and that further changes can be made later. He asked Judge Schiltz to clarify what the committee was voting on. Judge Schiltz

explained that the rule text is as proposed on pages 102–03 of the agenda book. The changes to the committee note are as follows: on page 103, line 31, “prior” was inserted before “inconsistent;” on page 105, line 77, the last sentence was deleted; on line 79, “timing” was deleted, and “requirement” became “requirements.”

Upon motion by a member, seconded by another, and by show of hands: **The Standing Committee, with one abstention,[2] gave approval to publish the proposed amendment to Rule 801 for public comment.**

Information Items

Professor Capra reported on three topics being considered by the Advisory Committee. The written report begins on page 98 of the agenda book.

Artificial intelligence and machine-generated information. The Advisory Committee has convened two panels of experts to educate the committee about artificial intelligence and how it affects admissibility. The Advisory Committee is focusing on two issues: (1) reliability issues concerning machine learning and algorithms and (2) authenticity issues related to deepfake audio and visual presentations.

Regarding machine learning, the Advisory Committee is looking at Article VII of the Evidence Rules. Although the issue is still in its early stages: one possibility is a new Rule 707 treating machine outputs that are used like human experts the same as human expert testimony by applying *Daubert* and Rule 702 standards.

Regarding deepfakes, the problem is how to authenticate alleged fakes. The Advisory Committee is considering proposals to create a structure for resolving these disputes but is also considering waiting and monitoring the caselaw. A New York State Bar Association commission decided to wait to see what courts are doing. In 2010, with respect to social media and allegations of hacking, the Advisory Committee determined that the authenticity rules were sufficiently flexible, and courts handled it well. The question is whether deepfakes are a difference in kind as opposed to degree. Timing also presents a dilemma. If the rule is too specific, it may no longer be relevant in three years. But a rule that is too general may not be helpful.

Rule 609 (Impeachment by Evidence of a Criminal Conviction). Under Rule 609(a)(2), convictions that involve dishonesty or false statement are automatically admissible for impeachment. Rule 609(a)(1) allows a party to impeach with prior convictions that do not involve dishonesty or false statement. For non-falsity convictions, there are two balancing tests. In deference to a defendant’s right to testify, Congress provided a more protective rule for defendants: the conviction is admissible only if the probative value outweighs its prejudicial effect. For all other witnesses, the admissibility is governed by Rule 403.

One professor urged the Advisory Committee to abrogate the entire rule because, as many academics argue, the rule does not make sense and is unfair. Many problematic convictions under

[2] Ms. Shapiro indicated that the DOJ would abstain for now and await publication.

Draft

Rule 609(a)(1) are being admitted against criminal defendants, particularly those similar to the crime being charged. Professor Capra explained that some Advisory Committee members felt that the problem was not with the rule but its application. On the other hand, if courts are misapplying the rule, then it may be a rule problem.

The Advisory Committee first considered eliminating Rule 609(a)(1) entirely and leaving only Rule 609(a)(2) for convictions that involve dishonesty or false statement. Some members felt that went too far so the Advisory Committee is focusing on a proposal to make the balancing test more protective for criminal defendants under Rule 609(a)(1)—the probative value must *substantially* outweigh the prejudice.

Some Advisory Committee members were also skeptical about whether this proposal would make a difference in how likely criminal defendants are to testify. Trying to determine whether, or to what extent, this rule impacts a defendant's decision to testify is difficult, and the FJC and Sentencing Commission will hopefully be able to help with data.

Evidence of prior false accusations made by complainants in criminal cases. The final information item related to false complaints, most often in sexual assault cases. This proposal came from a law professor who explained that courts are not using a consistent set of rules to handle the admissibility of false complaints of sexual assault. They might use Rule 404(b), Rule 608, or Rule 412. She proposed a new Rule 416 specifically addressing false complaints.

The proposal is in a nascent stage. Reducing confusion would be good. But states have much more experience handling false complaints of sexual assault, and the Advisory Committee resolved to first look at what states are doing. Professor Liesa Richter, Consultant to the Advisory Committee, is conducting a 50-state survey on this issue.

Judge Bates thanked Judge Schiltz and Professor Capra for the report and for Judge Schlitz's many years of excellent service.

OTHER COMMITTEE BUSINESS

The legislation tracking chart begins on page 606 of the agenda book. The Rules Law Clerk provided a legislative update, noting that the current legislative session will end shortly before the Standing Committee's next meeting.

Action Item

Judiciary Strategic Planning. As at prior meetings, Judge Bates asked the Standing Committee to authorize him to work with Rules Committee Staff to respond to the Judicial Conference of the United States regarding strategic planning. Without objection, the Standing Committee authorized Judge Bates to work with Rules Committee Staff to submit a response regarding Strategic Planning on behalf of the Standing Committee.

2024 Report on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002 (2024 Privacy Report). This was the last item on the meeting's agenda, and the draft 2024 Privacy Report is included in the agenda book starting on page 616. Mr. Byron asked for the

Standing Committee's approval of this draft with authorization for the Chair and Secretary to make minor changes based on feedback leading up to the Judicial Conference.

Judge Bates noted that the CACM Committee played a substantial role in preparing the 2024 Privacy Report. Mr. Byron added that the FJC also meaningfully contributed. The report describes the first phase of a study that the FJC conducted, which will assist both the CACM Committee and the Rules Committees in evaluating the adequacy of the privacy rules.

Without objection, the Standing Committee recommended that the Judicial Conference approve the 2024 Privacy Report, subject to any minor revisions approved by the Chair, and ask the AO Director to transmit it to Congress in accordance with law.

CONCLUDING REMARKS

Judge Bates thanked the Standing Committee members and other attendees. The Standing Committee will next convene on January 7, 2025, in a location to be announced.

Draft

TAB 3A2

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 6 and 39, 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. 2-4

2. a. Approve the proposed amendments to Bankruptcy Rules 3002.1 and 8006, 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, 2025 and contingent on the approval of the above-noted amendments to Bankruptcy Rule 3002.1, the proposed amendments to Bankruptcy Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R, as set forth in Appendix B, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date; and

   c. Approve, effective December 1, 2024, the proposed amendments to Official Form 410, as set forth in Appendix B, 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. 7-9

3. Approve the proposed amendments to Civil Rules 16 and 26, and new Rule 16.1, as set forth in Appendix C, 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. 11-13

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

4. Approve the proposed 2024 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002, as set forth in Appendix D, and ask the Administrative Office Director to transmit it to Congress in accordance with the law .... pp. 16-18

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

- Federal Rules of Appellate Procedure .... pp. 2-6
  - Rules and Form Approved for Publication and Comment .... pp. 4-6
  - Information Items .... p. 6
- Federal Rules of Bankruptcy Procedure .... pp. 7-11
  - Rules Approved for Publication and Comment .... pp. 9-10
  - Information Items .... p. 11
- Federal Rules of Civil Procedure .... pp. 11-14
  - Information Items .... pp. 13-14
- Federal Rules of Criminal Procedure
  - Information Items .... pp. 14-15
- Federal Rules of Evidence
  - Rule Approved for Publication and Comment .... p. 16
  - Information Items .... p. 16
- Judiciary Strategic Planning .... pp. 18-19

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 4, 2024. All members participated.

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

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

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

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

In addition to its general business, including a review of the status of pending rule amendments in different stages of the Rules Enabling Act[1] process and pending legislation affecting the rules, the Standing Committee received and responded to reports from the five advisory committees. The Committee also received an update on the coordinated work among the Bankruptcy, Civil, and Criminal Rules Committees on attorney admission rules, and by those committees and the Appellate Rules Committee on electronic filing by pro se litigants and on the redaction of Social Security numbers (SSNs).

FEDERAL RULES OF APPELLATE PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Appellate Rules recommended for final approval proposed amendments to Appellate Rules 6 and 39. The Standing Committee unanimously approved the Advisory Committee's recommendations, with minor stylistic changes to each rule.

Rule 6 (Appeal in a Bankruptcy Case)

The proposed amendments to Rule 6 make changes to Rule 6(a) (dealing with appeals from judgments of a district court exercising original jurisdiction in a bankruptcy case) to clarify the time limits for post-judgment motions in bankruptcy cases and Rule 6(c) (dealing with direct appeals from bankruptcy court to the court of appeals) to clarify the procedures for direct appeals. The amendments also make stylistic changes to those provisions and to Rule 6(b) (dealing with appeals from a district court or bankruptcy appellate panel exercising appellate jurisdiction in a bankruptcy case). The proposed amendments to Rule 6(a) clarify the time for

[1]Please refer to Laws and Procedures Governing Work of the Rules Committees for more information.

filing certain motions that reset the time to appeal in cases where a district court is exercising original jurisdiction in a bankruptcy case. The proposed amendments provide that the reference in Appellate Rule 4(a)(4)(A) to the time allowed for motions under certain Federal Rules of Civil Procedure must be read in such cases as a reference to the time allowed for the equivalent motions under the applicable Federal Rules of Bankruptcy Procedure. The proposed amendments to Rule 6(c) clarify the procedure for handling direct appeals from a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2), providing more detail about how parties should handle initial procedural steps in the court of appeals once authorization for a direct appeal is granted. The Rule 6(c) amendments dovetail with the proposed amendment to Bankruptcy Rule 8006(g) described later in this report.

Rule 39 (Costs on Appeal)

The proposed amendments are in response to the Supreme Court's holding in *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021). In that case, the Court held that Rule 39, which governs costs on appeal, does not permit a district court to alter a court of appeals' allocation of costs, even those costs that are taxed by the district court.

The proposed amendments clarify the distinction between (1) the court of appeals deciding which parties must bear the costs and, if appropriate, in what percentages and (2) the court of appeals, the district court, or the clerk of either court calculating and taxing the dollar amount of costs upon the proper party or parties. In addition, the proposed amendments codify the holding in *Hotels.com*, providing that the allocation of costs by the court of appeals applies to both the costs taxable in the court of appeals and the costs taxable in the district court, and establish a clearer procedure that a party should follow if it wants to ask the court of appeals to reconsider the allocation of costs. Finally, the proposed amendments clarify and improve Rule 39's parallel structure.

Recommendation: That the Judicial Conference approve the proposed amendments to Appellate Rules 6 and 39, 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 Form Approved for Publication and Comment

The Advisory Committee on Appellate Rules submitted proposed amendments to Rules 29 and 32, and the Appendix of Length Limits, as well as Form 4, with a recommendation that they be published for public comment in August 2024. The Standing Committee unanimously approved the Advisory Committee's recommendation, with minor changes to the proposed amendments to Rule 29.

Rule 29 (Brief of an Amicus Curiae)

After much consideration, the Advisory Committee recommended publication for public comment of proposed amendments to Rule 29, dealing with amicus curiae briefs, along with conforming amendments to Rule 32(g) and the Appendix of Length Limits. In considering the proposed amendments, the Advisory Committee was mindful of First Amendment concerns and proposed legislation regarding amicus filings.

The proposed amendments require all amicus briefs to include, as applicable, a description of the identity, history, experience, and interests of the amicus curiae along with an explanation of how the brief will help the court. Also, the proposed amendments require an amicus entity that has existed for less than 12 months to state the date the entity was created.

The proposed amendments add two new disclosure requirements regarding the relationship between a party and an amicus curiae. Those disclosure requirements focus, respectively, on ownership or control of the amicus (if it is a legal entity), and contributions to the amicus curiae; in each instance the focus is on ownership, control, or contributions by (1) a party, (2) its counsel, or (3) any combination of parties, counsel, or both. The first provision would require the disclosure of a majority ownership interest in or majority control of

a legal entity submitting the brief. The second provision would require disclosure of contributions to an amicus curiae, with a threshold amount of 25 percent of annual revenue, with the reasoning that an amicus that is dependent on a party for one quarter of its revenue may be sufficiently susceptible to that party's influence to warrant disclosure.

In addition, the proposed amendments revise the disclosure obligation with respect to a relationship between a nonparty and an amicus curiae. The current rule requires disclosure of contributions intended to fund preparing or submitting the brief by persons "other than the amicus curiae, its members, or its counsel." The proposed amended rule would retain the member exception, but would limit that exception to persons who have been members of the amicus for at least the prior 12 months or who are contributing to an amicus that has existed for less than 12 months. (As noted above, an amicus that has existed for less than 12 months must state the date it was created.) These proposed amendments would require a new member making contributions earmarked for a particular brief to be effectively treated as a non-member for these purposes and would require disclosure.

The proposed amendments would also eliminate the option for a non-governmental entity to file an amicus brief based on the parties' consent during a court's initial consideration of a case on the merits, and would therefore require a motion for leave to file the brief.

Finally, the proposed amendments set the length limit for amicus briefs at 6,500 words (rather than one-half the maximum length authorized for a party's principal brief) to simplify the calculation for filers.

At its meeting, the Standing Committee made minor changes to the rule. The phrase "may be of considerable help to the court" was changed to "may help the court" both to improve the style and readability and because the Committee determined that including the word "considerable" could create an unintentional burden. The disclosures required by the rule were

added to the required contents of the motion for leave. And to promote clarity, the phrase "a party, its counsel, or any combination of parties or their counsel" was changed to "a party, its counsel, or any combination of parties, their counsel, or both." Other changes to improve style and consistency were made to the rule and the committee note.

Rule 32 (Form of Briefs, Appendices, and Other Papers)

The proposed amendments to Rule 32 conform Rule 32(g)'s cross-references to the proposed amendments to Rule 29.

Appendix of Length Limits

The proposed amendments to the Appendix of Length Limits conform the Appendix's list of length limits for amicus briefs to the proposed amendments to Rule 29.

Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis)

The proposed amendments, in response to several suggestions, simplify Form 4 to reduce the burden on individuals seeking in forma pauperis (IFP) status (including the amount of personal financial detail required), while providing the information that courts of appeals need and find useful when deciding whether to grant IFP status.

Information Items

The Advisory Committee met on April 10, 2024. In addition to the recommendations discussed above, the Advisory Committee discussed a possible new rule regarding intervention on appeal, considered the possibility of improving the length and content of appendices, and discussed possible amendments to Rule 15 (Review or Enforcement of an Agency Order—How Obtained; Intervention). Also, the Advisory Committee removed from consideration a suggestion to eliminate PACER fees, because it is not a subject governed by the rules.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules and Forms Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules recommended for final approval: (1) amendments to Bankruptcy Rule 3002.1 and six new Official Forms related to those amendments; (2) amendments to Rule 8006; and (3) amendments to Official Form 410. The Standing Committee unanimously approved the Advisory Committee's recommendations.

<u>Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case) and Related Official Forms</u>

Rule 3002.1 is amended to encourage a greater degree of compliance with its provisions by adding an optional motion process the debtor or case trustee can initiate to determine a mortgage claim's status while a chapter 13 case is pending to give the debtor an opportunity to cure any postpetition defaults that may have occurred. The changes also add more detailed provisions about notice of payment changes for home-equity lines of credit.

Accompanying the proposed amendments to Rule 3002.1 is a proposal for adoption of six new Official Forms:

- Official Form 410C13-M1 (Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim)
- Official Form 410C13-M1R (Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim)
- Official Form 410C13-N (Trustee's Notice of Payments Made)
- Official Form 410C13-NR (Response to Trustee's Notice of Payments Made)
- Official Form 410C13-M2 (Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of Mortgage Claim)
- Official Form 410C13-M2R (Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of the Mortgage Claim)

Under Rule 3002.1(f), an official form motion (410C13-M1) can be used by the debtor or trustee over the course of the plan to determine the status of the mortgage. An official form response (410C13-M1R) is used by the claim holder if it disagrees with facts stated in the motion. If there is a disagreement, the court will determine the status of the mortgage claim. If

the claim holder fails to respond or does not dispute the facts set forth in the motion, the court may enter an order favorable to the moving party based on those facts.

Under Rule 3002.1(g), after all plan payments have been made to the trustee, the trustee must file the new official form notice (410C13-N) concerning disbursements made, amounts paid to cure any default, and whether the default has been cured. The claim holder must respond to the notice using the official form response (410C13-NR) to provide the required information. Rule 3002.1(g) also provides that either the trustee or the debtor may file a motion, again using an official form (410C13-M2), for a determination of final cure and payment. If the claim holder disagrees with the facts set out in the motion, it must respond using Official Form 410C13-M2R.

Stylistic changes are made throughout the rule, and its title and subdivision headings have been changed to reflect the amended content.

Rule 8006 (Certifying a Direct Appeal to a Court of Appeals)

Rule 8006 addresses the process for requesting that an appeal go directly from the bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2). The proposed amendment to Rule 8006(g) clarifies that any party to the appeal may file a request that a court of appeals authorize a direct appeal. There is no obligation to do so if no party wishes the court of appeals to authorize a direct appeal. This amendment dovetails with the proposed amendments to Appellate Rule 6 discussed earlier in this report.

Official Form 410 (Proof of Claim)

The form is amended to permit use of the uniform claim identifier for all payments in cases filed under all chapters of the Bankruptcy Code, not merely electronic payments in chapter 13 cases. In addition, an amendment is made to the margin note in “Part 3: Sign Below” to conform to the restyled rules approved by the Judicial Conference in September 2023 (JCUS-SEP 2023, p. 24): the reference to Rule 5005(a)(2) is changed to Rule 5005(a)(3).

Recommendation: That the Judicial Conference approve the following:

a. Proposed amendments to Bankruptcy Rules 3002.1 and 8006, 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. Effective December 1, 2025 and contingent on the approval of the above-noted amendments to Bankruptcy Rule 3002.1, the proposed amendments to Bankruptcy Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R, as set forth in Appendix B, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date; and

c. Effective December 1, 2024, the proposed amendments to Official Form 410, as set forth in Appendix B, 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 on Bankruptcy Rules submitted proposed amendments to (1) Rule 3018; (2) Rules 9014, 9017, and new Rule 7043; and (3) Rules 1007, 5009, and 9006, with a recommendation that they be published for public comment in August 2024. The Standing Committee unanimously approved the Advisory Committee's recommendation, with changes to the language in the committee note to Rule 9014 addressing the different treatment of adversary proceedings and contested matters with respect to allowing remote testimony.

Rule 3018 (Chapter 9 or 11—Accepting or Rejecting a Plan)

The proposed amendments would authorize a court in a chapter 9 or 11 case to treat as an acceptance of a plan a statement on the record by a creditor's attorney or authorized agent.

Rules 9014 (Contested Matters), 9017 (Evidence), and new Rule 7043 (Taking Testimony)

The proposed amendments would (1) amend Rule 9017 to eliminate the applicability of Fed. R. Civ. P. 43 (Taking Testimony) to bankruptcy cases generally; (2) create a new Rule 7043 (Taking Testimony) that would retain the applicability of Fed. R. Civ. P. 43 in

adversary proceedings—thereby authorizing remote witness testimony in adversary proceedings "for good cause in compelling circumstances and with appropriate safeguards"; and (3) amend Rule 9014 to allow a court in a contested matter to permit remote witness testimony "for cause and with appropriate safeguards" (i.e., eliminating the requirement of "compelling circumstances"). The effect of this proposal would be to provide bankruptcy courts greater flexibility to authorize remote testimony in contested matters. This proposed change rests on the difference between adversary proceedings and contested matters: whereas adversary proceedings resemble civil actions, contested matters proceed by motion and can usually be resolved less formally and more expeditiously by means of a hearing, often on the basis of uncontested testimony.[2]

Rules 1007 (Lists, Schedules, Statements, and Other Documents; Time to File), 5009 (Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied), and 9006 (Computing and Extending Time; Motions)

Proposed changes to Rules 1007, 5009, and 9006 are made to reduce the number of individual debtors who go through bankruptcy but whose cases are closed without a discharge because they either failed to take the required course on personal financial management or merely failed to file the needed documentation upon completion of the course. The proposed amendments to Rule 1007, along with conforming amendments to Rule 9006, would eliminate the deadlines for filing the certificate of course completion. The proposed amendment to Rule 5009 would provide for two notices instead of just one, reminding the debtor of the need to take the course and to file the certificate of completion.

[2]The Advisory Committee on Bankruptcy Rules previously requested input on these proposed amendments from the Committees on Court Administration and Case Management (CACM Committee) and the Administration of the Bankruptcy System, which advised that the proposals would not appear to create any conflict with existing Judicial Conference policy regarding remote access or remote proceedings, nor impact the CACM Committee's ongoing consideration of potential revisions to the remote public access policy.

Information Items

The Advisory Committee on Bankruptcy Rules met on April 11, 2024. In addition to the recommendations discussed above, the Advisory Committee discussed a proposal to require redaction of the entire SSN in court filings; two suggestions to eliminate the requirement that all notices given under Rule 2002 include in the caption, among other things, the last four digits of the debtor's SSN; and a suggestion to allow the appointment of masters in bankruptcy cases and proceedings.

FEDERAL RULES OF CIVIL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Civil Rules recommended for final approval proposed amendments to Civil Rules 16 and 26, and new Rule 16.1. The Standing Committee unanimously approved the Advisory Committee's recommendations, with minor changes to the proposed amendments to new Rule 16.1.

Rule 16 (Pretrial Conferences; Scheduling; Management) and Rule 26 (Duty to Disclose; General Provisions Governing Discovery)

The proposed amendments would call for early identification of a method to comply with Rule 26(b)(5)(A)'s requirement that producing parties describe materials withheld on grounds of privilege or as trial-preparation materials. Specifically, the proposed amendment to Rule 26(f)(3)(D) would require the parties to address in their discovery plan the timing and method for complying with Rule 26(b)(5)(A). The proposed amendment to Rule 16(b) would provide that the court may address the timing and method of such compliance in its scheduling order.

After public comment, the Advisory Committee recommended final approval of the proposed amendments as published with minor changes to the committee notes.

New Rule 16.1 (Multidistrict Litigation)

Proposed new Rule 16.1 is designed to provide a framework for the initial management of multidistrict litigation (MDL) proceedings. After several years of work by its MDL subcommittee, extensive discussions with interested bar groups, consideration of multiple drafts, three public hearings on the published draft, and subsequent revisions based on public comment, the Advisory Committee unanimously recommended final approval of new Rule 16.1.

Rule 16.1(a) encourages the transferee court to schedule an initial MDL management conference soon after transfer, recognizing that this is currently regular practice among transferee judges. An initial management conference allows for early attention to matters identified in Rule 16.1(b), which may be of great value to the transferee judge and the parties. Because it is important to maintain flexibility in managing MDL proceedings, proposed new Rule 16.1(a) says that the transferee court "should" (not "must") schedule such a conference.

Rule 16.1(b)—a revised version of what was published as subdivision (c)—encourages the court to order the parties to submit a report prior to the initial management conference. The report must address any topic the court designates—including any matter under Rule 16—and unless the court orders otherwise, the report must also address the topics listed in Rules 16.1(b)(2)-(3). Rule 16.1(b)(2) directs the parties to provide their views on appointment of leadership counsel; previously entered scheduling or other orders; additional management conferences; new actions in the MDL proceeding; and related actions in other courts. Rule 16.1(b)(3) calls for the parties' "initial views" on consolidated pleadings; principal factual and legal issues; exchange of information about factual bases for claims and defenses; a discovery plan; pretrial motions; measures to facilitate resolving some or all actions before the court; and referral of matters to a magistrate judge or master. Because court action on some matters identified in paragraph (b)(3) may be premature before leadership counsel is appointed,

those topics are categorized separately from those in paragraph (b)(2). Rule 16.1(b)(4) permits the parties to address other matters that they wish to bring to the court's attention.

Rule 16.1(c) prompts courts to enter an initial MDL management order after the initial MDL management conference. The order should address the matters listed in Rule 16.1(b) and may address other matters in the court's discretion. This order controls the MDL proceedings unless and until modified.

Following public comment, the Advisory Committee made some minor changes to the proposed new rule as published. In response to extensive public input, it removed a provision inviting courts to consider appointing "coordinating counsel." For the reasons noted above, it restructured the list of matters to be included in the parties' report into the "views" called for by Rule 16.1(b)(2) and the "initial views" called for by Rule 16.1(b)(3), and it revised those provisions to direct parties to address the listed topics unless the court orders otherwise (rather than obligating the court to affirmatively set out minimum topics to be addressed). It also made stylistic changes based on input from the Standing Committee's style consultants.

At its meeting, the Standing Committee made minor changes to the rule and committee note to improve style and promote consistency. In the committee note, language was refined to clarify measures to facilitate resolution of MDL proceedings.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Civil Rules 16 and 26, and new Rule 16.1, as set forth in Appendix C, 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.

Information Items

The Advisory Committee on Civil Rules met on April 9, 2024. In addition to the matters discussed above, the Advisory Committee discussed various information items, including potential amendments to Rule 7.1 (Disclosure Requirement) regarding disclosure of possible

grounds for recusal, Rule 28 (Persons Before Whom Depositions May Be Taken) regarding cross-border discovery, Rule 41(a) (Dismissal of Actions) regarding the dismissal of some but not all claims or parties, Rule 45(b)(1) (Subpoena) regarding methods for serving a subpoena, and Rule 81(c)(3)(A) (Applicability of the Rules in General; Removed Actions) regarding demands for a jury trial in removed cases. The Advisory Committee also discussed issues related to sealed filings and use of the word "master" in the rules, and was briefed on the random case assignment policy adopted by the Judicial Conference in March 2024 (*see* JCUS-MAR 2024, p. 8) and the importance of monitoring its implementation, as well as ongoing research related to rulemaking authority in this area. Finally, the Advisory Committee discussed a new proposal to amend Rule 43(a) (Taking Testimony) and Rule 45(c) (Subpoena) concerning the use of remote testimony in certain circumstances, and a new subcommittee was formed to consider this proposal.

FEDERAL RULES OF CRIMINAL PROCEDURE

Information Items

The Advisory Committee on Criminal Rules met on April 18, 2024, and discussed several information items, including two new suggestions.

The Advisory Committee continues to consider a possible amendment to Rule 17 (Subpoena), prompted by a suggestion from the White Collar Crime Committee of the New York City Bar Association. The Advisory Committee's Rule 17 subcommittee is working to develop a draft of a proposed amendment to clarify the rule and expand the scope of parties' authority to subpoena material from third parties before trial. The subcommittee has tentatively concluded that any proposed amendment should provide for case-by-case judicial oversight of each subpoena application, express authorization of ex parte subpoenas, and different standards or levels of protection for personal or confidential information and other information.

Last year, the Advisory Committee received two suggestions regarding Rule 53 (Courtroom Photographing and Broadcasting Prohibited) and proceedings in the cases of *United States v. Donald J. Trump*. The Advisory Committee concluded that it did not have the authority to exempt specific cases or parties from the rule's prohibition on broadcasting, and it acknowledged that any amendment under the Rules Enabling Act process would likely take three or more years. The Advisory Committee determined, however, that further examination of the proposal to amend Rule 53 was warranted, and, as previously reported to the Judicial Conference, a subcommittee was formed. The subcommittee is in early stages of its consideration of potential amendments and will coordinate with other committees evaluating issues of remote public access to federal judicial proceedings.

The Advisory Committee also discussed two new suggestions. The Department of Justice has submitted a suggestion to amend Rule 49.1 (Privacy Protection For Filings Made with the Court) to require the use of pseudonyms—instead of initials—to mask the identity of minors in court filings. A new subcommittee was formed to consider this proposal as well as other privacy issues under Rule 49.1. The Advisory Committee received another suggestion to clarify Rule 40 (Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District) as it applies when a defendant from outside the district is arrested for violating conditions of release. The Advisory Committee recently received a related submission (from the Administrative Office's Magistrate Judges Advisory Group) which includes a comprehensive proposal for additional amendments to Rule 40. Consideration of these proposals will continue.

FEDERAL RULES OF EVIDENCE

Rule Approved for Publication and Comment

The Advisory Committee on Evidence Rules submitted a proposed amendment to Rule 801(d)(1)(A) with a recommendation that it be published for public comment in August 2024. The Standing Committee (with the Department of Justice representative abstaining) approved the Advisory Committee's recommendation, with minor amendments to the committee note.

Rule 801 (Definitions That Apply to This Article; Exclusions from Hearsay)

The proposed amendment provides that all prior inconsistent statements admissible for impeachment are also admissible as substantive evidence, subject to Rule 403. The current Rule 801(d)(1)(A) includes a very limited exemption from the hearsay rule for prior inconsistent statements of a testifying witness, providing that a prior statement is substantively admissible only when it was made under oath at a formal proceeding.

Information Items

The Advisory Committee met on April 19, 2024. In addition to the recommendation discussed above, the Advisory Committee held a panel discussion on artificial intelligence and machine-generated information, and the possible impact of artificial intelligence on the Federal Rules of Evidence. The Advisory Committee also discussed a possible amendment to Rule 609(a) (Impeachment by Evidence of a Criminal Conviction) and a possible new rule to address evidence of prior false accusations made by alleged victims in criminal cases.

PROPOSED 2024 REPORT OF THE JUDICIAL CONFERENCE ON THE ADEQUACY OF PRIVACY RULES PRESCRIBED UNDER THE E-GOVERNMENT ACT OF 2002

The E-Government Act of 2002 directed the judiciary to promulgate rules, under the Rules Enabling Act, "to protect privacy and security concerns relating to electronic filing of documents and the public availability … of documents filed electronically." Pub. L.

No. 107-347, § 205(c)(3)(A)(i). Pursuant to this mandate, the "privacy rules"—Appellate Rule 25(a)(5), Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1—took effect on December 1, 2007. Section 205(c)(3)(C) of the E-Government Act directs that, every two years, "the Judicial Conference shall submit to Congress a report on the adequacy of [the privacy rules] to protect privacy and security." The most recent prior report was completed in June 2022. This report covers the period from June 2022 to June 2024. The Committee considered and approved the proposed draft 2024 report of the Judicial Conference on the Adequacy of the Privacy Rules Prescribed under the E-Government Act of 2002, subject to revisions approved by the chair in consultation with the Rules Committee Staff.

Part I of the 2024 report describes the consideration of several proposed rule changes that include privacy-related issues. The Bankruptcy, Civil, and Criminal Rules Committees are reconsidering the need for the last four digits of SSNs in court filings, and they are also considering whether the privacy rules need to remain uniform with respect to the level of redactions applied to SSNs. One suggestion noted in the 2022 report resulted in the proposed amendments to Appellate Form 4 (discussed earlier in this report) that will be published for comment in August 2024. Several more recent privacy-related suggestions are in the beginning stages of consideration. Part II of the 2024 report describes ongoing judiciary implementation efforts to protect privacy in court filings and opinions. Among other things, the CACM Committee sent a memorandum to the courts in May 2023 sharing suggested practices to protect personal information in court filings and opinions and encouraging continued outreach and educational efforts. The memorandum also reminded courts about the possible inclusion of sensitive information in Social Security and immigration opinions and reminded courts of a software fix implemented in 2020 that can mask certain information in extracts of Social Security and immigration opinions. Part II also reports that the CACM Committee asked

the Administrative Office and the FJC to explore other ways to increase awareness of the need to protect privacy in court filings and opinions. This has led the Administrative Office to update the judiciary's internal and external websites, and the FJC to consider increased ways to address privacy issues in educational materials for new judges and other judiciary officials. Part III of the 2024 report, in turn, discusses the FJC's 2024 update of its studies in 2010 and 2015 concerning the rate of compliance with existing privacy rules regarding unredacted SSNs in court filings, conducted at the request of the CACM Committee. The FJC's 2024 study reveals that instances of non-compliance remain very low. Upcoming FJC studies addressing other aspects of the privacy rules will be considered by the rules committees and the CACM Committee in the coming years and will be addressed in future privacy reports.

The CACM Committee considered the draft report at its May 2024 meeting and endorsed a recommendation that the Judicial Conference approve the 2024 report and ask the AO Director to transmit it to Congress in accordance with the law.

> **Recommendation:** That the Judicial Conference approve the proposed 2024 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002, as set forth in Appendix D, and ask the Administrative Office Director to transmit it to Congress in accordance with the law.

JUDICIARY STRATEGIC PLANNING

The Committee was asked to provide input on the proposed process for the 2025 review and update of the *Strategic Plan for the Federal Judiciary*. The Committee's views were

communicated to Judge Scott Coogler (N.D. Ala.), the judiciary planning coordinator, by letter dated June 17, 2024.

Respectfully submitted,

John D. Bates, Chair

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

* * * * *

TAB 4

TAB 4A

MEMORANDUM

To: Advisory Committee Chairs

From: Reporters' Privacy Rules Working Group
H. Thomas Byron III, Rules Committee Chief Counsel

Re: Potential issues related to the privacy rules

Date: August 21, 2024

The Rules Committees have received several suggestions that address particular issues related to the privacy rules (Appellate Rule 25, Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1): (1) a suggestion to reconsider whether to require complete redaction of social-security numbers (SSNs) in federal-court filings (22-AP-E, 22-BK-I, 22-CV-S, 22-CR-B); (2) suggestions to streamline the caption on many bankruptcy notices by limiting or eliminating detailed information about a debtor, including the debtor's SSN, from subsequent notices after the meeting of creditors notice (23-BK-D, 23-BK-J); and (3) a suggestion to amend Criminal Rule 49.1(a)(3) and corresponding provisions of the other privacy rules, which currently require including in a filing only the initials of a known minor, to require instead the use of a pseudonym in order to better protect the privacy interests of minors who are victims or witnesses (suggestions 24-CR-A, 24-AP-B, 24-BK-D, 24-CV-C). The appropriate Advisory Committees will continue to consider those pending suggestions. This memo addresses whether those deliberations should expand to encompass other privacy-related issues, and recommends against such an expansion.

I. Background and Overview

At the spring 2024 meetings, the Advisory Committees discussed a suggestion from Senator Wyden (22-AP-E, 22-BK-I, 22-CV-S, 22-CR-B) that would require complete redaction of social-security numbers. The agenda books included a sketch of a draft rule amendment but did not recommend that the amendment be considered at that time. (Our March 19, 2024, memorandum is attached for reference.) Based on the recommendation of the reporters' working group, the committees decided to defer consideration of a draft rule amendment until after discussion of pending suggestions and possibly other potential issues concerning the privacy rules.

In addition to the pending suggestions that are under consideration by the Bankruptcy and Criminal Rules Committees, we have identified several potential

issues common to all three rule sets (Bankruptcy, Civil, and Criminal).[1] This memorandum explains the tentative conclusion of the working group that those issues, outlined below, do not warrant further study by the advisory committees. We seek input from each committee about that recommendation and about whether any other issues related to the privacy rules deserve consideration at this time.

Each of the issues described below represents an area where some clarifying changes could be made to the privacy rules or where they could be expanded to cover additional information. But our consensus view is that there is no demonstrated need for the Rules Committees to take up any of these issues. Put simply, there is no real-world problem that we need to solve right now. That initial question—whether there is an actual problem in the application of the rules that could be solved by an amendment—has long driven the focus of the rules committees, and it properly reflects the limited time and other resources available to the committees, as well as the presumption that rule amendments should be limited to avoid disruption of settled practices.

That view could change if we receive a specific suggestion for a rule amendment that identifies a practical problem in the privacy rules or if case law or other information reflects real uncertainty or divergence in how the rules are being interpreted or applied. In that event, we will ask the committees to consider how to address the particular concern. Similarly, if another Judicial Conference committee, such as CACM or IT, were to identify a privacy-related concern that could be addressed by a rule amendment, the rules committees could consider the issues raised in that context.

In the meantime, the Bankruptcy and Criminal Rules Committees will continue to consider the pending proposals for amendments to the privacy rules. The suggestion for an amendment requiring complete redaction of social-security numbers can be considered along with any proposed amendments that result from that ongoing work on pending suggestions.

The following summaries describe the issues considered by the working group:

II. Potential Privacy-Rule Issues

A. Ambiguity and overlap in the exemptions

The exemptions from the redaction requirements, set forth in subdivision (b) of each of the privacy rules, include language that appears ambiguous or possibly

[1] Appellate Rule 25(a)(5) generally provides that that the appropriate privacy rule in the Bankruptcy, Civil, or Criminal Rules will govern in particular categories of cases in the appellate courts. Unless otherwise noted, privacy rule citations in this memo are to the common provisions of the Bankruptcy, Civil, and Criminal Rules.

overbroad, although we are not aware of any particular problems or concerns related to the application of these provisions. Here are two examples:

Subdivision (b)(3) refers to the "official record from a state-court proceeding"; rules committee records indicate that this exemption was originally intended to refer to the records of state cases removed to federal court. But that focus is not apparent in the text of the rules. And state-court records can be included in filings in other types of cases as well.

Subdivision (b)(4), which exempts "the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed," was initially aimed at pre-2007 federal court records, although the rule text appears to apply much more broadly to the record of any court or tribunal. It appears to overlap, and perhaps make redundant, some more specific exemptions for: (1) the record of administrative or agency proceedings, in subdivision (b)(2); (2) the official record of a state-court proceeding, in subdivision (b)(3); and (3) state-court records in a pro se action brought under 28 U.S.C. § 2254, in subdivision (b)(6) of Civil Rule 5.2 and Criminal Rule 49.1.

B. Scope of the waiver

The waiver provision in subdivision (h) of Civil Rule 5.2 and Criminal Rule 49.1, and subdivision (g) of Bankruptcy Rule 9037, can be read narrowly to provide only that an individual does not violate the rule by failing to comply with the redaction requirements with respect to the person's own personally identifiable information (PII). That is, inclusion of a person's own unredacted PII waives the redaction requirement for that party with respect to that specific PII in that particular filing only. However, the records of the rules committees' original consideration of the privacy rules support a broader reading of the waiver provision: Under that view, once a person waives the protection of subdivision (a)'s redaction requirements in a filing as to the person's own information, other filers no longer need to redact the disclosed PII in subsequent filings in the case (or perhaps even in other cases).

The broader view is not apparent from the rule text or committee note. But the ambiguity inherent in the term "waives," as well as the rules committees' public records on the subject, leaves open the possibility that the waiver provision could be read by some litigants to permit inclusion of unredacted PII in a broad range of court filings. Here too, however, we have not received any indication of a problem in practice related to the waiver provision.

C. Expansion of protected information subject to redaction

Since their adoption in 2007, the privacy rules have required redaction of "an individual's social-security number, taxpayer-identification number, or birth date," as well as "the name of an individual known to be a minor" and "a financial-account

number." Civil Rule 5.2(a). Other categories or identifiers might equally warrant protection in court filings as PII. For example, an individual's passport or driver's license number could potentially cause harm if disclosed, and there seems little or no reason why an unsealed filing would need to disclose those kinds of details. Similarly, online login information such as account identifiers and passwords could cause harm if disclosed.

Other information, such as an individual's birthplace, could—in conjunction with other data—facilitate identity theft or similar malicious activity. Telephone numbers and physical or email addresses could pose different considerations, as they are generally required for attorneys and pro se filers to ensure that courts and parties can reach litigants. But there might be little reason to allow routine disclosure of third parties' information.

At this point, we have not received any indication that disclosure of these categories of information in court filings is widespread or has led to specific problems. And the absence of such a suggestion seems sufficient reason not to devote resources to these questions now.

D. Protection of other sensitive information

Beyond redaction of specific PII, there might also be additional categories of information that warrant protection from public disclosure. For example, medical records and related information about an individual's health conditions are protected from disclosure in certain circumstances, although the privacy rules do not address that type of information. And geolocation information (such as from cellphone records, smartwatches, GPS devices, or Bluetooth trackers) can also include sensitive personal information that might be considered private in some circumstances. The privacy rules specifically mention filings made under seal in subdivision (d), and these categories of information raise the question whether the rules should protect specific categories of privacy-related information that might need to be known to parties in litigation but should not be subject to wider public disclosure.

A 2023 submission from Lawyers for Civil Justice (23-CV-W) questions whether the rules as a whole do enough to ensure the protection of sensitive personal information from disclosure. The Civil Rules Committee has not yet discussed that suggestion, and its consideration of the issues could provide additional relevant guidance to the other Advisory Committees. At this time, however, there is no indication that the privacy rules need to be amended to address these broader concerns.

MEMORANDUM

To: Advisory Committee Chairs

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

Re: Update on Review of Privacy Rules

Date: March 19, 2024

I. Background and Overview

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

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

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

II. Sketch of Rules Amendments Requiring Complete Redaction of SSNs

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

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

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

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

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

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

III. Other Privacy Rule Issues

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

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

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

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

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

*** * * ***

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

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

TAB 4B

MEMORANDUM

DATE: August 21, 2024

TO: Advisory Committees on the Bankruptcy, Civil, and Criminal Rules

FROM: Judge J. Paul Oetken
Andrew Bradt
Catherine T. Struve

RE: Joint Subcommittee on Attorney Admission Report

We write on behalf of the Joint Subcommittee on Attorney Admission to report on the Subcommittee's ongoing deliberations. As you know, the Subcommittee includes members of the Criminal, Civil, and Bankruptcy Rules Committees[1] and has been tasked with considering the proposal by Alan Morrison and others for adoption of national rules concerning admission to the bars of the federal district courts.[2]

We are grateful for the feedback provided by the Advisory Committees at their spring 2024 meetings. This memo summarizes our inquiries since then. Part I of this memo provides a brief summary of the project to date, including the 2024 discussions in the Standing Committee and Advisory Committee meetings. Part II turns briefly to the question of statutory authority for rulemaking on the topic of attorney admission. Part III considers the admission of attorneys to practice in the federal appellate courts. Part IV discusses local-counsel requirements and how those might affect the efficacy of any national rule that might be adopted concerning attorney admission. Part V summarizes what we have learned to date concerning attorney admission fees. Part VI explores the question of how a rule concerning admission to practice in federal district courts might intersect with state law concerning the unauthorized practice of law. And Part VII

1 The Subcommittee members are: Judge J. Paul Oetken (Chair; member, Bankruptcy Rules Committee), Judge André Birotte Jr. (member, Criminal Rules Committee), Thomas G. Bruton (Clerk of Court representative on the Civil Rules Committee), David J. Burman, Esq. (member, Civil Rules Committee); Judge Michelle M. Harner (member, Bankruptcy Rules Committee), Judge M. Hannah Lauck (member, Civil Rules Committee), and Catherine M. Recker, Esq. (member, Criminal Rules Committee).

2 See Suggestions 23-BK-G, 23-CR-A, and 23-CV-E, available at https://www.uscourts.gov/rules-policies/archives/suggestions/alan-morrison-23-bk-g .

notes that concerns about challenges facing attorneys who are military spouses may be partially addressed through other mechanisms.

I. The project to date

In this Part, we briefly sketch some of the major developments since the project's inception.

A. October 2023 Subcommittee discussion

The Subcommittee held its initial discussion in October 2023, and considered the three possible options sketched by Dean Morrison: (1) creating a national "Bar of the District Court for the United States," (2) adopting a rule providing that admission to any federal district court entitles a lawyer to practice before any federal district court, or (3) adopting a rule barring the district courts from requiring (as a condition of admission to the district court's bar) that the applicant reside in, or be a member of the bar of, the state in which the district court is located.

Subcommittee members expressed no interest in Dean Morrison's Option (1), and a number of members questioned its feasibility and/or predicted that it would generate much opposition. Some participants did express interest in considering Option (3). Participants also discussed the possibility of modeling a national rule for the district courts on Appellate Rule 46.

The Subcommittee members considered various policy concerns regarding any change from the current system. It was noted that requiring in-state bar admission is particularly burdensome in states that require applicants to take the bar examination. But participants also noted the need to allow districts to pursue their goal of protecting the quality of practice within the district – a goal that implicates both a lawyer's experience level and also the capacity of the admitting court to know of discipline imposed on the lawyer in other jurisdictions. The Subcommittee recognized that changing the rules on attorney admission might pose a revenue concern and observed that fee revenues currently fund a range of important court functions.

We also noted that any proposal would need to address questions of whether the rulemakers have statutory authority to address the topic of attorney admission.

The Subcommittee summarized its progress in a December 2023 report that was published in the agenda book for the Standing Committee's January 2024 meeting.[3]

---

3 That report starts on page 101 of the agenda book that is available here: https://www.uscourts.gov/sites/default/files/2024-01_agenda_book_for_standing_committee_meeting_final_0.pdf .

B. Morrison / Alvord December 2023 comment

On December 21, 2023, after publication of the Subcommittee's December 2023 report to the Standing Committee, Dean Morrison and Thomas Alvord responded to the report:

> … Our primary goal in making this proposal was to eliminate the many barriers that prevented lawyers who are admitted to practice in one district court from practicing in other districts. It was our view that centralizing admission in the Administrative Office of the U.S. Courts would be the easiest way to accomplish that goal, but we are by no means wedded to that alternative.
>
> In particular, we have no interest in removing the authority from individual districts to discipline attorneys, and our suggestion to centralize discipline was based on our view about centralizing admission.
>
> As for the issues of costs of implementation and loss of revenue, we also recognize that the AO has much better access to the data than we do. In that connection, we note that different districts have different rules on how often attorneys must renew their licenses and how much the court charges for renewal. The lack of uniformity might be another issue the Subcommittee might consider if it is not inclined to support a centralized system of admission….

C. January 2024 Standing Committee discussion

At the Standing Committee's January 2024 meeting, the Subcommittee Chair and reporters summarized the Subcommittee's initial discussion (as well as the new Morrison / Alvord comments) and sought the Standing Committee's reactions.[4]

Multiple members of the Standing Committee expressed support for pursuing the project. A number of members expressed support for dropping Option (1), and no one expressed interest in pursuing that option. A couple of members expressed support for considering Option (3). It was noted that in-state bar admission is not a close proxy for quality of lawyering and that fees to local counsel can be costly for litigants. A committee member encouraged us to consider whether and how to assist military spouses who must practice law while moving multiple times.

Participants did express some reservations, as well. One member wondered whether lawyers admitted only to federal court would forum-shop into federal court; and other participants expressed concern that permitting out-of-state lawyers to handle state-law claims in diversity or supplemental jurisdiction could offend federalism values. It was noted that

---

4 The relevant portion of the draft minutes of the meeting is available starting on page 22 of the agenda book available here: https://www.uscourts.gov/sites/default/files/2024-06_agenda_book_for_standing_committee_meeting_final_6-21-24.pdf .

admission to practice in the courts of appeal is not a close model for admission to practice in the trial court, where more can go wrong (e.g., with discovery).

Ethics and client-protection concerns were also highlighted. There was concern about national practitioners soliciting clients whom they can only represent in federal court. The importance of collaboration between district courts and state disciplinary authorities was noted. A member asked whether broadening admission standards for lawyers who are not members of the encompassing state's bar could raise questions of unauthorized practice of law.

The question of fees was also discussed, with one member asking how fees and revenues vary across districts.

D. February 2024 Subcommittee discussion

The Subcommittee held its second meeting on February 12, 2024. We first reported on the Standing Committee's January discussion.

The issue of local-counsel requirements emerged as a key theme during our February discussion. It was noted that some judges would oppose a rule amendment that would prevent the court from requiring the involvement of local counsel in every case. That requirement, for instance, could be viewed as important in a district that maintains a practice of moving cases quickly. Would broadening attorney admission requirements do much to increase access if the broadening rule change were offset by a broadened local-counsel requirement? Members suggested that it would be helpful to learn more about why the courts that require local counsel do so.

Attorney discipline also emerged as a matter of concern. While courts each have their own disciplinary systems, and can also coordinate with the disciplinary authorities of other jurisdictions, we questioned how any particular district court could stay abreast of disciplinary activity in far-flung jurisdictions. One idea was to require the admitted attorney to update the court concerning subsequent disciplinary actions in other jurisdictions.

Tim Reagan had already been researching the various district courts' attorney-admission fees, and he undertook to prepare an additional report on local-counsel requirements. (His findings on these topics are discussed in Parts IV and V, below.)

E. Spring Advisory Committee discussions

We provided a report to each of the relevant Advisory Committees (Bankruptcy, Civil, and Criminal) during their spring 2024 meetings. The most extensive discussion took place at the

Civil Rules Committee meeting.[5]

At the Civil Rules Committee's April 9, 2024 meeting, two judge members voiced strong opposition to the project, and a third judge member's comments were also somewhat skeptical. The first judge questioned why this is a rules issue; to him, this is a matter for state bars. He can see why a court would want lawyers practicing before it to be part of the state bar, as that increases the chances of repeat players and a sense of community. He also questioned the analogy to practice in the courts of appeals; coming in to argue an appeal differs from establishing a law practice in the state. The second judge agreed, noting that districts have distinct cultures and important traditions. This judge felt that admission pro hac vice suffices to accommodate the legitimate needs of out-of-state lawyers. The third judge noted that a district's bar-admission practices reflect the culture of the local bar as well as that of the local bench. During the Civil Rules discussion, Dan Coquillette also underscored the need to look at the unauthorized-practice issue.

Our report on the project did not generate feedback during the Bankruptcy Rules Committee's April 11, 2024 meeting, but a member shared a suggestion for a potential contact with state bar authorities. At the Criminal Rules Committee's April 18, 2024 meeting,[6] Jonathan Wroblewski (the DOJ representative) noted that the U.S. Supreme Court has very permissive practices about admitting attorneys to its bar, and he asked how the Court handles situations in which an attorney it has admitted is disbarred in another jurisdiction.

F. Summer 2024 Subcommittee discussion

The Subcommittee met virtually in July 2024. It reviewed Tim Reagan's research (detailed in Parts IV and V below) concerning local-counsel requirements and admission fees. Participants continued discussing the potential significance of local-counsel requirements, which might offset the effects of any new rule requiring the district courts to loosen their attorney-admission practices. The Subcommittee also discussed issues relating to the unauthorized practice of law (noted in Part VI of this memo). Participants noted that it would be useful to make inquiries among state bar authorities to learn whether they would have concerns about a national rule loosening district-court admission requirements for out-of-state lawyers. It was also noted that learning more about circuits' practices under Appellate Rule 46 (see Part III.A below) would be useful.

---

5 The Civil Rules discussion is also described in the Civil Rules Committee's draft minutes starting at page 566 of the agenda book available here: https://www.uscourts.gov/sites/default/files/2024-06_agenda_book_for_standing_committee_meeting_final_6-21-24.pdf .

6 The Criminal Rules discussion is also described in the Criminal Rules Committee's draft minutes starting at page 600 of the agenda book available here: https://www.uscourts.gov/sites/default/files/2024-06_agenda_book_for_standing_committee_meeting_final_6-21-24.pdf .

II. Questions of rulemaking authority

One threshold question, as always, is whether the Rules Enabling Act provides rulemaking authority on this issue. In the language of the statute, would rulemaking regarding district court bar membership fit the category of "general rules of practice and procedure . . . for cases in the United States district courts" and not "not abridge, enlarge or modify any substantive right." The Reporters are continuing research on this question, though the existence of Appellate Rule 46, detailed further below, for a half century provides strong precedent on the general issue.

Questions were also raised about the relevance of 28 U.S.C. § 1654. We enclose a helpful memo from the then-Rules Law Clerk, Zachary Hawari, on that topic.

III. Federal appellate courts as a model?

As the Subcommittee has already discussed, the federal appellate courts might provide a model for attorney admission at the district-court level. Part III.A summarizes what we know of the courts of appeals' approaches under Appellate Rule 46, and Part III.B discusses the approach taken by the U.S. Supreme Court under its rules. Part III.C notes reasons why the appellate court experience may not generalize to the district court.

A. The federal courts of appeals

This subpart recapitulates Rule 46's features and summarizes what we have learned about admission fees and attorney discipline in the courts of appeals.

Appellate Rule 46 reads:

(a) Admission to the Bar.

> (1) Eligibility. An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).
>
> (2) Application. An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:
> "I, ________________, do solemnly swear [or affirm] that I will

conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."

(3) Admission Procedures. On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) Suspension or Disbarment.

(1) Standard. A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) Procedure. The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) Order. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) Discipline. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

A few features of Rule 46 are worth noting. Rule 46(a)(1) mandates that an attorney is eligible for admission to the bar of a court of appeals if the attorney is "of good moral and professional character" and admitted to the bar of the U.S. Supreme Court, a state high court, another federal court of appeals, or a federal district court. Rules 46(a)(2) and (3) accord the court of appeals the authority to set the form of the application and to prescribe the fee. Rule 46(b) recognizes the court of appeals' authority to suspend or disbar the attorney, subject to a loose substantive test (suspension or disbarment by another court, or "conduct unbecoming") and some basic procedural protections. And Rule 46(c) recognizes a court of appeals' authority to

impose discipline short of suspension or disbarment upon lawyers practicing before the court, so long as it provides notice and an opportunity to be heard.

Thanks to helpful research by Tim Reagan, we know that the fee for admission to the bar of a court of appeals varies across the circuits.[7] It is "$199 plus any additional fee that the local court charges."[8] "The median [total] bar admission fee is $239, and the range is from $214 to $300."[9] Tim notes that because Appellate Rule 46 requires that the attorney seeking admission be admitted to another bar, the attorney will also have to pay for a certificate of good standing from that other bar.[10] Three circuits charge a renewal fee (of from $20 to $50) every five years.[11] Some circuits exempt stated categories of lawyers from paying the admission fee (or, in some instances, permit the lawyer to appear pro hac vice without paying a fee). The most common exemptions are those for federal government lawyers and lawyers representing IFP litigants.

As noted, Rule 46(b)(1)(A) provides for discipline based upon suspension or disbarment in another jurisdiction. In the Subcommittee's discussions, the question has arisen how a court of appeals would become aware of discipline imposed by another jurisdiction. Anecdotally, a court of appeals is more likely to be contacted about attorney discipline by authorities from states within the circuit than by authorities from states outside the circuit. But on at least some occasions, a court of appeals may become aware of discipline imposed by an out-of-circuit state. In at least one circuit, a local rule appears to require that members of the court's bar update the court if they are suspended or disbarred in another jurisdiction.[12] Self-reporting is of course an imperfect system; one can find examples where lawyers who should have self-reported failed to do so.

There is reason to think that not all attorney-discipline opinions can be found on electronic case-reporting systems such as WestlawNext or Lexis. It is thus perhaps unsurprising that an initial very rough search found not many opinions available on WestlawNext concerning reciprocal discipline.

The Subcommittee is currently making inquiries with the Circuit Clerks to ascertain how

---

7 See Tim Reagan, Fees for Admission to Federal Court Bars 2 (FJC 2024) ("Reagan Fee Report"). Tim's report was distributed to the Subcommittee previously; you can also download it at https://www.fjc.gov/content/385023/fees-admission-federal-court-bars (last visited August 12, 2024).

8 Id. at 1.

9 Id. at 2.

10 Id. at 1 (noting that the fee for a certificate of good standing "in the states and territories range from no fee to $50").

11 Id. at 2.

12 Ninth Circuit Rule 46-2(c) provides in part: "An attorney who practices before this Court shall provide the Clerk of this Court with a copy of any order or other official notification that the attorney has been subjected to suspension or disbarment in another jurisdiction."

Rule 46 is functioning and whether the Rule's relatively open approach to attorney admission causes any problems with attorney conduct in the circuits.

B. The U.S. Supreme Court

Like the federal courts of appeals, the U.S. Supreme Court has a relatively permissive admission standard. Supreme Court Rule 5.1 provides:

> To qualify for admission to the Bar of this Court, an applicant must have been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for a period of at least three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3-year period; and must appear to the Court to be of good moral and professional character.

Supreme Court Rule 8 governs disbarment and disciplinary action. It provides:

> 1. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or if no response is timely fled, the Court will enter an appropriate order.
>
> 2. After reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, the Court may take any appropriate disciplinary action against any attorney who is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.

The Supreme Court Practice treatise offers this description of the Supreme Court's approach:

> The issuance of an order to show cause is usually premised, as Rule 8 indicates, on a report by federal or state bar authorities that some form of serious discipline has been imposed upon the attorney in question…. The Supreme Court also learns of disbarment or disciplinary actions affecting members of its Bar from the periodic reports of the American Bar Association Center for Professional Responsibility, which maintains a computerized information system referred to as the National Discipline Data Bank. That data bank records disciplinary actions of all state, federal, and appellate courts and bar authorities. The Supreme Court

> Clerk's Office carefully reviews the reports of the Center for Professional Responsibility to determine whether any members of the Supreme Court Bar have been subjected to disbarment or other discipline, and it provides the Center with information concerning disbarment or discipline imposed by the Court….
>
> If reports of state disciplinary actions are made and it appears that any member of the Supreme Court Bar has been the subject of such discipline, the Clerk then makes an evaluation of the disciplinary sanction. A mere reprimand or other minor sanction is not likely to result in the issuance of a show cause order by the Court, although the fact that the state imposed such a sanction is duly noted. But if the state has imposed some significant disciplinary sanction falling short of permanent disbarment, a show cause order may well issue from the Court. In such situations, the Court has been known to impose a more severe sanction than that imposed by the state authorities, the sanction of permanent disbarment.[13]

The National Lawyer Regulatory Data Bank (as it is now called) warrants a bit of explanation. The ABA's website states:

> The ABA National Lawyer Regulatory Data Bank is the only national repository of information concerning public regulatory actions relating to lawyers throughout the United States. It was established in 1968 and is operated under the aegis of the ABA Standing Committee on Professional Discipline. ... The Data Bank is particularly useful for disciplinary authorities and bar admissions agencies in providing a central repository of information to facilitate reciprocal discipline and to help prevent the admission of lawyers who have been disbarred or suspended elsewhere. All states and the District of Columbia, as well as many federal courts and some agencies, provide regulatory information to the Data Bank.[14]

An important limitation of the Data Bank is that submission of data is voluntary, and thus may not be complete.[15] Moreover, one commentator stated in 2012 that disciplinary authorities "are not informed automatically when lawyers they license are reported to the Data Bank."[16] And

---

13 Stephen M. Shapiro et al., Supreme Court Practice ch. 20, § 20.8 (11th ed. 2019) (ebook).
14 American Bar Association, National Lawyer Regulatory Data Bank, available at https://www.americanbar.org/groups/professional_responsibility/services/databank/ (last visited August 12, 2024).
15 See Jennifer Carpenter & Thomas Cluderay, Implications of Online Disciplinary Records: Balancing the Public's Interest in Openness with Attorneys' Concerns for Maintaining Flexible Self-Regulation, 22 Geo. J. Legal Ethics 733, 746 (2009).
16 Arthur F. Greenbaum, The Automatic Reporting of Lawyer Misconduct to Disciplinary Authorities: Filling the Reporting Gap, 73 Ohio St. L.J. 437, 506 n.277 (2012).

even when the authorities are told about the imposition of discipline in another jurisdiction, there may be mix-ups concerning who was disciplined: "because [the Data Bank] does not employ a universal identification number system, it is sometimes hard to identify whether a given lawyer, particularly one with a common name, has been reported."[17] Note, as well, that the "Data Bank only includes those who have actually been disciplined, thus, excluding lawyers who have been sanctioned by courts, but not disciplined."[18]

C. Whether the appellate experience generalizes to the district court

Initial anecdotal data suggest that, at least in one circuit, the current system has not led to problems with the quality of practice before the court of appeals. This is so even though it is possible that the court does not learn about disciplinary problems encountered by all the lawyers that practice before it. Similarly, the U.S. Supreme Court maintains a very large bar and a very permissive admission standard.

However, a number of participants in discussions of this project have questioned whether the experience of the federal courts of appeals with attorney admission can generalize to the context of admission to practice at the trial level. They note that the typical appellate proceeding involves a very confined set of activities and comparatively few deadlines (briefing and perhaps argument), whereas at the trial level – where the record is made and where the participants conduct discovery, hearings, and trials – much more can go awry if an unskilled or unscrupulous practitioner is involved.

IV. Local-counsel requirements

Many districts currently require that an attorney admitted pro hac vice associate local counsel. Dean Morrison and his fellow rule-change proponents appear to assume that admission to a district court's bar would exempt an out-of-state lawyer from the requirement of associating local counsel in a case.[19] But in the Subcommittee's most recent discussions, participants asked whether expanding access to district court bars would be a Pyrrhic victory for the rule change's

---

17 Greenbaum, supra note 16, at 506 n. 277.

18 Lonnie T. Brown, Jr., Ending Illegitimate Advocacy: Reinvigorating Rule 11 Through Enhancement of the Ethical Duty to Report, 62 Ohio St. L.J. 1555, 1607–08 (2001).

19 Dean Morrison's proposal for a national rules change does not discuss local-counsel requirements. But the appended materials (which he and others previously submitted to the Northern District of California in support of a proposal for a local rule amendment) explain that not being admitted to practice in the district subjects litigants to onerous local-counsel requirements. See Petition of Public Citizen Litigation Group & 12 Others Pursuant to Local Rule 83-2 To Amend Local Rule 11-1(b) (Feb. 6, 2018), at 11 ("[U]nder the current Rule, if a client prefers to have as lead counsel a lawyer who is not eligible to become a member of the Bar of this Court, that will generally require retaining and paying for local counsel, not just to sign papers, but, for at least some judges, to appear in court.").

proponents if districts responded by also expanding their local-counsel requirement so that it encompasses attorneys who are admitted in the district but not in the encompassing state.

Currently, more than half of federal districts require participation by local counsel in litigation conducted by an attorney who is admitted pro hac vice. Tim found that "[f]ifty-six districts (60%) require local-counsel participation for pro hac vice appearances. In addition to being a member of the district court's bar, local counsel may be required to live or work in the district or be a member of the local state's bar."[20]

Some districts even require local counsel for some cases litigated by members of the district court's bar;[21] these districts do so in (variously) three types of circumstances: (1) if the attorney is not an in-state bar member, (2) if the attorney neither resides nor has an office in the district, and (3) if the attorney either doesn't reside in the district or lacks a full-time office there.

Courts vary in the degree of involvement that they require of local counsel. Many courts require that local counsel make the motion for non-local counsel's admission pro hac vice; it's possible that this might be one way that a district assures itself that someone has checked that the non-local counsel is in good standing with their home-state bar. The court may also require that local counsel:

- sign the first pleading,[22]
- review and sign all filings,[23]
- be available for service of litigation papers,[24]
- be prepared to try the case,[25]

---

20 Tim Reagan, Local-Counsel Requirements for Practice in Federal District Courts (FJC 2024), at 10. Tim's report and its appendices are available here: https://www.fjc.gov/content/385779/local-counsel-requirements-practice-federal-district-courts (last visited August 12, 2024).

21 See Reagan, Local-Counsel Report, at 6 ("Thirteen districts (14%) require association with local counsel even for some members of the district court's bar."). In six of those districts, though, as Tim notes, the rules don't themselves require local counsel in this situation, but accord the judge discretion to require it.

22 See, e.g., E.D. Okla. Local Civil Rule 83.3(b) ("The local attorney shall sign the first pleading filed and shall continue in the case unless other local counsel is substituted.").

23 See W.D. Wash. Local Civil Rule 83.1(d)(2) ("Unless waived by the court … , local counsel must review and sign all motions and other filings [and] ensure that all filings comply with all local rules of this court ….").

24 See, e.g., E.D. Okla. Local Civil Rule 83.3(b) ("Any notice, pleading or other paper may be served upon the local counsel with the same effect as if personally served on the non-resident attorney.").

25 M.D. Tenn. Local Rule 83.01(e)(4) ("Entry of an appearance or otherwise participating as

- be prepared to step in for the lead counsel whenever necessary,[26]
- attend all court appearances,[27] and/or
- be "equally responsible with *pro hac vice* counsel for all aspects of the case."[28]

We might try to infer from the nature of these requirements the reasons why courts require local counsel. To take an obvious example, the requirements that local counsel be available to accept service seem addressed to a simple logistical point – and one that may be largely obsolete now that service of papers subsequent to the commencement of the case is ordinarily accomplished via CM/ECF. A requirement that local counsel review and sign all filings suggests that the court wishes to have a local (and thus more accountable?) lawyer review the filings' compliance with Civil Rule 11. Requirements that local counsel be available to step in at any time suggest that the court is concerned that out-of-district lawyers not cause delay. (A related example might be the Eastern District of Virginia, where local counsel are viewed as important to fulfilling the demands of the court's "rocket docket.") An additional possibility is that, by requiring local counsel, some courts are trying to address behavior by lawyers that doesn't rise to the level of a discipline issue but that implicates questions of quality of lawyering, civility, and professionalism.

Another theme that has emerged is the potential significance of the court's discretion to excuse compliance with the local-counsel requirement. Some local rules explicitly provide for such discretion. Additionally, some local rules expressly exempt some categories of attorney from the local co-counsel requirement.[29]

Dean Morrison and the other rule-change proponents are not taking direct aim at the local counsel requirements themselves (perhaps because they are not focusing on the relatively small number of districts that require local counsel even for some admitted attorneys). Rather, they appear to assume that admission would release an out-of-district lawyer from any obligation to associate local counsel. To test the plausibility of that assumption, it may make sense to focus on districts that currently require in-state bar membership for admission and ask whether those

---

counsel of record is a representation that the attorney will be prepared to conduct the trial of the case, from which the attorney may only be relieved by approval of the Court.").

26 See W.D. Wash. Local Civil Rule 83.1(d)(2) ("By agreeing to serve as local counsel and by signing the pro hac vice application, local counsel attests that he or she is authorized and will be prepared to handle the matter in the event the applicant is unable to be present on any date scheduled by the court.").

27 See E.D. Mich. Local Rule 83.20(f)(2) ("Local counsel must attend each scheduled appearance on the case unless the Court, on its own motion or on motion or request of a party, dispenses with the requirement.").

28 M.D. Tenn. Local Rule 83.01(d)(6).

29 See, e.g., N.D. Okla. Loc. Gen. Rule 4-3(c) (exempting lawyers for the federal government, federal defenders, and CJA lawyers); M.D. Tenn. Local Rule 83.01(d)(2) (exempting lawyers for the federal government and federal defenders).

districts also impose a local-counsel requirement for attorneys who are only admitted pro hac vice.

We have not yet compiled that full list, but as a starting point, one can look at the nine districts in California, Delaware, Florida, and Hawaii that currently require in-state bar membership for admission (it is in those districts, of course, that in-state bar membership is the most onerous barrier because it requires taking the state bar exam). Here is a chart of those districts:

District	Local counsel required where lead attorney is admitted pro hac vice?
Central District of California	Yes. See C.D. Cal. Local Civil Rule 83-2.1.3.4.
Eastern District of California	Not exactly? E.D. Cal. Local Rule 180(b)(2)(ii) requires that an attorney admitted pro hac vice "shall … designate … a member of the Bar of this Court with whom the Court and opposing counsel may readily communicate regarding that attorney's conduct of the action and upon whom service shall be made."
Northern District of California	Yes. See N.D. Cal. Local Civil Rule 11-3(a)(3) (requiring "[t]hat an attorney, identified by name and office address, who is a member of the bar of this Court in good standing and who maintains an office within the State of California, is designated as co-counsel").
Southern District of California	Not exactly? S.D. Cal. Civil Rule 83.3(c)(4) requires that an attorney admitted pro hac vice must "designate … a member of the bar of this court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom papers will be served."
District of Delaware	Yes. See D. Del. Local Rule 83.5(d): "Unless otherwise ordered, an attorney not admitted to practice by the Supreme Court of the State of Delaware may not be admitted pro hac vice in this Court unless associated with an attorney who is a member of the Bar of this Court and who maintains an office in the District of Delaware for the regular transaction of business ("Delaware counsel"). … Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. Unless otherwise ordered, Delaware counsel shall attend proceedings before the Court."
Middle District of Florida	Apparently not. (N.B.: This district's version of pro hac vice admission is called "special admission," see M.D. Fla. Local Rule 2.01(c).).
Northern District of Florida	Apparently not.
Southern District of Florida	Yes. See Rules 1(b)(1) (local counsel to move admission pro hac vice) and 1(b)(3) (requiring designation of "at least one member of the bar of this Court who is authorized to file through the Court's electronic filing system, with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, upon whom filings shall be served, and who shall be

	required to electronically file and serve all documents and things that may be filed and served electronically, and who shall be responsible for filing and serving documents in compliance with the CM/ECF Administrative Procedures”).
District of Hawaii	Yes. See D. Haw. Local Rule 83.1(c)(2)(B)(vi) (requiring “designation of a current member in good standing of the bar of this court who maintains an office within the district to serve as associate counsel” and also “the associated attorney’s commitment to at all times meaningfully participate in the preparation and trial of the case with the authority and responsibility to act as attorney of record for all purposes; to participate in all court proceedings (not including depositions and other discovery) unless otherwise ordered by the court; and to accept service of any document”).

We can see that more than half of these districts (five of nine) require attorneys admitted pro hac vice to associate local counsel. It’s not implausible to surmise that at least some of these districts – if required by national rule to admit to their bar attorneys not admitted to the bar of the encompassing state – might consider whether to extend the local-counsel requirement to such attorneys.

These reflections prompt the following questions:

- Is this sampling of districts representative of the districts that currently take a restrictive approach to bar admissions?

- In districts with rules that require local counsel, how often are those requirements waived in practice?

- Would a national rule change on bar admission simply prompt widespread enlargement of local-counsel requirements?

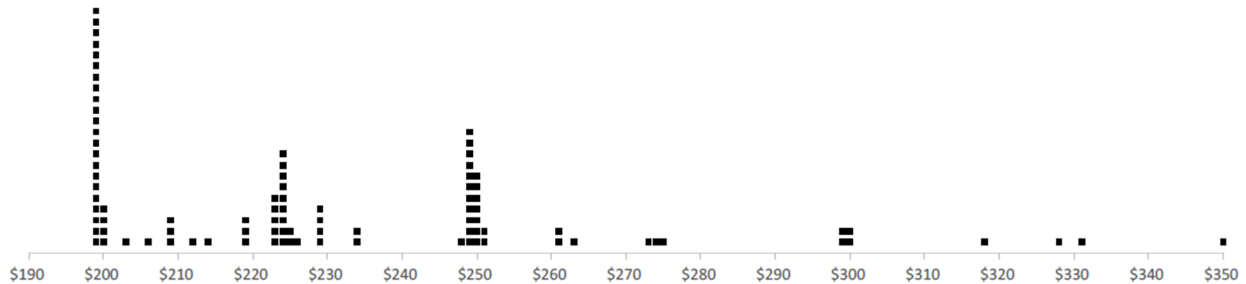
If the answer to the last of these questions is yes, then unless the rulemakers are willing to enlarge this project to encompass districts’ ability to require local counsel, one might question the prospects for effectively addressing the access and expense concerns that underpin the proposals we are currently considering.

V. Attorney admission fees

Our discussions have also focused on the fiscal implications of potential changes to the district courts’ attorney-admission framework. This Part briefly summarizes what we have learned about the revenue coming in and the uses to which it is put.

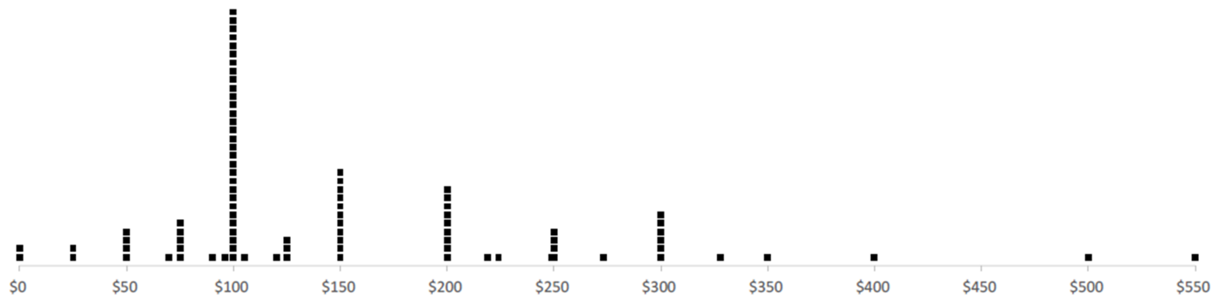
A. Revenue coming in

Tim Reagan has provided us with an overview of the fees charged by districts around the country. He reports that "admission fees range from the national minimum of $199 to $350."[30] His helpful graph[31] suggests that most districts set the fee in the $199 - $250 range:



In addition, roughly a quarter of districts charge periodic dues or renewal fees. "Twenty-five districts (27%) charge dues, often referred to as renewal fees. Renewal periods range from one to six years, and annualized dues range from $3 to $75."[32] From the detailed discussion in the accompanying footnote, it looks as though five districts have annualized 'dues' of more than $25.[33]

Separate from admission fees are the fees charged for pro hac vice admission. Tim reports that "[p]ro hac vice fees range from no fee to $550."[34] His accompanying graph[35] suggests that most districts charge $150 or less, with additional clusters at $200, $250, and $300:



30 Reagan Fee Report, supra note 7, at 3.
31 See id.
32 Id.
33 See id. at 3 n.6.
34 See id. at 3.
35 See id. at 4.

B. Uses to which revenue is put

The district courts do not keep the "national" portion of the admission fee, which is $199;[36] they remit that portion to the Administrative Office of the U.S. Courts. By contrast, there is no "national" portion of any fee for renewing a bar admission or for admission pro hac vice, and so the districts keep the entirety of those fees.

As we have previously noted, districts put their portion of the fees to various uses, including funding a clinic for self-represented litigants; guardians ad litem for defendants who are minors; bench/bar activities; reimbursement of pro bono expenses; and support for a court historical society.

VI. Unauthorized practice of law

During our discussions, a number of participants have stressed the importance of examining the relevance of state law concerning the unauthorized practice of law. An initial look at this field confirms that this topic is well worth the Subcommittee's consideration.

To some, the idea of federal-court attorney-admission barriers intersecting with unauthorized-practice-of-law issues might seem somewhat counterintuitive. After all, if a federal district court *authorizes* someone to practice as a member of the court's bar, how could practice in that court be *unauthorized*? An answer to this question becomes easier to discern if one distinguishes between different types of situations in which the question might be posed.

Some might intuitively imagine a scenario that a big-firm lawyer usually encounters: Big Corp. gets sued in federal court in State A, looks around for a high-powered lawyer, finds Lawyer B in State C, and hires B to handle the federal-court lawsuit in State A. It seems (and likely is) straightforward that B can handle the suit, without being admitted to practice in State A, so long as B is admitted to practice, or gets permission to appear pro hac vice, in the relevant federal district court in State A.

But a look at the caselaw indicates that unauthorized-practice issues usually come up in quite a different type of scenario. Lawyer D, say, is admitted to practice in State E but not in State F. Lawyer D moves to State F and doesn't get admitted in State F, but gets admitted in the federal district court for the District of F. Lawyer D hangs out a shingle in State F, sees clients, triages them, and only takes cases Lawyer D can bring in federal court. In at least some states, it seems, there is a potential risk that the state bar authorities would consider D to be engaging in the unauthorized practice of law in State F by so doing. The strictest caselaw on this topic is in some instances decades old, and there has been some movement toward making the rules on

---

36 See District Court Miscellaneous Fee Schedule (setting fee "[f]or original admission of attorneys to practice" at $199), available at https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule (last visited June 28, 2024).

unauthorized practice of law more forgiving, but nonetheless it appears from an initial look at the caselaw that Lawyer D could run a substantial risk in a number of states by behaving as described.

We will not review here the details of the caselaw that we have gathered thus far. By definition, a field of law (like professional responsibility) that is governed state-by-state is challenging to summarize comprehensively. Moreover, some of the notable caselaw is relatively dated. Instead, we note a few key lines of authority and sketch some relevant concepts. A better sense of the scope and nature of likely problems might emerge from an inquiry with state bar authorities as the project moves forward.

It's useful to start with two sources of authority that might be influential to those shaping state law on unauthorized practice: the Model Rules of Professional Conduct and the Restatement of the Law Governing Lawyers.

Model Rule of Professional Conduct 5.5[37] currently provides in relevant part:

Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) **A lawyer who is not admitted to practice in this jurisdiction shall not:**

(1) **except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law**; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) **A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that**:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

---

37 See American Bar Association, Model Rules of Professional Conduct Rule 5.5, available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_5_unauthorized_practice_of_law_multijurisdictional_practice_of_law/ (last visited August 12, 2024).

(2) **are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized**;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) **A lawyer admitted in another United States jurisdiction** or in a foreign jurisdiction, **and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof**, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, **may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:**

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) **are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction…**.

Model Rule 5.5 (emphases added).

Much of the contents of the current version of Model Rule 5.5 – including most of the bolded language above – was contained in the version of Model Rule 5.5 adopted by the ABA House of Delegates in August 2002.[38] Of particular interest in the current context is Rule

38 See American Bar Ass’n Center for Professional Responsibility, Client Representation in the

5.5(d)(2), which authorizes the provision, by a lawyer not admitted in the state, "through an office or other systematic and continuous presence in this jurisdiction," of "services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction."

A key question is what the drafters meant by "authorized by federal … law or rule." Neither the Commentary nor the 2002 Report of the Commission on Multijurisdictional Practice addresses whether a federal court's admission of a lawyer to practice would count as authorization for this purpose, or what the scope of that authorization would be.[39]

The Restatement of the Law Governing Lawyers also provides relevant, but somewhat equivocal, authority on this point. Section 3 of the Restatement provides:

> § 3 Jurisdictional Scope of the Practice of Law by a Lawyer
>
> A lawyer currently admitted to practice in a jurisdiction may provide legal services to a client:
>
> (1) at any place within the admitting jurisdiction;
>
> (2) before a tribunal or administrative agency of another jurisdiction or the federal government in compliance with requirements for temporary or regular admission to practice before that tribunal or agency; and
>
> (3) at a place within a jurisdiction in which the lawyer is not admitted to the extent that the lawyer's activities arise out of or are otherwise reasonably related to the lawyer's practice under Subsection (1) or (2).

Comment g to Section 3 states in part:

21st Century: Report of the Commission on Multijurisdictional Practice title page & 19-20 (2002) ("MJP Commission Report"). An ABA commission is currently considering possible changes to Model Rule 5.5, including a proposal to authorize practice in all states based on admission in any single state. See Memorandum dated January 16, 2024 from David Machrzak, Chair, Center for Professional Responsibility Working Group on ABA Model Rule of Professional Conduct 5.5 to ABA Entities, Courts, Bar Associations (state, local, specialty, and international), Individuals, and Entities, available at https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/issues-paper-for-comment-mr5-5.pdf (last visited August 19, 2024) ("ABA Issues Paper"). That proposal, if adopted, would significantly change the assumptions on which restrictive federal-court admission rules are based. The ABA project does not address more specifically the federal-court-practice issues of interest here.

39 MJP Commission Report, supra note 38, at 34.

> g. Authorized practice in a federal agency or court. A lawyer properly admitted to practice before a federal agency or in a federal court (see § 2, Comment b) may practice federal law for a client either at the physical location of the agency or court or in an office in any state, so long as the lawyer's practice arises out of or is reasonably related to the agency's or court's business. Such a basis for authorized practice is recognized in Subsection (2). Thus, a lawyer registered with the United States Patent and Trademark Office could counsel a client from an office anywhere about filing a patent or about assigning the ensuing patent right, matters reasonably related to the lawyer's admission to the agency. (The permissible scope of practice of a nonlawyer patent agent may be less, since admission to the agency does not suggest competence to deal with matters, such as the assignment of patents, beyond the jurisdiction of the agency.)
>
> A lawyer admitted in one state who is admitted to practice in a United States district court located in another state, but who is not otherwise admitted in the second state, can practice law in the state so long as the practice is limited to cases filed in that federal court. Local rules in some few federal district courts additionally require admission to the bar of the sitting state as a condition of admission to the federal court. The requirement is inconsistent with the federal nature of the court's business….

Reading this commentary, one might be tempted to impute to the Restatement a broad view about the preemptive force of federal-court rules governing attorney admission to practice in federal court. Before reaching that conclusion, though, it is useful also to consider this observation in the Reporter's Note to comment e: "There are few decisions dealing with the question of permissible out-of-state practice. Several involve clear instances of impermissible practice, through setting up an office in a state in which the lawyer is not admitted." Admittedly, the Reporter's Note expresses only the views of the Reporter, and not necessarily those of the ALI. But together, the commentary and the Reporter's Note suggest a view that admission to practice in a federal district protects the lawyer from unauthorized-practice accusations so long as the lawyer limits that practice to the cases actually filed in federal court – but that the lawyer courts trouble by actually opening an office in a state in which the lawyer isn't admitted.

It's also useful to consider the U.S. Supreme Court's decision in *Sperry v. State of Florida*, 373 U.S. 379 (1963). *Sperry* provides some support for the idea that a lawyer who only maintains an in-state office for purposes of a solely federal-tribunal practice does not violate state unauthorized-practice prohibitions. However, *Sperry* can be read narrowly to apply only to the context in which it arose – federal patent office practice – in which the topic area is well-defined and the jurisdiction is exclusively federal.

Sperry was "a practitioner registered to practice before the United States Patent Office"

who had "not been admitted to practice law before the Florida or any other bar."[40] He had an office in Tampa and held "himself out to the public as a Patent Attorney."[41] The Florida Supreme Court found that he was engaging in unauthorized practice and enjoined him from, inter alia, from calling himself a patent attorney, giving legal opinions (even on patentability), preparing legal documents (including patent applications), "holding himself out, in [Florida], as qualified to prepare … patent applications," or otherwise practicing law.[42] The U.S. Supreme Court vacated and remanded, holding that 35 U.S.C. § 31[43] and regulations promulgated thereunder authorized the admission of persons, including nonlawyers, to practice before the Patent Office.[44] The Court did not define exactly what the state was foreclosed from prohibiting, but offered this guidance:

> Because of the breadth of the injunction issued in this case, we are not called upon to determine what functions are reasonably within the scope of the practice authorized by the Patent Office. The Commissioner has issued no regulations touching upon this point. We note, however, that a practitioner authorized to prepare patent applications must of course render opinions as to the patentability of the inventions brought to him, and that it is entirely reasonable for a practitioner to hold himself out as qualified to perform his specialized work, so long as he does not misrepresent the scope of his license.[45]

One might read *Sperry* to stand for the proposition that any valid federal-law provision authorizing a person to practice before a federal tribunal preempts the application of state unauthorized-practice provisions to a lawyer's work in connection with such authorized practice before a federal tribunal. Note, however, that federal patent applications differ from ordinary federal-court litigation because the subject-matter is discrete and exclusively federal, and might well be ordinarily separable from matters that might be covered by state law.

---

40 Sperry, 373 U.S. at 381.

41 Id.

42 Id. at 382.

43 At the time, 35 U.S.C. § 31 provided:

> § 31. Regulations for agents and attorneys
> The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

44 Id. at 384-85.

45 Id. at 402 n.47.

As noted previously, it is challenging to offer confident appraisals of state unauthorized-practice law as it might apply to practice by lawyers admitted in federal court but not to the bar of the encompassing state. Much of the relevant caselaw is somewhat dated – raising the possibility that subsequent changes in applicable state statutes or rules might have undermined earlier and more restrictive approaches. Also, the Rules of Professional Conduct may provide incomplete guidance in some states, because unauthorized-practice principles are also contained in statutes that might not have been updated at the same time as the state's Rules of Professional Conduct.

Initial research has uncovered some authority in a couple of states that suggests that admission to practice in an in-state federal court may not always immunize a lawyer (who is not admitted to the state bar) from charges of unauthorized practice. The picture emerging is that the clearest case for protection from unauthorized-practice allegations is where the client relationship arose in a state where the lawyer is admitted to practice and the client then decides to sue (or is sued) in a federal court (in a different state) where the lawyer is admitted. The clearest case of danger of unauthorized practice would be where the lawyer opens a permanent office only in the encompassing state without being admitted there, and brings in new clients by interviewing them in that in-state office. Even if the lawyer appears only in federal court, the lawyer might be regarded (at least by authorities in some states) as engaging in unauthorized practice.

Due to this complexity, it may be difficult to draft a national rule without giving attention to the unauthorized-practice question in some way. While the picture of unauthorized-practice-of-law doctrine is still emerging, this topic merits attention as the Subcommittee seeks the views of state bar authorities concerning the issues raised by this project.

VII. Addressing concerns about attorneys who are military spouses

In the discussions to date, participants have sometimes mentioned that particular types of attorneys face particular hardship from restrictive bar admission rules. Lawyers who are military spouses are an example, as their spouse's work might require the family to relocate multiple times.

That particular concern might be partly addressed at the state bar level. An effort is underway to persuade state bar authorities to adopt special provisions to accommodate military spouses. The Military Spouse J.D. Network Foundation provides this description of its ongoing efforts:

> In February 2012, with the support of the ABA Commission on Women in the Profession, the ABA House of Delegates adopted a ABA Resolution 108 (2012) supporting changes in state licensing rules for military spouses with law degrees.

In April 2012, Idaho became the first state to approve a military spouse licensing accommodation.

Then in July 2012, the Conference of Chief Justices voted to support a resolution for admission of military spouse attorneys without examination. ….

December 2012 saw the second state, Arizona, adopt a licensing rule specifically addressed the challenges faced by military spouse attorneys. Since then, other states have joined in the efforts to reduce barriers to employment for military spouses in the legal profession.

In the years since, MSJDN has seen more than 40 states and the U.S. Virgin Islands pass common sense license reciprocity rules for military spouse attorneys. Our efforts continue as we work to reach all 50 states. MSJDN has also begun to petition the nine states which passed license reciprocity for military spouses but included harmful supervision requirements which have rendered the rules unduly burdensome and ineffective in practice.[46]

VIII. Conclusion

This report provides a snapshot of the Subcommittee's efforts as of summer and fall 2024. The Subcommittee will provide further updates as it continues its inquiries, and welcomes any additional Advisory Committee feedback in the meantime.

Encl.

---

46 See Military Spouse J.D. Network Foundation, State Licensing Efforts, available at https://msjdn.org/rule-change/ (last visited August 12, 2024).

MEMORANDUM

To: Catherine T. Struve
Andrew Bradt

From: Zachary Hawari, Rules Law Clerk

Re: History of 28 U.S.C. § 1654

Date: December 28, 2023

History

Why and when was this statute first adopted, and what was its subsequent history?

The statutory right to plead and conduct one's own case personally or by counsel goes back at least to the founding of the United States courts, and its language remains largely unchanged. Section 35 of the Judiciary Act of 1789 provided "[t]hat in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct their cases therein." 1 Stat. 73, 92 (1789).

The Judiciary Act of 1789 was introduced as Senate Bill No. 1 in the first legislative session of the first Congress, and its authorship is often credited to Oliver Ellsworth and the other two members of the drafting committee–William Paterson and Caleb Strong.[1] Section 35 contains the provision that became 28 U.S.C. § 1654, but it also included a more controversial provision providing for the appointment of United States Attorneys and the Attorney General.[2] I have not had much success in identifying the purpose or history of the relevant part of Section 35.

Some courts and commentators have since observed that the Sixth Amendment's right to counsel was being debated at the same time as the Judiciary Act.[3] The history of the common law right to self-representation, the Founders'

---

[1] *See* New Light on the History of the Federal Judiciary Act of 1789 (jstor.org); The Judiciary Act of 1789: Charter for U.S. Marshals and Deputies (usmarshals.gov); First Federal Congress: Creation of the Judiciary (gwu.edu)

[2] New Light on the History of the Federal Judiciary Act of 1789 (jstor.org).

[3] Historical Background on Right to Counsel | Constitution Annotated | Congress.gov | Library of Congress

skepticism toward lawyers, the Sixth Amendment's right to counsel, and the Judiciary Act was discussed extensively by the Supreme Court in *Faretta v. California*, 422 U.S. 806, 812-32 (1975). More research would be required to understand how views during the 17th and 18th century led to Section 35, especially considering that views on the right to counsel in civil and criminal cases appears to have essentially reversed.[4]

In any event, Section 35 was codified in Section 747 of the Revised Statutes in the 1870s. The Judicial Code of 1911 then included a slightly modified version. 36 Stat. 1087, 1164 (1911). Section 272 of Chapter 11, which provided for provisions common to more than one court, stated: "In all courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein" (changes emphasized). When Title 28 was reorganized, that provision was moved from 28 U.S.C. § 394 to § 1654.

In 1948, § 1654 was briefly shortened to: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel." 62 Stat. 869, 944 (1948). According to the reviser's notes for the 1948 amendment, the phrase "as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein" was "omitted as surplusage," and "[c]hanges were made in phraseology."[5] For example, "by the assistance of such counsel or attorneys at law" was apparently shortened to "by counsel."[6]

But in 1949, Congress "restore[d]" the "language of the original law." 63 Stat. 89, 103 (1949). Oddly, this restoration only included the "as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein" phrase.

---

[4] Several colonies in the 17th century prohibited pleading for hire. *Faretta*, 422 U.S. at 827. Interestingly, the Massachusetts Body of Liberties included a proto-attorney-admission element or, at least, a provision giving the court power to reject a representative:

Every man that findeth himselfe unfit to plead his owne cause in any Court shall have Libertie to imploy any man *against whom the Court doth not except*, to helpe him, provided he give him noe fee or reward for his paines….

Id. at n.32 (quoting Art. 26 (1641)) (emphasis added).

[5] United States Code: General Provisions, 28 U.S.C. §§ 1651-1656 (1952) (loc.gov).

[6] It is not entirely clear whether shortening to "by counsel" was done in the 1948 amendment. The advisory committee notes to the 1944 amendment of Criminal Rule 44 quotes § 1654 with the assistance-of-counsel-or-attorney-at-law language. So, either there was another amendment between 1944 and 1948 or the 1949 amendment did not fully restore § 1654 to the 1911 version. Unfortunately, year-by-year versions of this statute have proven difficult to track down.

The change to "by counsel" survived the 1949 rollback. The allusion to the last phrase being "surplusage" in 1948 and its subsequent restoration in 1949 is intriguing, but I have not been able to find much legislative history on these changes. For example, the reviser's notes and several cases refer to 80th Congress House Report No. 308, but I cannot find it online.

The current § 1654 has not changed since 1949. To summarize, these are the differences between 1789 and today:

> "[I]n all ~~the~~ courts of the United States~~,~~ the parties may plead and ~~manage~~ conduct their own ~~causes~~ cases personally or by ~~the assistance of such~~ counsel ~~or attorneys at law~~ as, by the rules of ~~the said~~ such courts, respectively, ~~shall be~~ are permitted to manage and conduct ~~their cases~~ causes therein.

Rule-Making Authority and Appellate Rule 46

Does the statute's reference to counsel who are "permitted to … conduct causes" in the federal courts "by the rules of such courts" indicate that this statute accords the local courts authority over attorney admissions?

Courts were regulating attorney admissions and conduct prior to the REA, but it is not clear under what authority they did so—possibly inherent authority, some natural law theory, or statutory authorization like Section 35. *See generally Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1867) (discussing attorney admission and discipline in the context of a Civil War era statute requiring attorneys to swear oaths).

More recently, the Supreme Court has "recogniz[ed] that a district court has discretion to adopt local rules that are necessary to carry out the conduct of its business. See 28 U.S.C. §§ 1654, 2071; Fed. Rule Civ. Proc. 83." *Frazier v. Heebe*, 482 U.S. 641, 645 (1987). "This authority includes the regulation of admissions to its own bar." *Id.* This is a point on which the dissent agreed. *Id.* at 652 (Rehnquist, J., dissenting) ("It is clear from 28 U.S.C. § 1654 that the authority provided in § 2071 includes the authority of a district court to regulate the membership of its bar.").[7]

Nor was *Frazier* the first time the Supreme Court mentioned these provisions together as a basis for authority. The Court had previously noted that two district

[7] The Court held that the district court "was not empowered to adopt its local Rules to require members of the Louisiana Bar who apply for admission to its bar to live in, or maintain an office in, Louisiana where that court sits." *Frazier*, 482 U.S. at 645. The dissent, however, believed that the Supreme Court lacked authority to set aside a rule promulgated by a district court governing admission to its own bar merely because it found the rules "unnecessary and irrational." *Id.* at 652-55.

courts were "[a]cting under 28 U.S.C. §§ 1654, 2071, and Rule 83" when they promulgated local rules governing practice in their courts." *United States v. Hvass*, 355 U.S. 570, 571 (1958).[8]

Circuit courts have made similar statements. The Seventh Circuit stated that "[t]he authority to adopt rules relating to admission to practice before the federal courts was delegated by Congress to the federal courts in Section 35 of the Judiciary Act of 1789, … *now codified as* 28 U.S.C. § 1654." *Brown v. McGarr*, 774 F.2d 777, 781 (7th Cir. 1985); *see also Pappas v. Philip Morris, Inc.*, 915 F.3d 889, 895 (2d Cir. 2019) (quoting *Brown*). The Seventh Circuit also relied on § 2071 and inherent power to support the district court's authority to regulate attorney conduct.

It appears that courts have the necessary authority to regulate admission to the bar of that court under § 1654 and the REA, but it is not entirely clear whether § 1654, alone, would provide sufficient authority.[9]

If so, was this statute analyzed during prior rulemaking discussion on attorney admissions, for example in the lead-up to the adoption of Appellate Rule 46?

I have not found a direct reference to § 1654 in the discussion leading up to the addition of Appellate Rule 46 in the 1960s—at least not in the materials on the uscourts.gov website, namely the Committee Reports and Meeting Minutes. There is another archive of historical records that I have not yet searched, so there might still be something to be found.

Interestingly, however, in the minutes for the Appellate Rules Committee's August 1963 meeting, Dean O'Meara felt that attorney admission issues should be left for each appellate court to deal with by local rule while other members felt that this was an area where uniformity would be particularly helpful to the bar.[10]

[8] The issue in *Hvass* was not, however, about the validity of a local rule, but rather whether a willfully false statement made by an attorney under oath during the district court's examination, under its local rule, into his fitness to practice before it, constitutes perjury.

[9] The reviser's note to the 1940s amendments to § 1654 also mentions these sections together, stating that "the revised section [1654] and section 2071 of this title effect no change in the procedure of the Tax Court before which certain accountants may be admitted as counsel for litigants under Rule 2 of the Tax Court." That said, the reviser's note was getting at separate discussion about who can appear before the Tax Court and whether it should be limited to attorneys.

[10] Circuit courts as they existed in the 18th century looked very different from modern courts of appeal, which were created in the Evarts Act in 1891. Another potential avenue for follow-up research is determining when courts of appeals created local rules governing attorney admission (presumably in the late 19th and early 20th centuries but possibly earlier) and seeing what authority they cited.

TAB 4C

MEMORANDUM

DATE: August 21, 2024

TO: Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules

FROM: Catherine T. Struve

RE: Sketch of potential rule amendments concerning self-represented litigants' filing and service

As you know, a working group has recently been discussing possible rule amendments on the topic of self-represented litigants' filing and service. The working group has focused on two broad topics: (1) increases to electronic access to court by self-represented litigants (whether via the court's electronic-filing system[1] or alternative means) and (2) service (of papers subsequent to the complaint) by self-represented litigants on litigants who will receive an electronic notice of filing (Notice of Filing)[2] through the court's electronic-filing system or through a court-based

---

1 In prior memos, this project had referred specifically to CM/ECF. This memo refers generically to the "court's electronic-filing system" in order to take account of other terms that courts may use for their electronic-filing system (such as the Appellate Case Management System, or "ACMS," that is in use in the Second and Ninth Circuits).

2 This memo uses "Notice of Filing" to denote an electronic notice provided to case participants by the court's electronic-filing system to inform them of a filing or other activity on the docket. The term "Notice of Filing" encompasses the current terms "Notice of Docket Activity" and "Notice of Electronic Filing" or "NEF."

One Clerk representative questions the choice of "Notice of Filing" as the defined term, and suggests "Notice of Entry" or "Notice of Docket Activity" as possible alternatives: "Because electronic notices are sent whenever anything happens on the docket, we tend to think the term 'NDA' is more appropriate. There are many instances where nothing was 'Filed' and only a docket entry has been entered. Many courts issue docket text-only orders. It's not implausible to consider attorneys eventually doing this too. If so, would 'entry' be more accurate than 'document?'"

This is a good question. If one were thinking only of items that might be served by a party, then "Notice of Filing" seems like a logical choice, because the items that a party might typically need to serve under Rule 5 – usually, post-complaint pleadings, motions, and other papers – would also be filed. But Civil Rule 77(d)(1) incorporates Rule 5(b) when discussing the

electronic-noticing program.

The working group has collaborated on a very tentative sketch of a possible amendment to Civil Rule 5. This memo sets out the current version of that sketch for discussion at the fall Advisory Committee meetings. After providing a brief introduction (in Part I of this memo), I set out the sketch in Part II.

I. Overview of the project

General policy choices. The sketch in Part II implements two policy choices – one regarding service, and the other regarding filing.

As to service, the sketch eliminates the requirement of separate (paper) service (of documents after the complaint) on a litigant who receives a Notice of Filing through the court's electronic-filing system or a court-based electronic-noticing program. (See Part I of my September 2023 memo[3] for discussion of some courts that have already implemented such an exemption.)

The sketch also permits service by email to the address that the court uses to email Notices of Filing, so long as the sender has designated in advance the email address from which such service will be made.[4] This provision could be useful beyond the context of self-

---

clerk's service of notice of the entry of an order or judgment: "Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b)." So it's worthwhile to consider whether the choice of term should reflect the reality that many of the court-provided notices served electronically under Rule 77(d)(1) and Rule 5(b) concern docket entries that don't involve a separately *filed* court order. (See also Rule 79(a)(2), including among the things the clerk must enter in the docket "papers filed with the clerk" and "orders, verdicts, and judgments.")

On the other hand, I think that terminological issue is also baked into the current Rule as well, given that existing Rule 5(b)(2)'s description of service through CM/ECF reads in relevant part "A paper is served under this rule by: … (E) sending it to a registered user by filing it with the court's electronic-filing system." If that provision is sufficiently clear as it applies currently to Rule 5(b) as incorporated by Rule 77(d)(1), then perhaps "Notice of Filing" would be sufficiently clear in the amended rule as applied to the same thing.

3 That memo is available starting at page 184 of the agenda book that is available here: https://www.uscourts.gov/sites/default/files/2024-01_agenda_book_for_standing_committee_meeting_final_0.pdf

4 The proviso about designating the email address from which the service will be made is designed to address the possibility that this sort of email service otherwise might end up in the

represented litigants; for example, discovery material that is served but not filed could also be served this way.

As to filing, the sketch makes two changes compared with current practice: (1) it presumptively permits self-represented litigants to file electronically (unless a court order or local rule bars them from doing so) and (2) it provides that a local rule or general court order that bars self-represented litigants from using the court's electronic-filing system must include reasonable exceptions or must permit the use of another electronic method for filing documents and receiving electronic notice of activity in the case.

A court could comply with this amended filing rule by doing either of the following:

- Allowing reasonable access for self-represented litigants to the court's electronic-filing system. That access could (and I expect typically would) be limited to non-incarcerated litigants and could be restricted to those persons who satisfactorily complete required training. (See Part II of my September 2023 memo for discussion of some courts that already provide such access.)

- Not allowing self-represented litigants to access CM/ECF, but providing them with an alternative electronic means for filing (such as by email or upload) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program). (See Part III of my September 2023 memo for discussion of some courts that already have such alternative programs.)

Note that, under the amended filing rule, a court would need to adopt a local rule or court order *dis*allowing CM/ECF access for self-represented litigants if it wanted to foreclose such access; the default would be access. Note also that the rule would always permit a court to enter an order barring a particular litigant from using CM/ECF.

These policy choices, at present, are the product of discussions in the working group.

---

recipient's "junk mail" folder. This concern might arise with respect to service by a party in a way that it wouldn't arise with respect to notices from the court, because it's reasonable to expect those participating in the court's electronic-filing or electronic-noticing systems to take steps to ensure that emails from the court's email address won't be snared in a junk folder. In order for the participant to take similar steps with respect to service by another litigant, it may be necessary to require that a litigant making service by email has designated their email address in advance before using it to make email service.

It should be noted, though, that there is not full consensus on the inclusion of this proviso. One of the Clerk representatives argues that this proviso is unnecessary and "serves only to complicate the rule. A recipient's junk filters aren't really of concern to the courts. This potentially exists in the paper world too. (We mailed it, but it never arrived for any myriad of reasons.)"

After roughing out a sketch of the proposed rule changes based on those policy choices, we circulated the sketch to the Clerk representatives on the Appellate, Bankruptcy, Civil, and Criminal Rules Committees for their comments. Their input has produced significant improvements in the draft shown here.

In addition, the Clerk liaisons' feedback made clear that – as the committees have already heard – the proposed changes regarding filing by self-represented litigants will be controversial at the level of the trial courts (though likely not at the level of the courts of appeals). Although the proposed rule and Note would make clear that e-filing need not be provided to incarcerated filers and that litigants who abuse the system can be barred from it, concerns persist that technological limitations or cybersecurity fears may nonetheless make it difficult for some trial courts to comply with either of the dual options noted above (providing self-represented litigants with either CM/ECF access or some alternative means of electronic filing and noticing).

In the event that the advisory committees decide to publish these proposed amendments for comment, we would expect to receive robust public input on the filing aspects of the proposal. A question for the Advisory Committees is whether to proceed with publication and comment of the filing portion of the project despite the concerns that have been expressed about it. On one hand, these concerns may ultimately lead the Advisory Committees to hold back from approving the filing aspects of the proposal sketched below (at least in the rule sets that apply to the trial courts). But on the other hand, publication and comment may usefully serve to generate new knowledge and awareness about practices in federal courts around the country, which may be salutary even if the changes concerning filing are not adopted in this rulemaking cycle.

In any event, whether or not the Advisory Committees decide to publish for public comment the aspects of the proposed rule concerning filing, the working group supports the publication (and adoption, assuming no unanticipated grounds for hesitation emerge from the comment period) of the proposed rule changes concerning service. The service-related changes sketched below have not generated substantive concerns to date (though, as noted in this memo, consensus is still emerging on the best language choices for the service provisions).

Implementation across the rule sets. As noted, we are using Civil Rule 5 for illustrative purposes. Once we arrive at a working draft of Civil Rule 5, we would then turn to working on parallel sketches for amendments to the other sets of rules.[5]

---

5 Here is my working list of the rules that would require consideration: Appellate Rule 25 (filing and service); Bankruptcy Rules 5005 (filing), 7005 (applying Civil Rule 5 in adversary proceedings), 8011 (filing & service in appeals to a district court or BAP), and 9036(c) (electronic service); and Criminal Rule 49.

In those other rules, there might be additional particularities to consider as drafting proceeds. For example, as noted in the text, our goal here is to address filing and service issues of documents subsequent to the initial complaint – hence the focus on Civil Rule 5 rather than

Application in the criminal, habeas, and Section 2255 contexts. We are contemplating possible amendments that would be generally parallel across the Appellate, Bankruptcy, Civil, and Criminal rule sets. It is also necessary to consider how the amendments would work in the context of state-prisoner habeas (i.e., Section 2254) and Section 2255 proceedings.

Criminal Rule 49's treatment of issues regarding self-represented litigants may at first appear beside the point, given that nearly all criminal defendants are represented. But Criminal Rule 49's potential applicability to Section 2255 proceedings means that there is a significant population of self-represented litigants that could be affected by the proposed changes to Criminal Rule 49. Admittedly, nearly all those self-represented litigants will be incarcerated, and the proposed amendments would not require courts to provide CM/ECF access for self-represented litigants who are incarcerated. So the on-the-ground effect of the proposed filing-related changes to Criminal Rule 49 would be minimal. However, the proposed service-related changes to Criminal Rule 49 (and Civil Rule 5) would be important for incarcerated self-represented litigants (in Section 2254 and Section 2255 proceedings), because those changes would relieve such litigants of a service requirement that is likely to be onerous for incarcerated litigants (who may have greater difficulty than non-incarcerated litigants in paying for postage).

There is a further reason to amend Criminal Rule 49 in tandem with Civil Rule 5. As you know, Rule 12 of the Rules Governing § 2254 Cases provides that "[t]he Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules." Meanwhile, Rule 12 of the Rules Governing § 2255 Proceedings provides that "[t]he Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules." To the extent that Civil Rule 5 and Criminal Rule 49 are amended so as to take the same approach to the service and filing questions discussed here, that would allow courts to avoid choosing which rule governs.

As drafting proceeds, the Appellate and Criminal Rules Committees might also wish to give attention to whether the proposed changes would require adjustment to the 'prison mailbox' provisions in Appellate Rules 4(c) and 25(a)(2)(A)(iii) and in Rules 3 of the habeas and Section

---

Civil Rule 4. In the bankruptcy context, the petition that initiates the bankruptcy may not be the only case-initiating document, because complaints in adversary proceedings might also be filed in the context of an ongoing bankruptcy. Thus, the Bankruptcy Rules Committee might wish to consider adjusting the language of the sketch's Committee Note, when transposing it into the context of Bankruptcy Rule 5005, to make clear that the amended rule does not displace any local requirement that a complaint initiating an adversary proceeding be filed in paper. The adjustment might be accomplished by this tweak to the Committee Note: "Also, a court could adopt a local provision stating that certain types of filings – for example, **complaints in adversary proceedings, and/or** notices of appeal – cannot be made by means of the court's electronic-filing system."

2255 rules.[6]

II. The tentative rule sketch

Below is the current sketch. A particular focus, in drafting, has been on terminology. We are trying to use language that maps onto the way in which court technology programs currently work and are likely to work in the future.

Currently, the court electronic-filing programs that we are aware of are the Case Management / Electronic Case Filing (CM/ECF) system and the Appellate Case Management (ACMS) system; both of those are encompassed in the term "the court's electronic-filing system." We are also aware of alternative electronic-filing options that some courts provide to self-represented litigants (such as the Electronic Document Submission System (EDSS)) and court-based electronic-noticing programs. Notice from a court-based electronic-noticing system is encompassed in proposed Rule 5(b)(2)'s reference to persons "registered to receive [a Notice of Filing] from the court's electronic-filing system" and in proposed Rule 5(d)(3)(B)(ii)'s reference to "another electronic method for … receiving electronic notice of activity in the case." Alternative electronic-filing options (such as EDSS) are encompassed in proposed Rule 5(d)(3)(B)(ii)'s reference to "another electronic method for filing documents … in the case."

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

(1) In General. Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

---

6 I highlighted this question in a prior sketch of this project that was circulated to the Clerk representatives on the Advisory Committees and to selected additional court personnel. The feedback that we received included this suggestion: "This would be a good opportunity to amend [Appellate Rule] 4(c) to make explicit that the electronic service programs qualify as 'a system designed for legal mail' and to define 'deposited in the institution's mail system' for purposes of filing - what kind of document, statement, or evidence does the inmate need to provide when filing electronically, to get the benefit of the mailbox rule?"

The possibility of revising the prisoner-mailbox provisions to take account of prison e-filing programs may have been briefly considered the last time that the Appellate Rules' prison-mailbox rules were amended (effective 2016). At that time, no attempt was made to address institutional e-filing programs. But it may well be that the prevalence of prison e-filing programs has expanded in the 8+ years since the 2016 amendments were under consideration, so perhaps the time may be ripe for re-considering this question. In any event, that question seems potentially separable from the proposed rule changes addressed in the text of this memo.

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

* * *

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service by Means of the Court's Electronic-Filing System. The [court's sending of the][7] Notice of Filing [is] [constitutes][8] service under this rule [of the filed paper][9] on the Notice's[10] date on any person registered to receive the Notice from the court's electronic-filing system. The court may provide by local rule that [filings] [papers filed] under seal are not served under this Rule 5(b)(2).

(3) Service by Other Means ~~in General~~. A paper ~~is~~ can also be served under this rule by:

---

7 Some participants have suggested eliminating the phrase "court's sending of the" and saying, simply, "The Notice of Filing is" service. That shorter formulation may also work, but one benefit of the slightly longer formulation is that it might be clearer to users (such as self-represented litigants) who aren't generally familiar with the system.

8 Which of these verbs is better? Cf. Civil Rule 5(d)(3)(C) ("A filing made through a person's electronic-filing account . . . constitutes the person's signature.").

9 Is this bracketed language helpful or unnecessary? A participant suggested "of the filed document," but I would lean toward "of the filed paper" if we are adding this phrase, because Civil Rule 5 uses "paper" instead of "document."

10 Should we capitalize "Notice"? I believe that the CM/ECF authorities use capitals in the phrase "Notice of Electronic Filing," see, e.g., https://www.uscourts.gov/court-records/electronic-filing-cmecf/faqs-case-management-electronic-case-files-cmecf. Presumably whether to capitalize the short form ("Notice") is a question for the style consultants.

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address – in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) ~~sending it to a registered user by filing it with the court's electronic-filing system or~~ sending it by email to the address that the court uses to email Notices of Filing – so long as the sender has designated in advance the email address from which such service will be made – or by other electronic means that the person consented to in writing—in either of which events service is complete upon ~~filing or~~ sending, but is not effective if the ~~filer or~~ sender learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing – in which event service is complete when the person making service delivers it to the agency designated to make delivery.

~~**(3) Using Court Facilities.** [Abrogated (Apr. 26, 2018, eff. Dec. 1, 2018.]~~

(4) Papers not filed. Rule 5(b)(3) governs service of a paper that is not filed.

(5) Definition of "Notice of Filing." The term "Notice of Filing" in this rule includes a Notice of Docket Activity, a Notice of Electronic Filing, and any other similar electronic notice provided to case participants by the court's electronic-filing system to inform them of a filing or other activity on the docket.

* * *

(d) Filing.

(1) Required Filings; Certificate of Service.

(A) Papers after the Complaint. Any paper after the complaint that is required to be served must be filed no later than a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(B) Certificate of Service. No certificate of service is required when a paper is served under Rule 5(b)(2)~~by filing it with the court's electronic-filing system~~. When a paper that is required to be served is served by other means:

(i) if the paper is filed, a certificate of service must be filed with it or within a reasonable time after service; and

(ii) if the paper is not filed, a certificate of service need not be filed unless filing is required by court order or by local rule.

(2) Nonelectronic Filing. A paper not filed electronically is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) Electronic Filing and Signing.

(A) By a Represented Person—Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(B) By an Unrepresented Person—When Allowed or Required.

(i) A person not represented by an attorney~~: (i)~~ may file electronically ~~only if allowed by~~ unless a court order or ~~by~~ local rule bars the person from doing so; ~~and~~but ~~(ii)~~ may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.

(ii) A local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions or must permit the use of another electronic method for filing documents and receiving electronic notice of activity in the case.

(iii) A court may set reasonable conditions and restrictions on access to the court's electronic-filing system for persons not represented by an attorney.

(iv) A court may deny a particular person access to the court's electronic-filing system, and may revoke a person's prior access to the court's electronic-filing system for noncompliance with the conditions stated in (iii).

* * *

Committee Note

Rule 5 is amended to address two topics concerning self-represented litigants. Rule 5(b) is amended to address service of documents (subsequent to the complaint) filed by a self-represented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Rule 5(b)'s treatment of service is also reorganized to reflect the primacy of service by means of the electronic notice. Rule 5(d) is amended to expand the availability of electronic modes by which self-represented litigants can file documents with the court and receive notice of filings that others make in the case.

Subdivision (b). Rule 5(b) is restructured so that the primary means of service – that is, service by means of the court's electronic-filing system – is addressed first, in subdivision 5(b)(2). Existing Rule 5(b)(2) becomes new Rule 5(b)(3), which continues to address alternative means of service. New Rule 5(b)(4) addresses service of papers not filed with the court, and new Rule 5(b)(5) defines the term "Notice of Filing" as any electronic notice provided to case participants by the court's electronic-filing system to inform them of a filing or other activity on the docket.

Subdivision (b)(2). Amended Rule 5(b)(2) eliminates the requirement of separate (paper) service (of documents after the complaint) on a litigant who is registered to receive a Notice of Filing from the court's electronic-filing system. Litigants who are registered to receive a Notice of Filing include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the

Notice because they have registered for a court-based electronic-noticing program.[11] (Current Rule 5(b)(2)(E)'s provision for service by "sending [a paper] to a registered user by filing it with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

The last sentence of amended Rule 5(b)(2) states that the court may provide by local rule that papers filed under seal are not served under Rule 5(b)(2). This sentence is designed to account for districts in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system.

Subdivision (b)(3). Subdivision (b)(3) carries forward the contents of current Rule 5(b)(2), with two changes.

The subdivision's introductory phrase ("A paper is served under this rule by") is amended to read "A paper can also be served under this rule by." This locution ensures that what will become Rule 5(b)(3) remains an option for serving any litigant, even one who receives Notices of Filing. This option might be useful for a litigant who will be filing non-electronically but who wishes to effect service on their opponent before the time when the court will have uploaded the filing into the court's system (thus generating the Notice of Filing).

Subdivision (b)(3)(E). Subdivision (b)(3)(E) is amended in two ways. First, the prior reference to "sending [a paper] to a registered user by filing it with the court's electronic-filing system" is deleted, because this is now covered by new Rule 5(b)(2). Second, a new option is added: "sending [the paper] by email to the address that the court uses to email Notices of Filing – so long as the sender has designated in advance the email address from which such service will be made." This provision enables a litigant to serve another case participant by email to the email address that the court uses to email Notices of Filing, but only if the sending litigant has already designated in advance the email address from which such service will be made. The latter proviso addresses the possible concern that otherwise an email from another litigant in the case might end up in the recipient's junk email folder.

---

11 N.B.: An initial sketch of Rule 5(b) included a proposed Rule 5(b)(3) that separately treated "service by means of the court's electronic-noticing system," but we have removed that provision because it appears that such service appears to be already covered in proposed Rule 5(b)(2). The reason is that – as far as we are aware – the way that electronic-noticing programs work, in the courts that have them, is that email addresses for those self-represented litigants who opt in to electronic noticing are simply added to the list of email recipients that will receive Notices of Filing from the court's electronic-filing system. (There seems to be no reason that any court would use a different method for their e-noticing program. However, if we are incorrect about this, public comment should bring that fact to light.)

Subdivision (b)(4). New Rule 5(b)(4) addresses service of papers not filed with the court. It makes explicit what is arguably implicit in new Rule 5(b)(2): If a paper is not filed with the court, then the court's electronic system will never generate a Notice of Filing, so the sender cannot use Rule 5(b)(2) for service and thus must use Rule 5(b)(3).

Subdivision (b)(5). New Rule 5(b)(5) defines the term "Notice of Filing" as any electronic notice provided to case participants by the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of Filing" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "Electronic" is deleted as superfluous now that electronic filing is the default method.

Subdivision (d)(3)(B). Under new Rule 5(d)(3)(B)(i), the presumption is the opposite of the presumption set by the prior Rule 5(d)(3)(B). That is, under new Rule 5(d)(3)(B)(i), self-represented litigants are presumptively authorized to use the court's electronic-filing system to file documents in their case subsequent to the case's commencement. If a district wishes to restrict self-represented litigants' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 5(d)(3)(B)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 5(d)(3)(B)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 5(d)(3)(B)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for self-represented litigants to the court's electronic-filing system, or (2) providing self-represented litigants with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program).

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing system. Rule 5(d)(3)(B)(ii) uses the term "general court order" to make clear that Rule 5(d)(3)(B)(ii) does not restrict a court from entering an order barring a specific self-represented litigant from accessing the court's electronic-filing system.

Rule 5(d)(3)(B)(iv) provides that the court may deny a specific self-represented litigant access to the court's electronic-filing system, and that the court may revoke a self-represented litigant's access to the court's electronic-filing system.

* * *

A conforming amendment to Civil Rule 6(d) would be needed to adjust for the change in numbering of current Civil Rule 5(b)(2):

Rule 6. Computing and Extending Time; Time for Motion Papers

* * *

(d) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(~~2~~3)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

Committee Note

Subdivision (d) is amended to conform to the renumbering of Civil Rule 5(b)(2) as Rule 5(b)(3).

TAB 5

TAB 5A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: SUGGESTION FOR AMENDMENT TO RULE 2003 (MEETING OF CREDITORS OR EQUITY SECURITY HOLDERS)

DATE: AUGUST 13, 2024

Rebecca Garcia, a chapter 12 and chapter 13 trustee, has submitted a suggestion (Suggestion 24-BK-G) to amend Rule 2003(a) and (c) as pertains to the timing, location, and recording of meetings of creditors in chapter 7, 11, 12, and 13 cases. She makes this suggestion, which has been endorsed by the Association of Chapter 12 Trustees and the National Association of Chapter 13 Trustees, in response to the current practice of conducting the meetings remotely by means of Zoom.

The Suggestion

The proposed amendment is as follows:

Rule 2003. Meeting of Creditors or Equity Security Holders

(a) Date and Place. Except as otherwise provided in §341(e) of the Code, in a chapter 7, ~~liquidation or a chapter~~ 11, 12, or 13 ~~reorganization~~ case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than ~~40~~ 60 days after the order for relief. ~~In a chapter 12 family farmer debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 35 days after the order for relief. In a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 50 days after the order for relief.~~ If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. ~~The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.~~ For chapter 7, 11, 12, and 13 cases the meeting may be held remotely via video. If a video meeting is not practical, an in-person meeting may be held at a regular place

for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest.

* * * * *

(c) Record of Meeting. Any examination under oath at the meeting of creditors held pursuant to §341(a) of the Code shall be recorded verbatim by the United States trustee using electronic video or sound recording equipment or other means of recording, and such record shall be preserved by the United States trustee and available for public access until two years after the conclusion of the meeting of creditors. Upon request of any entity, the United States trustee shall certify and provide a copy or transcript of such recording at the entity's expense.

* * * * * *

The proposed amendment, which as submitted was shown on the pre-restyling version of the rule, would authorize remote meetings of creditors, create a preference for virtual meetings over ones held in person, allow video recording of meetings, and provide the same timeframe in all chapters for holding the meetings.

Remote Meetings of Creditors

Ms. Garcia says that "Section 341 meetings are now largely [conducted] via remote video (Zoom)." The proposed amendment to Rule 2003(a) would provide explicit authority for this practice, thereby no longer calling for meetings to be held only at "a regular place for holding court . . . or any other place in the district that is convenient for the parties in interest."

The U.S. Trustee Program ("USTP") has established a nationwide program of conducting meetings of creditors remotely by means of Zoom in chapter 7, 12, and 13 cases.[1] Necessitated by the Covid pandemic, remote meetings were initially conducted by telephone. In order to achieve greater security and assurance of the identity of the debtor, the USTP, after conducting a pilot program, moved in two waves to authorize meetings of creditors to be conducted via Zoom.

[1] *See The Transition to Virtual § 341 Meetings: Lessons Learned, and Looking Ahead* at https://www.justice.gov/ust/blog/transition-virtual-ss-341-meetings-lessons-learned-and-looking-ahead.

By switching to Zoom meetings, it says, it has eliminated some of the problems of in-person meetings: “Participants often missed work (and potentially lost much-needed pay), had to arrange for childcare, or incurred parking or other travel expenses. Some had to travel great distances to attend these in-person meetings.”[2] In North Carolina and Alabama, bankruptcy administrators are also conducting meetings of creditors remotely (by Zoom and telephone, respectively).

The Subcommittee is supportive of the use of remote meetings of creditors via Zoom. Members noted that because some districts are very large, attending an in-person meeting that may last only 10 to 15 minutes can be quite burdensome. Those who have participated in such meetings said that they worked well.

The Subcommittee’s discussion raised several issues on which it would like feedback from the Advisory Committee. First is the question whether an amendment to Rule 2003 is needed. The Justice Department (through the USTP) and the AO (through the bankruptcy administrators) have already established a nationwide program of remote meeting of creditors under the existing rule. Can Rule 2003(a)’s authorization of meetings “at any . . . place designated by the United States trustee within the district convenient for the parties in interest” be read to encompass remote meetings?

If an amendment to expressly authorize remote meetings is needed, will there be concerns about the Advisory Committee proposing another “remoteness” amendment on the heels of the proposed amendments regarding remote hearings in contested matters? Subcommittee members discussed a number of reasons why allowing remote meetings of creditors should not raise concerns. These meetings are not judicial proceedings. Section 341(c) of the Code prohibits

[2] *Id.*

judges from attending the meetings, and it allows creditors to participate on their own without attorney representation. Moreover, the experience to date—as explained in the article cited above—shows that the nationwide program of Zoom meetings is being conducted with few problems or concerns.

The Subcommittee did question two aspects of the suggestion for remote meetings. The proposed amendment would authorize in-person meetings of creditors only "[i]f a video meeting is not practical." The Subcommittee saw no reason to impose this limitation on traditionally conducted meetings. United States trustees might prefer in-person meetings in some cases in order to better assess the credibility of the debtor, to impose upon the debtor the seriousness of the undertaking, to hold the meeting on the same date and place as a court hearing, or for other reasons.

The suggestion also proposes allowing video recording of meetings. Ramona Elliott stated that the USTP has declined to allow video recording of debtor examinations, allowing only audio recording, and she opposed amending the rule to allow video recording. No Subcommittee member expressed a contrary view. It was suggested that Rule 2003(c) be amended to require the U.S. trustee to "record verbatim all examinations under oath" without specifying any method.

Uniform Time Limits

Currently Rule 3002 prescribes different time limits for setting the meeting of creditors depending on the case's chapter. The time periods are as follows:

Chapter 7 or 11 – no fewer than 21 days and no more than 40 days after the order for relief;

Chapter 12 – no fewer than 21 days and no more than 35 days after the order for relief;

Chapter 13 – no fewer than 21 days and no more than 50 days after the order for relief. In addition, the rule provides that "[i]f the designated meeting place is not regularly staffed by the United States trustee or an assistant who may preside, the meeting may be held no more than 60 days after the order for relief."

Ms. Garcia's suggestion proposes that the time limits in all chapters be no fewer than 21 days and no more than 60 days after the order for relief. She gives no explanation for this change other than "to streamline the time frames."

A review of the history of Rule 2003 shows that the time limits were initially uniform. When the rule went into effect in 1983, subdivision (a) provided that the meeting be held not less than 20 and not more than 40 days after the order for relief. In 1987 the latter time period was extended to 60 days "if the court designate[d] a place for the meeting which is not regularly staffed by a clerk [later changed to "United States trustee or an assistant"] who may preside at the meeting."

The 1991 amendments to Rule 2003(a) reflected the addition to the Code of chapter 12. Meetings of creditors in chapter 12 cases were required to be held no more than 35 days after the order for relief. The Committee Note explained that this shorter deadline was imposed to be "consistent with the expedited procedures of chapter 12."

The deadline for holding the meeting of creditors in a chapter 13 case was extended to 50 days in 1993 in order to "provide more flexibility for scheduling the meeting of creditors."[3] The

[3] According to the minutes, the following explanation for the amendment was given at the June 1991 Advisory Committee meeting: "Mr. Mabey explained that some of the districts with a large number of chapter 13 filings prefer to schedule the meeting of creditors and consensual confirmation hearings on the same day. He stated that this is difficult to do in compliance with the current rules because the debtor has 15 days to file a plan and creditors must be given 25 days' notice of the confirmation hearing, along with a copy of the plan or a summary of it."

minutes of the June 1991 Advisory Committee meeting reflect that, when the Committee was considering proposing this extension, the desirability of a more uniform set of time periods was discussed and rejected:

> Professor King expressed concern that the proposal would create a third time period for meetings of creditors: one in chapter 7 and chapter 11 cases, one in chapter 12 cases, and one in chapter 13 cases. He moved to create uniform 50-day periods in chapters 7, 11, and 13. Mr. Mabey noted that extending the time for the meeting would also extend the time for filing claims and objections to discharge. The Reporter stated that uniformity would not necessarily justify the delay in chapter 7 cases, which are more numerous than chapter 13 cases. Professor King's motion was rejected by a vote of 4-6.

The final change to the time periods in Rule 2003(a) was made in 2009, when time periods of less than 30 days in the federal rules were changed to multiples of 7. The 20-day minimum periods in subdivision (a) were therefore changed to 21 days.

Other than seeking to streamline the rule, Ms. Garcia does not suggest a reason to disturb the established time periods in Rule 2003(a). Because other time periods in the Bankruptcy Code and Rules are expressed in relation to the meeting of creditors,[4] a change to the times in Rule 2003(a) would have a ripple effect elsewhere. The reporter suggested that, in the absence of a good reason to make this change, the Subcommittee recommend that this amendment not be proposed by the Advisory Committee.

Nancy Whaley said that the impact of such a change on other provisions would be less than might otherwise appear. She explained that under the current rule meetings of creditors are often set for 60 days after the order for relief. That scheduling relies on the provision that allows an extended 60-day deadline "if the designated meeting place is not regularly staffed by the

[4] *See* Code §§ 521(a)(2)(A), 521(a)(2)(B), 521(e)(2)(A)(i, ii), 1308(a), and 1308(b); Rules 1006(b)(2), 1007(c), 1017(e), 1019(1), 1020(b), 2015.3(b), 4002(b), 4004(a), 4007(c), 4008(a), and 5009(b).

United States trustee or an assistant who may preside." The proposed amendment for a uniform 60-day deadline, Ms. Whaley said, would merely reflect the current practice.

The Subcommittee welcomes input from the Advisory Committee on whether it should further consider an amendment to Rule 2003 that would provide a uniform time period of no fewer than 21 days and no more than 60 days after the order for relief for setting meetings of creditors in all chapters.

TAB 6

TAB 6A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: Technical Changes to Official Forms 122A-2 and 122C-2 to conform to Connecticut Housing and Utilities Standards Changes

DATE: August 5, 2024

The U.S. Trustee Program recently updated the Means Testing page on its website to reflect that, effective May 15, 2024, "the Housing and Utilities Standards for Connecticut shall be broken down by planning regions rather than counties, to reflect the Census Bureau's use of the State of Connecticut's nine Regional Councils of Government, or Planning Regions, as the county equivalent for purposes of the statistical data that informs the Housing and Utilities Standards."

In completing Official Form 122A-2, lines 8 and 9a, a debtor must consult the Housing and Utilities Standards for the debtor's "county" to determine the appropriate income deduction amount. To conform to the revised terminology now used for Connecticut, lines 8 and 9a should be revised to add "or planning region" after the word "county." The same changes should be made to lines 8 and 9a of Official Form 122C-2. Mockups of the proposed changes to the two forms are attached. A proposed Committee Note for Official Form 122 follows:

Committee Note

> Official Forms 122A-2 and 122C-2 are each amended at lines 8 and 9a to account for a change in terminology used in the IRS Local Standards for Housing and Utilities. For most states, the relevant geographical location is the debtor's "county." The state of Connecticut, however, now uses the term "planning region" instead of "county." To account for this change, references to "county" in lines 8 and 9a of the two forms are revised to "county or planning region."

The Advisory Committee has the authority to make "non-substantive, technical, or conforming amendments" to official forms, subject to later approval by the Standing Committee. *See* JCUS, Mar. 2016, p.24.[1] Because these amendments will conform the forms to the current language used in the IRS local standards, **the Subcommittee recommends that the Advisory Committee approve them effective December 1, 2024, and that it ask the Standing Committee to approve the changes when it meets in January 2025.**

---

[1] "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 nonsubstantive, 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."

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 the appropriate box as directed in lines 40 or 42:

According to the calculations required by this Statement:

❑ 1. There is no presumption of abuse.

❑ 2. There is a presumption of abuse.

❑ Check if this is an amended filing

Official Form 122A–2

Chapter 7 Means Test Calculation

12/24

To fill out this form, you will need your completed copy of *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1).

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: Determine Your Adjusted Income

1. **Copy your total current monthly income.** .... **Copy line 11 from Official Form 122A-1 here** ➔ .... $__________

2. **Did you fill out Column B in Part 1 of Form 122A–1?**

   ❑ No. Fill in $0 for the total on line 3.

   ❑ Yes. Is your spouse filing with you?

   ❑ No. Go to line 3.

   ❑ Yes. Fill in $0 for the total on line 3.

3. **Adjust your current monthly income by subtracting any part of your spouse's income not used to pay for the household expenses of you or your dependents.** Follow these steps:

   On line 11, Column B of Form 122A–1, was any amount of the income you reported for your spouse NOT regularly used for the household expenses of you or your dependents?

   ❑ No. Fill in 0 for the total on line 3.

   ❑ Yes. Fill in the information below:

State each purpose for which the income was used For example, the income is used to pay your spouse's tax debt or to support people other than you or your dependents	**Fill in the amount you are subtracting from your spouse's income**
______________________	$__________
______________________	$__________
______________________	+ $__________
Total.	$__________

Copy total here .... ➔ – $__________

4. **Adjust your current monthly income.** Subtract the total on line 3 from line 1. $__________

Local Standards You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- **Housing and utilities – Insurance and operating expenses**
- **Housing and utilities – Mortgage or rent expenses**

To answer the questions in lines 8-9, use the U.S. Trustee Program chart.

To find the chart, go online using the link specified in the separate instructions for this form.
This chart may also be available at the bankruptcy clerk's office.

8. **Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county or planning region for insurance and operating expenses. .... $__________

9. **Housing and utilities – Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county or planning region for mortgage or rent expenses. .... $__________

9b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of the creditor	Average monthly payment
______________________	$__________
______________________	$__________
______________________	+ $__________
Total average monthly payment	$__________

Copy here ➔ – $__________ Repeat this amount on line 33a.

9c. Net mortgage or rent expense.
Subtract line 9b (*total average monthly payment*) from line 9a (*mortgage or rent expense*). If this amount is less than $0, enter $0. .... $__________ Copy here ➔ $__________

10. **If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim.** $__________

Explain why: ____
____

11. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.

❑ 0. Go to line 14.
❑ 1. Go to line 12.
❑ 2 or more. Go to line 12.

12. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the *Operating Costs* that apply for your Census region or metropolitan statistical area. $__________

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 122C–2

Chapter 13 Calculation of Your Disposable Income

12/24

To fill out this form, you will need your completed copy of *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C–1).

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 Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-15. To find the IRS standards, go online using the link specified in the separate instructions for this form. This information may also be available at the bankruptcy clerk's office.

Deduct the expense amounts set out in lines 6-15 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not include any operating expenses that you subtracted from income in lines 5 and 6 of Form 122C–1, and do not deduct any amounts that you subtracted from your spouse's income in line 13 of Form 122C–1.

If your expenses differ from month to month, enter the average expense.

Note: Line numbers 1-4 are not used in this form. These numbers apply to information required by a similar form used in chapter 7 cases.

5. **The number of people used in determining your deductions from income**
Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

National Standards You must use the IRS National Standards to answer the questions in lines 6-7.

6. **Food, clothing, and other items:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items. $________

7. **Out-of-pocket health care allowance:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories—people who are under 65 and people who are 65 or older—because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

People who are under 65 years of age

7a. Out-of-pocket health care allowance per person $____________

7b. Number of people who are under 65 X ______

7c. Subtotal. Multiply line 7a by line 7b. $____________ **Copy here➔** $____________

People who are 65 years of age or older

7d. Out-of-pocket health care allowance per person $____________

7e. Number of people who are 65 or older X ______

7f. Subtotal. Multiply line 7d by line 7e. $____________ **Copy here➔** + $____________

7g. **Total**. Add lines 7c and 7f. $____________ **Copy here➔** .... $________

Local Standards You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- **Housing and utilities – Insurance and operating expenses**
- **Housing and utilities – Mortgage or rent expenses**

To answer the questions in lines 8-9, use the U.S. Trustee Program chart. To find the chart, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

8. **Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county or planning region for insurance and operating expenses. $________

9. **Housing and utilities – Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county or planning region for mortgage or rent expenses. $____________

9b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Next divide by 60.

Name of the creditor	Average monthly payment
____________________	$__________
____________________	$__________
____________________	+ $__________
9b. Total average monthly payment	$__________

Copy here➔ – $____________ Repeat this amount on line 33a.

9c. Net mortgage or rent expense.

Subtract line 9b (*total average monthly payment*) from line 9a (*mortgage or rent expense*). If this number is less than $0, enter $0. $____________ **Copy here➔** .... $________

10. **If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim.** $________

Explain why: ______________________________________

____

Committee Note

Official Forms 122A-2 and 122C-2 are each amended at lines 8 and 9a to account for a change in terminology used in the IRS Local Standards for Housing and Utilities. For most states, the relevant geographical location is the debtor's "county." The state of Connecticut, however, now uses the term "planning region" instead of "county." To account for this change, references to "county" in lines 8 and 9a of the two forms are revised to "county or planning region."

TAB 6B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 24-BK-I – OFFICIAL FORM 101

DATE: AUG. 10, 2024

Mark A. Neal, Clerk of the Bankruptcy Court for the D. Md., submitted a suggestion, 24-BK-I, to modify the prompt for Question 4 in Part 1 on the Voluntary Petition for Individuals Filing for Bankruptcy (Official Form 101). Currently the question asks for "Your Employer Identification Number (EIN), if any." Mr. Neal notes that some pro se debtors are providing the employer identification number of their employers, not realizing that the question is attempting to elicit the EIN of the individual filing for bankruptcy if that individual is himself or herself an employer. Because multiple debtors may file who have the same employer and list that employer's EIN, the CM/ECF monitoring for repeat filings triggers a report erroneously suggesting that the debtor is not eligible because of prior filings.

The Subcommittee agrees that the prompt may be confusing, and **recommends to the Advisory Committee for publication** an amendment to the existing language of the prompt in Question 4 and the addition of a new paragraph so that the prompt would read as follows:

"~~Your employee identification number (EIN), if any~~ EIN (Employer Identification Number) issued to you, if any.

Do NOT list the EIN of any separate legal entity such as your employer, a corporation, partnership, or LLC that is not filing this petition."

A suggested committee note follows:

Committee Note

Question 4 has been amended to make it clear that only debtors who themselves have an employer identification number (EIN) should list it; they should not include the EIN of their employer or any other entity not filing the petition.

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

12/26

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):
1. Your full name Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	____________ First name ____________ Middle name ____________ Last name ____________ Suffix (Sr., Jr., II, III)	____________ First name ____________ Middle name ____________ Last name ____________ Suffix (Sr., Jr., II, III)
2. All other names you have used in the last 8 years Include your married or maiden names and any assumed, trade names and *doing business as* names. Do NOT list the name of any separate legal entity such as a corporation, partnership, or LLC that is not filing this petition.	____________ First name ____________ Middle name ____________ Last name ____________ First name ____________ Middle name ____________ Last name ____________ Business name (if applicable) ____________ Business name (if applicable)	____________ First name ____________ Middle name ____________ Last name ____________ First name ____________ Middle name ____________ Last name ____________ Business name (if applicable) ____________ Business name (if applicable)
3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)	xxx – xx – ___ ___ ___ ___ OR 9 xx – xx – ___ ___ ___ ___	xxx – xx – ___ ___ ___ ___ OR 9 xx – xx – ___ ___ ___ ___

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
4. EIN (Employer Identification Number) issued to you, if any. Do NOT list the EIN of any separate legal entity such as your employer, a corporation, partnership, or LLC that is not filing this petition.	___ ___ – ___ ___ ___ ___ ___ ___ ___ EIN ___ ___ – ___ ___ ___ ___ ___ ___ ___ EIN	___ ___ – ___ ___ ___ ___ ___ ___ ___ 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:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.) ______________________________ ______________________________ ______________________________ ______________________________	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.) ______________________________ ______________________________ ______________________________ ______________________________

Committee Note

Question 4 has been amended to make it clear that only debtors who themselves have an employer identification number (EIN) should list it; they should not include the EIN of their employer or any other entity not filing the petition.

TAB 6C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: INSTRUCTIONS FOR FORMS IMPLEMENTING RULE 3002.1

DATE: AUGUST 12, 2024

At its June meeting, the Standing Committee gave final approval to the proposed amendments to Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence) and the six new forms proposed to implement its new provisions. The forms, if approved by the Judicial Conference, will go into effect on December 1, 2025, simultaneously with the amended rule. In the meantime, instructions for completing the forms need to be drafted.

The instructions for some official forms are relatively short and straightforward, but these are likely to be more detailed. In response to publication of the forms, several commenters asked for instructions, and one commenter raised a number of questions about the meaning of terms used in the forms, to which the Advisory Committee responded that the instructions would address those issues.

During the Subcommittee's meeting on July 29, a group was formed to draft the instructions. It will work on them this fall, and the Subcommittee will present recommended instructions to the Advisory Committee at the spring meeting.

TAB 6D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 24-BK-F – OFFICIAL FORM 318 AND DIRECTOR'S FORMS 3180WAND 3180WH

DATE: AUG. 10, 2024

We have received a suggestion from Dana C. McWay, Chair of the Administrative Office of the U.S. Courts' Unclaimed Funds Expert Panel, that language be added to the form Order of Discharge used in Chapter 7 and Chapter 13 cases notifying recipients that unclaimed funds may be available and suggesting that they check the Unclaimed Funds Locator to ascertain whether they are entitled to any. Although there are comparable forms of Order of Discharge used in Chapter 12 and Subchapter V of Chapter 11, the Panel believes that there are fewer unclaimed funds in those cases and inclusion of the language is not necessary but could be done for consistency. The Panel notes that the Orders of Discharge "reach a wide audience, including those for whom Bankruptcy courts hold unclaimed funds, making the forms an ideal vehicle to inform potential claimants of available funds." The Panel suggests that the following language be inserted in each form:

> **Money may be left over in this case.**
>
> **Unclaimed funds are held by the court for an individual or entity who is entitled to the money but who has failed to claim ownership of it. To search unclaimed funds, use the Unclaimed Funds Locator at https://ucf.uscourts.gov/.**

The Subcommittee recommends that no action be taken on this suggestion for several reasons.

First, although it is true that the Order of Discharge must be mailed by the clerk under Bankruptcy Rule 4004(g) to all creditors, the Subcommittee does not believe that order is the appropriate vehicle for admonitions about unclaimed funds. The existence of unclaimed funds has nothing to do with discharge. The Subcommittee believes that the discharge order should be kept clean of extraneous matter.

Second, often courts do not receive unclaimed funds until months after the discharge order is issued, so even if a creditor saw the notice and immediately communicated with the clerk's office – and this might increase the number of such calls -- the clerk would only be able to tell the creditor to check back later.

Third, if the reason that the funds are unclaimed is that the creditor has failed to update its address, the discharge order will be sent to the same erroneous address and therefore will not reach the creditor with a right to the funds.

Fourth, including this in the discharge order may encourage fraudulent claims by creditors who are not entitled to the funds. Such fraudulent claims seem to be increasing, and having the notice in the discharge order might encourage creditors to "try their luck" in securing unclaimed funds.

Finally, including that statement in the explanation of the nature of a bankruptcy discharge in the discharge order, which was drafted more for debtors than for creditors, could confuse debtors who might think there is left-over money that belongs to them.

Although the Subcommittee is sympathetic to the goals of the Unclaimed Funds Expert Panel, it does not believe this is the appropriate approach and **recommends that no action be taken on the suggestion**.

TAB 6E

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: SUGGESTION FOR AMENDMENT OF OFFICIAL FORM 106C

DATE: AUGUST 12, 2024

Rebecca Garcia, a chapter 12 and chapter 13 trustee, has submitted a suggestion (Suggestion 24-BK-H) to amend Official Form 106C (Schedule C: The Property You Claim as Exempt). The suggestion, which has been endorsed by the Association of Chapter 12 Trustees and the National Association of Chapter 13 Trustees, proposes amending the form to include a total amount of assets being claimed exempt, similar to Schedule C in use prior to 2015. Ms. Garcia explains that "28 U.S.C. Sec. 589b(d)(3) requires the uniform final report submitted by trustees to total the 'assets exempted.' Without the amount totaled on the form, the Trustee is required to manually add up the amounts on each form in preparation of the required final report."

The current form resulted from several years of deliberation by the Advisory Committee and represents a compromise of competing interests. The following section reviews the history of Official Form 106C.

What Led Up to the Current Form?

At the fall 2010 meeting, the Advisory Committee discussed the impact of the Supreme Court's decision in *Schwab v. Reilly*, 560 U.S. 770 (2010), on what was then Official Form 6, Schedule C (Property Claimed as Exempt). Concluding that the Court's decision pointed out an ambiguity in Schedule C, the Committee decided that the form should be amended to provide an express option for the debtor to state an intent to exempt the full fair market value of an asset,

regardless of the dollar amount of that value. By doing so, the debtor would notify the trustee of the need to object to the exemption within the period prescribed by Rule 4003(b) in order to preserve for the estate any value in the property exceeding a statutory exemption limit.

The chapter 7 debtor in *Schwab* listed as an asset on Schedule B business equipment valued at $10,718. On her Schedule C, she claimed an exemption for the equipment in the same dollar amount and also specified that amount as the value of the equipment. The bankruptcy trustee did not object to the exemption of the equipment within the 30-day period allowed by Rule 4003(b). Later, however, arguing that the property was worth more than the amount stated by the debtor, the trustee moved to sell the equipment, pay the debtor her claimed exemptions in the amount she specified, and distribute the rest of the proceeds to her creditors. The debtor opposed this motion by arguing that her Schedule C indicated the intent to exempt the full value of the equipment. Thus, she claimed, because the trustee had not timely objected, the property in its entirety was now exempt under § 522(*l*).[1] The lower courts agreed with the debtor.

The Supreme Court granted *certiorari* to resolve a split among the circuits over whether an exemption claimed in the same amount as the value specified for the exempted property constitutes a claim for the entire value of the property, even if that value is more than the specified amount.[2] The Court reversed the lower courts' affirmative answer in a 6-3 decision.

---

[1] Section 522(*l*) requires a debtor to "file a list of property that the debtor claims as exempt" and states that "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt." In *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), the Supreme Court held that if no one objected to a claimed exemption by the deadline set by the rules for doing so, the property claimed exempt was exempt, whether or not the debtor had a colorable statutory basis for claiming the exemption.

[2] "The starting point for our analysis is the proper interpretation of Reilly's Schedule C. If we read the Schedule Reilly's way, she claimed exemptions in her business equipment that could exceed statutory limits, and thus claimed exemptions to which Schwab should have objected if he wished to enforce those limits for the benefit of the estate. If we read Schedule C Schwab's way, Reilly claimed valid exemptions to which Schwab had no duty to object." 560 U.S. at 779.

The majority concluded that the debtor "accurately describe[d] an asset subject to an exempt interest and . . . declare[d] the 'value of [the] claimed exemption' as a dollar amount within the range the Code allows." 560 U.S. at 782. Thus, according to the Court, her Schedule C revealed a valid exemption claim to which the trustee had no duty to object.

At the end of the majority opinion, the Court explained how a debtor can indicate the intent to exempt "the full market value of the asset or the asset itself" in a manner that puts the trustee on notice of the scope of the claimed exemption. The Court stated that the debtor can list as the exempt value of the asset on Schedule C "'full fair market value (FMV)' or '100% of FMV.'" Then, the Court explained, "[i]f the trustee fails to object, or if the trustee objects and the objection is overruled, the debtor will be entitled to exclude the full value of the asset." 560 U.S. at 792-93.

Early in the Advisory Committee's deliberations, a majority decided that Schedule C should be amended because it did not inform the debtor of the option described in *Schwab* of claiming the entire fair market value of the property as exempt. The Committee was divided, however, on how best to express that option. After lengthy discussions at two meetings, the Committee proposed for publication an amendment to Schedule C that would have requested the following information:

Description of Property	Current Market Value of Property Without Deducting Exemptions	Specify Law Providing Each Exemption	Value of Claimed Exemption (check one box only for each claimed exemption)
			☐ Exemption limited to $________________ ☐ Full fair market value of the exempted property

This proposed amendment to Schedule C was published for comment in August 2011. The comments submitted in response to the publication were divided. Consumer debtors'

attorneys and the National Association of Consumer Bankruptcy Attorneys favored adding the option of claiming the full value of an asset as exempt, although some of them suggested different wording. Bankruptcy trustees, however, and a bankruptcy judge opposed the amendment. Comments and testimony submitted on behalf of the National Association of Bankruptcy Trustees expressed concern that the new option could be easily invoked by checking a box and would encourage debtors to claim the full fair market value of an asset as exempt, even when using an exemption capped at an amount less than the asset's value. They argued that the increase in such exemption claims would then lead to a "plethora of objections" and would increase the gamesmanship that, according to them, already occurred with the valuation of property and the claiming of exemptions.

At the spring 2012 meeting, the Advisory Committee voted (with two dissents) to withdraw its published proposal to amend Schedule C and to refer further consideration of any amendments of Schedule C to the Forms Modernization Project ("FMP"). It asked that group to address the *Schwab* decision, while accounting for the concerns raised in the comments. The challenge was to make available on the exemption schedule the option the *Schwab* Court had suggested of claiming 100% of fair market value, but to do so in a way that did not encourage improper use of the option.

With a recommendation of the FMP and input from the Consumer and Forms Subcommittees, as well as the Standing Committee,[3] the Advisory Committee eventually

[3] The Advisory Committee previewed to the Standing Committee a draft of the form that included a preface similar to the one eventually adopted and under the third column—Amount of the exemption you claim—included only a blank line on which a debtor could insert either a specific dollar amount or claim as exempt "100% of fair market value." Members of the Standing Committee commented that that the option of claiming 100% of fair market value was presented too subtly for pro se debtors to understand and that perhaps the Advisory Committee had given too much deference to the views of trustees and that it should consider revising the form to present the "100% FMV" option more clearly.

proposed the version of Form 106C that currently exists. It was published for comment in 2013, approved by the Advisory and Standing Committees in 2014, and took effect in 2015. It includes the following preface to the form:

> **For each item of property you claim as exempt, you must specify the amount of the exemption you claim. One way of doing so is to state a specific dollar amount as exempt. Alternatively, you may claim the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Some exemptions—such as those for health aids, rights to receive certain benefits, and tax-exempt retirement funds—may be unlimited in dollar amount. However, if you claim an exemption of 100% of fair market value under a law that limits the exemption to a particular dollar amount and the value of the property is determined to exceed that amount, your exemption would be limited to the applicable statutory amount.**

It then requires the following information to be provided for each property claimed as exempt:

Brief description of the property and line on *Schedule A/B* that lists this property	**Current value of the portion you own** Copy the value from *Schedule A/B*	**Amount of the exemption you claim** *Check only one box for each exemption*	**Specific laws that allow exemption**
	$______________	☐ $______________ ☐ 100% of fair market value, up to any applicable statutory limit	

Because of the nonspecific-dollar-amount category of claimed exemptions, no total amount is asked for on the form or on the summary of schedules (Official Form 106Sum).

<u>The Subcommittee's Discussions</u>

Members of the Subcommittee understood the desire of trustees to have a total dollar amount of claimed exemptions listed on Form 106C in order to simplify their task of reporting "assets exempted" to the U.S. trustee under 28 U.S.C. § 589b. But because the form—in response to *Schwab*—allows an unspecified dollar amount to be claimed, simple addition to arrive at a total amount is not always possible. The value of an asset claimed as 100% exempt

might be unliquidated or in dispute. Requiring a debtor to assign a definite value to such property in order to arrive at a total amount would be contrary to the option recognized in *Schwab*.

A suggestion was made that the form be revised to place in separate columns the two categories of exemption amounts: "□ $________________" and "□ 100% of fair market value, up to any applicable statutory limit." With that design the column for specific dollar amounts could be totaled. Consideration of that possibility led to a discussion of the trustees' statutory duty to report "assets exempted." Several questions were raised:

- Does reporting only exemptions claimed in a specific dollar amount satisfy the statutory requirement?
- Are unspecified amounts currently being reported and, if so, how?
- Are assets *claimed* as exempt on Form 106C the same as "assets exempted"?

The Subcommittee intends to explore these issues further, assisted by Ramona Elliott, who will gather further information about the purpose and use of the reports to U.S. trustees on exemptions. The Subcommittee welcomes any thoughts and suggestions from the Advisory Committee about issues to pursue.

TAB 6F

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: Conforming Changes to Director's Form 2000 Concerning the Pending Elimination of Official Form 423.

DATE: August 5, 2024

Bankruptcy Code § 727(a)(11) provides, subject to limited exceptions, that a debtor will not receive a discharge if "after filing the petition, the debtor failed to complete an [approved] instructional course concerning personal financial management." This restriction applies to individual debtors in chapter 7, in certain chapter 11 cases (*see* § 1141(d)(3)), and in chapter 13 (*see* § 1328(g)(1)). The pending amendments to Rule 1007(b)(7) on track to go into effect this December eliminate the requirement that the debtor file a statement on Official Form 423 *Certification About a Financial Management Course*, to certify satisfaction of this requirement. Instead, it requires that the debtor file the certificate of course completion provided by the approved course provider, unless the course provider notifies the court of course completion. The amendments also eliminate the requirement that a debtor who has been excused from taking such a course file Official Form 423 indicating the court's waiver of the requirement. As a result, Official Form 423 will be abrogated this December.

Abrogation of Official Form 423 requires conforming changes to Director's Form 2000, *Required Lists, Schedules, and Fees.* That form serves as a checklist for debtors of various requirements under chapter 7, 11, 12, or 13 of the Bankruptcy Code. Revisions are needed to the chapter 7, 11, and 13 checklists to remove references to Official Form 423, and to reflect that the debtor will no longer have to affirmatively assert the applicability of an exemption from taking the course. A mockup of the proposed changes is attached.

Because Form 2000 is a Director's Form, the Advisory Committee's role is to review and, if appropriate, endorse any changes to the form.

Recommendation: The Subcommittee recommends that the Advisory Committee endorse the proposed changes to Form 2000.

B2000 (Form 2000) (12/24)

UNITED STATES BANKRUPTCY COURT
REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Voluntary Chapter 7 Case

☐ **Filing Fee of $245.** If the fee is to be paid in installments or the debtor requests a waiver of the fee, the debtor must be an individual and must file a signed application for court approval. Official Form 103A or 103B and Fed.R.Bankr.P. 1006(b), (c).

☐ **Administrative fee of $78 and trustee surcharge of $15.** If the debtor is an individual and the court grants the debtor's request, these fees are payable in installments or may be waived.

☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101) or **Voluntary Petition for Non-Individuals Filing for Bankruptcy** (Official Form 201); **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 707(a)(3). Official Form 101 contains spaces for the certification.

☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement About Your Social Security Numbers** (Official Form 121). Required if the debtor is an individual. Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request,** if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Statement of Your Current Monthly Income** (Official Form 122A). Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of assets and liabilities** (Official Forms 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b),(c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Your Income and Your Expenses** (Schedules I and J of Official Form 106). If the debtor is an individual, Schedules I and J of Official Form 106 must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of financial affairs** (Official Form 107 or 207). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by the debtor from any employer within 60 days before the filing of the petition. Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Intention for Individuals Filing Under Chapter 7** (Official Form 108). Required ONLY if the debtor is an individual and the schedules of assets and liabilities contain debts secured by property of the estate or personal property subject to an unexpired lease. Must be filed within 30 days or by the date set for the Section 341 meeting of creditors, whichever is earlier. 11 U.S.C. §§ 362(h) and 521(a)(2).

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030). Required if the debtor is represented by an attorney. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certification About a Financial Management Course**. ~~(Official Form 423), if applicable.~~ Required if the debtor is an individual, unless the course provider has notified the court that the debtor has completed the course, or the debtor is exempt under 11 U.S.C. § 727(a)(11).~~.~~ Must be filed within 60 days of the first date set for the meeting of creditors. 11 U.S.C. § 727(a)(11) and Fed.R.Bankr.P. 1007(b)(7), (c).

REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Voluntary Chapter 11 Case

☐ **Filing fee of $1,167.** If the fee is to be paid in installments, the debtor must be an individual and must file a signed application for court approval. Official Form 103A and Fed.R.Bankr.P. 1006(b).

☐ **Administrative fee of $571.** If the debtor is an individual and the court grants the debtor's request, this fee is payable in installments.

☐ **United States Trustee quarterly fee.** The debtor, or trustee if one is appointed, is required also to pay a fee to the United States trustee at the conclusion of each calendar quarter until the case is dismissed or converted to another chapter. The calculation of the amount to be paid is set out in 28 U.S.C. § 1930(a)(6). As authorized by 28 U.S.C. § 1930(a)(7), the quarterly fee is paid to the clerk of court in chapter 11 cases in Alabama and North Carolina.

☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101) or **Voluntary Petition for Non-Individuals Filing for Bankruptcy** (Official Form 201); **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 1112(e). Official Form 101 contains spaces for the certification.

☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement About Your Social Security Numbers** (Official Form 121). Required if the debtor is an individual. Must be submitted **WITH** the petition. Fed.R.Bankr.P. 1007(f).

☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request,** if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Statement of Your Current Monthly Income** (Official Form 122B). Required if the debtor is an individual unless the case is filed under subchapter V. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders** (Official Form 104) or **Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders** (Official Form 204). Must be filed WITH the petition. Fed.R.Bankr.P. 1007(d).

☐ **Names and addresses of equity security holders of the debtor.** Must be filed with the petition or within 14 days, unless the court orders otherwise. Fed.R.Bankr.P. 1007(a)(3).

☐ **Schedules of Assets and Liabilities** (Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Current Income and Expenditures.** If the debtor is an individual, Schedules I and J of Official Form 106 must be used for this purpose. Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Financial Affairs** (Official Form 107 or 207). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by debtor from any employer within 60 days before the filing of the petition. Required if the debtor is an individual. Must be filed WITH the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030), if applicable. Required if the debtor is represented by an attorney. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certification About a Financial Management Course**, ~~(Official Form 423), if applicable.~~ Required if the debtor is an individual and § 1141(d)(3) applies, unless the course provider has notified the court that the debtor has completed the course. Must be filed no later than the date of the last payment under the plan or the filing of a motion for a discharge under § 1141(d)(5)(B). 11 U.S.C. § 1141(d)(3) and Fed.R.Bankr.P. 1007(b)(7), (c).

☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1**), if applicable. Required if the debtor is an individual and has claimed exemptions under state or local law as described in § 522(b)(3) in excess of $189,050*. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1141(d)(5)(B). 11 U.S.C. § 1141(d)(5)(C) and Fed.R.Bankr.P. 1007(b)(8), (c).

* Amount subject to adjustment on 4/01/25, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Chapter 12 Case

☐ **Filing Fee of $200.** If the fee is to be paid in installments, the debtor must be an individual and must file a signed application for court approval. Official Form 103A and Fed.R.Bankr.P. 1006(b).

☐ **Administrative fee of $78.** If the debtor is an individual and the court grants the debtor's request, this fee is payable in installments.

☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101) or **Voluntary Petition for Non-Individuals Filing for Bankruptcy** (Official Form 201). **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the court in a timely manner. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii). Official Form 101 contains spaces for the certification.

☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement of Your Social Security Numbers** (Official Form 121). Required if the debtor is an individual. Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request,** if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Schedules of Assets and Liabilities** (Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Current Income and Expenditures.** If the debtor is an individual, Schedule I and J of Official Form 106 must be used for this purpose. Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Financial Affairs** (Official Form 107 or 207). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices** or other evidence of payment received by the debtor from any employer within 60 days before the filing of the petition if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030), if applicable. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Chapter 12 Plan.** Must be filed within 90 days. 11 U.S.C. § 1221.

☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1)**, if applicable. Required if the debtor is an individual and has claimed exemptions under state or local law as described in §522(b)(3) in excess of $189,050*. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1228(b). 11 U.S.C. § 1228(f) and Fed.R.Bankr.P. 1007(b)(8), (c).

* Amount subject to adjustment on 4/01/25, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Chapter 13 Case

☐ **Filing fee of $235.** If the fee is to be paid in installments, the debtor must file a signed application for court approval. Official Form 103A and Fed.R.Bankr.P. 1006(b).

☐ **Administrative fee of $78.** If the court grants the debtor's request, this fee is payable in installments.

☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101). **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 1307(c)(9). Official Form 101 contains spaces for the certification.

☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement of Social Security Number** (Official Form 121). Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request,** if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Statement of Your Current Monthly Income** (Official Form 122C). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007.

☐ **Schedules of Assets and Liabilities** (Official Form 106). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Current Income and Expenditures** (Schedules I and J of Official Form 106). Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Financial Affairs** (Official Form 107). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by the debtor from any employer within 60 days before the filing of the petition. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Chapter 13 Plan.** (Official Form 113), or local form plan (check with your local court for required plan version). Fed.R.Bankr.P 3015.1. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 3015.

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030), if applicable. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certification About a Financial Management Course** ~~(Official Form 423), if applicable~~. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1328(b), unless the course provider has notified the court that the debtor has completed the course, or if the debtor is exempt under 11 U.S.C. § 1328(g)(2). ~~.~~ 11 U.S.C. § 1328(g)(1) and Fed.R.Bankr.P. 1007(b)(7), (c).

☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1),** if applicable. Required if the debtor has claimed exemptions under state or local law as described in §522(b)(3) in excess of $189,050*. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1328(b). 11 U.S.C. § 1328(h) and Fed.R.Bankr.P. 1007(b)(8), (c).

* Amount subject to adjustment on 4/01/25, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

TAB 7

TAB 7A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: TECHNOLOGY, PRIVACY, AND PUBLIC ACCESS SUBCOMMITTEE

SUBJECT: 22-BK-I – PROPOSAL TO REDACT ENTIRE SSN FROM COURT FILINGS AND CREDITOR DISTRIBUTIONS

DATE: AUG. 10, 2024

Background

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

Statutory Limitations

To a limited extent, the requirement that social security numbers be included on bankruptcy documents, either in whole or in redacted form, is set forth in the Bankruptcy Code. Section 342(c)(1) requires that:

> **(c)(1)** If notice is required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court, such notice shall contain the name, address, and last 4 digits of the taxpayer identification number of the debtor. If the notice concerns an amendment that adds a creditor to the schedules of assets and liabilities, the debtor shall include the full taxpayer identification number in the notice sent to that creditor, but the debtor shall include only the last 4 digits of the taxpayer identification number in the copy of the notice filed with the court.

Section 110 requires disclosure of the complete social security number of a bankruptcy petition preparer (BPP) on documents such as the petition and schedules prepared by the BBP:

> (c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document.
>
> (2)(A) Subject to subparagraph (B), for purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social account number of each individual who prepared the document or assisted in its preparation.

(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social account number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.

These provisions cannot, of course, be modified by rule.

Bankruptcy Rules

The source of the requirement that a redacted social security number appear on filed bankruptcy documents is in the Bankruptcy Rules, primarily Rule 1005 which specifies that the caption of a petition include the redacted SSN of an individual debtor:

Rule 1005. Caption of a Petition; Title of the Case[1]

(a) Caption and Title; Required Information. A petition's caption must contain the name of the court, the title of the case, and the case number (if known). The title must include the following information about the debtor:

(1) name;
(2) employer-identification number;
(3) the last 4 digits of the social-security number or individual taxpayer-identification number;
(4) any other federal taxpayer-identification number; and
(5) all other names the debtor has used within 8 years before the petition was filed.

That caption is also currently included on notices in the case (many of which are embodied in Official Forms) pursuant to Rule 2002(o):[2]

(o) Caption. The caption of a notice given under this Rule 2002 must conform to Rule 1005. The caption of a debtor's notice to a creditor must also include the information that § 342(c) requires.

Gathering Information

When the Subcommittee last considered the suggestion, it concluded that it needed more information before formulating a response. Specifically, it decided to defer consideration until two different tasks were completed.

[1] The restyled versions of the Bankruptcy Rules, on track to go into effect December 1, 2024, are used throughout this memo.
[2] The Subcommittee is currently recommending for publication to the Advisory Committee in response to Suggestion 23-BK-D and Suggestion 23-BK-J an amendment to Bankruptcy Rule 2002(o) that would eliminate (among other things) the truncated SSN in Rule 20002 notices. *See* Agenda Item 7B.

First, in connection the Judiciary's biannual report to Congress on the Adequacy of the Privacy Rules (the 2024 Privacy Report),[3] the Committee on Court Administration and Case Management of the Judicial Conference of the United States (CACM) requested the Federal Judicial Center to design and conduct a study regarding the inclusion of sensitive personal information in court filings and in social security and immigration opinions that would update its 2015 privacy study and gather information about compliance with privacy rules and the extent of unredacted SSNs in court filings. The FJC's 2024 privacy study (Privacy Study) is attached to this memorandum as Exhibit A2.

Second, the Subcommittee decided that it was important to survey debtor attorneys, chapter 7, 12, and 13 trustees, creditor attorneys, various tax authorities, and representatives of the National Association of Attorneys General about whether bankruptcy forms that currently require inclusion of the debtor's redacted SSN must or should continue to do so. Concurrently, the Subcommittee decided to ask for reactions from bankruptcy clerks of court on the issue. Working with the FJC, the reporters and members of the Subcommittee developed two surveys and sent them electronically to the various bankruptcy parties. The responses to the surveys are attached to this memorandum as Exhibit B.

Summary of Privacy Study

For the Privacy Study the FJC downloaded and analyzed all documents filed in district courts, bankruptcy courts, and appeal courts on 37 randomly selected days in calendar year 2022. Of those filings, 2,518,202 were made in the bankruptcy courts, including proofs of claim. The FJC searched these documents for unredacted SSNs. It found that, as compared to the district court documents where the majority of unredacted SSNs were found, a smaller percentage of bankruptcy court documents contained unredacted SSNs. Only 1,839 of the total bankruptcy filings examined (0.07%) contained unredacted SSNs, and there were 5,615 instances of unredacted SSNs in those documents.

The FJC concluded that 72% of the unredacted SSNs were included in violation of existing privacy rules, the vast majority of those in proof of claim forms. Indeed, 98% of unredacted SSNs that appeared in proof of claim forms were included in violation of the existing privacy rules. Of the 3,833 unredacted SSNs in other bankruptcy filings, 60% were noncompliant with existing privacy rules, 35% were exempt from the redaction requirement,[4] and 5% belonged to pro se litigants who waived the privacy protections by including their SSNs.

Of the 4,024 bankruptcy documents that included unredacted SSNs in violation of existing privacy rules, 54 involved the improper filing of Bankruptcy Form 121, which is not supposed to be filed on the public case file.

[3] At its September 2024 meeting, the Judicial Conference will consider a recommendation from the Standing Committee to approve the 2024 Privacy Report for submission to Congress. The version that was included in the Standing Committee's June 2024 agenda book is attached as Exhibit A1,

[4] Reasons for exemption from the requirement include appearance of the SSN in an official record of a state court proceeding which is filed in the bankruptcy court, the requirement that bankruptcy petition preparers include their full SSN, and the filing of a record of an administrative proceeding.

Summary of Surveys

Twenty-three clerks responded to the clerks' survey. In addition to responses to questions about use of the Rule 1005 caption required by Rule 2002(n) (soon to be Rule 2002(o)) – which are described in a separate memorandum to the Subcommittee on Suggestions 23-BK-D and 23-BK-J), the clerks were first asked whether they would support an amendment to Rule 2002(a) and (b) to limit the ability of the court to delegate authority for sending notices to the debtor or to an individual debtor. The purpose behind this question was the concern that Bankruptcy Code § 342(c)(1) would require the full caption if the court delegates responsibility for sending notices to the debtor. Most of the respondents opposed such an amendment.

The clerks were then asked which of the listed forms (all those that currently include the truncated social security number of the debtor) could be modified to remove the SSN entirely. More respondents stated that they endorsed eliminating the SSN entirely from all of the forms than stated that they opposed elimination, but fewer than half of the responding clerks endorsed removing it from Form 2040 (Notice of Need to File Proof of Claim Due to Recovery of Assets) (43% yes) and Form 2060 (Certificate of Commencement of Case) (48% yes). A large percentage were unsure about whether to endorse removal of the truncated SSN from all the forms (3-5 respondents out of 23 checked "not sure" for each form).

Two of the comments follow:

> "I checked with my staff on listing (or not listing) the redacted social on all of the forms reflected in this survey. They did not feel strongly one way or the other. They did feel strongly that it should be consistent. So whatever approach is taken should be reflect[ed] on all of these forms rather than having different requirements for each form. Life is too short to have to remember where it is required and where it is not required."

> "The primary reason in favor of including these numbers on the forms is to help reduce ambiguity about the debtor's identity, because many individuals have the same name, and many businesses have similar names. That is why many businesses (especially medical providers and financial institutions) ask for a name and either a birthdate or SSNs to confirm identity. That said, in bankruptcy cases, every caption of every notice will always have the case number, which will help remove ambiguity because the case number is not only unique but could also be used to look up the truncated SSN or ITIN or the EIN by looking at the 309 Form that was sent earlier in the case, or to look up those numbers using PACER. Thus, the issue could be framed as a question of whether it is better to freely distribute the truncated personal identifying numbers throughout the life of a bankruptcy case to make it more convenient for creditors to process bankruptcy notices, or to restrict such distribution to better protect debtors' PII. It would also reduce noticing costs somewhat within the bankruptcy universe if notices can be shorter because a smaller caption would not cause the notice to spill over onto another page."

The general survey was sent to Chapter 13, Chapter 7, and Subchapter V Trustees, creditors/attorneys for multiple agencies, collection agencies and other third-party debt collectors, debtor attorneys, state agency representatives, and creditors/attorneys for unsecured creditors. We

received 87 responses, 38 of them from Chapter 7 trustees, 19 from Chapter 13 trustees, and 13 from attorneys for debtors. There were few responses from other constituencies.

The survey recipients were first asked about whether a truncated version of the SSN would be sufficient on the Notice of Bankruptcy Case (Form 309) that was sent to them. Fifty-five percent of all respondents said they needed the full SSN on that Form, including 71% of all chapter 7 trustees and 58% of all chapter 13 trustees. (All debtor attorneys said that it would be sufficient for them, but those attorneys would have access to the full SSN from their clients.)

The survey recipients were then asked about whether they needed the truncated SSN on all the other forms that currently have it. Most agreed that it should not be eliminated on the docketed versions of Forms 309A-I (Notice of Bankruptcy Case) (38% yes, 58% no) and Form 2040 (Notice of Need to File Proof of Claim Due to Recovery of Assets) (49% yes, 48% no), but agreed it could be eliminated from all other forms. Chapter 7 trustees were less likely to agree that the truncated SSN could be eliminated for all forms. Debtors' attorneys strongly supported eliminating the truncated SSN on all forms. There were many thoughtful comments made in response to the survey, many emphasizing that the initial Notice of Bankruptcy Case sent to the trustee and creditors must include the full SSN. One pointed out that if a creditor is not initially listed as a creditor in the case or if the account is sold or transferred during the case, the current claim holder may not get the initial Notice of Bankruptcy Case and it would be difficult of match the Discharge Notices and the Asset Case notification if no truncated SSN is included. Another pointed out that the debtor's SSN appears on PACER's docket report, which is used by creditors to identify customer bankruptcy filings.

Recommendation

The Subcommittee recommends that the Advisory Committee take no action on Sen. Wyden's suggestion for three reasons.

First, as far as the Subcommittee knows there is no demonstrated problem of SSN fraud stemming from the disclosure of either full or truncated SSN in bankruptcy filings. Sen. Wyden pointed to the last FJC report on protecting privacy and noted that SSNs have been disclosed in court filings (including in bankruptcy court filings). But he provided no evidence that these disclosures have in fact led to "identity theft, stalking or other harms" about which he is concerned. Even if the Advisory Committee recommended the extensive modifications to the rules and forms to eliminate redacted SSNs from most bankruptcy court filings, mistakes would be made (as they are today). The bankruptcy clerks and courts cannot guarantee that any rules would be followed especially in connection with proofs of claim where most of the errors are made. As the new Privacy Study pointed out, the vast majority of disclosures of unredacted SSNs in filed bankruptcy documents (of which there are very few compared to district court cases) appear in violation of the existing privacy rules. The various rules committees have consistently tried to limit disclosure of personally identifiable information in filed documents to the redacted SSN in an effort to protect the privacy of debtors. The Standing Committee in the past has declined to go beyond the current requirements, and although the suggestion is well-meant, it may not be addressing a real-world problem.

Second, although most survey recipients would support removing the truncated SSN on most forms, the surveys indicate a significant number of bankruptcy specialists oppose the idea

with respect to every form we listed. Perhaps over time those parties could be made comfortable with the deletion of the truncated SSN in many of the forms, but it seems unwise to pursue changes that are both unnecessary and potentially unpopular.

Third, there are other ways to address the very valid concerns expressed in the Suggestion. It is clear from the Privacy Study that significant progress has been made in protecting SSNs from disclosure, and it is anticipated that such progress will continue. As noted above at Footnote 2, the Subcommittee is recommending for publication an amendment to Bankruptcy Rule 2002(o) to eliminate the requirement that notices sent under Bankruptcy Rule 2002 use the full caption described in Bankruptcy Rule 1005 (which includes the truncated SSN) and instead use a shorter caption that does not include that information. This may decrease the number of filed documents with the truncated SSN.

As described in Part II of the 2024 Privacy Report (Exhibit A1), there are a number of ongoing approaches to protect privacy in court filings and opinions, including continued outreach and educational efforts. In May 2023 CACM sent a memorandum to the courts sharing suggested practices to protect personal information in court filings and opinions. The memorandum urged the courts to continue or to consider initiating outreach efforts to litigants and members of the bar to ensure that they are aware of redaction obligations and the need to minimize personal identifiers in certain court filings. In addition, CACM recently requested the AO and FJC to explore other ways to increase awareness about ways to protect privacy in court filings and opinions.

The current case management system notifies filers via a prominent banner titled "Redaction Agreement" that appears immediately after a filer logs in to the system reminding them of the redaction requirements. The instructions to Official Form B410 (Proof of Claim) includes a warning that "A Proof of Claim form and any attached documents must show only the last 4 digits of any social security number …." Continuing advances in court management software may alert filers and courts of possible violations of the privacy rules so that corrective action can be taken.

For these reasons, the Subcommittee recommends that the Advisory Committee take no action on Suggestion 22-BK-I.

EXHIBIT A1

2024 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002

PREPARED FOR THE
U.S. SENATE AND HOUSE OF REPRESENTATIVES

JUDICIAL CONFERENCE OF THE UNITED STATES

June 2024

2024 REPORT OF THE JUDICIAL CONFERENCE OF THE UNITED STATES
ON THE ADEQUACY OF PRIVACY RULES PRESCRIBED
UNDER THE E-GOVERNMENT ACT OF 2002

The E-Government Act of 2002 directed the judiciary to promulgate rules, under the Rules Enabling Act, "to protect privacy and security concerns relating to electronic filing of documents and the public availability … of documents filed electronically." Pub. L. No. 107-347, 116 Stat. 2914, § 205(c)(3)(A)(i). The privacy rules – Appellate Rule 25(a)(5), Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1 – took effect on December 1, 2007.

Subject to specified exemptions, the privacy rules require that filers redact from documents filed with the court (1) all but the last four digits of an individual's social-security number or taxpayer-identification number (these numbers are collectively referred to here as the SSN); (2) the month and day of an individual's birth; (3) all but the initial letters of a known minor's name; (4) all but the last four digits of a financial-account number; and (5) in criminal cases, all but the city and state of an individual's home address. In recognition of the pervasive presence of sensitive personal information in filings in actions for benefits under the Social Security Act, and in proceedings relating to an order of removal, to relief from removal, or to immigration benefits or detention, the privacy rules exempt filings in those matters from the redaction requirement but also limit remote electronic access to those filings.

Section 205(c)(3)(C) of the E-Government Act directs that, every two years, "the Judicial Conference shall submit to Congress a report on the adequacy of [the privacy rules] to protect privacy and security." This report covers the period from June 2022 to June 2024.

The report proceeds in four parts. Part I discusses potential rule amendments (i) under consideration by the rules committees at the time of the 2022 Report, or (ii) added to the rules committee dockets since the 2022 Report was completed. Part II discusses ongoing implementation efforts by the Administrative Office of the United States Courts (the AO), the Federal Judicial Center (the FJC), and others to protect privacy in court filings and opinions. Part III discusses research undertaken by the FJC to assess adherence to the privacy rules. Part IV concludes with a summary and an overview of anticipated next steps.

I. Potential Privacy-Related Rules Amendments Under Consideration by the Rules Committees Since June 2022.

This section addresses topics under consideration by the rules committees at the time of the 2022 Report or added to the committees' agendas since that report was completed. Part I.A. discusses potential amendments to Criminal Rule 49.1. Part I.B. discusses ongoing deliberations concerning applications to proceed in forma pauperis, or without prepayment of fees, in appeals. Part I.C. notes proposals to adopt a Civil Rule addressing the sealing of court filings. Part I.D. discusses proposals to require the full redaction of SSNs in court filings and to restrict the dissemination of an individual's full SSN to creditors in bankruptcy cases, and Part I.E. discusses two new suggestions proposing changes to the civil rules to address privacy and cybersecurity risks in civil litigation.

Draft

A. Potential Amendments to Criminal Rule 49.1

At the time of the 2022 Report, the Criminal Rules Committee was evaluating whether any change to Criminal Rule 49.1 is needed to address a reference – in the 2007 committee note to that Rule – to the March 2004 "Guidance for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files" from the Committee on Court Administration and Case Management (CACM). The Committee's consideration of a change was prompted by a public suggestion questioning whether the guidance, as outlined in the note, is consistent with caselaw concerning rights of public access to information contained in criminal defendants' CJA applications. Since the 2022 Report was issued, the Committee concluded that an amendment to Criminal Rule 49.1 would not change the note's reference to the CACM Committee's March 2004 guidance and that an amendment is otherwise not warranted.

In March 2024, the U.S. Department of Justice submitted a suggestion to the Criminal Rules Committee proposing an amendment to Rule 49.1 to require that all publicly available court filings refer to minors by pseudonyms rather than by their initials. The Committee's work on this matter is at an early stage. A new Rule 49.1 Subcommittee has been formed to study this proposal. If the Criminal Rules Committee concludes that an amendment to Criminal Rule 49.1 is warranted, the other advisory committees would then consider whether parallel amendments to the other privacy rules would be appropriate.

B. Potential Amendments Concerning Applications to Proceed In Forma Pauperis (IFP)

The Appellate Rules Committee has been considering suggestions to revise Appellate Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis). The basic suggestion is that Form 4 could be substantially simplified while still providing the courts of appeals with enough detail to decide whether to grant IFP status. At its April 2024 meeting, the Appellate Rules Committee recommended for publication and public comment proposed amendments to Form 4 that would reduce the amount of personal financial detail the form requires. If publication goes forward as recommended, and the proposed amendments receive subsequent approvals in the ordinary course, a revised version of the form could go into effect as early as December 1, 2026.

C. Proposals to Adopt a Rule on Sealing of Court Filings

The Civil Rules Committee has before it proposals to adopt a rule setting standards and procedures governing the sealing of court filings. The Committee has referred these proposals to its Discovery Subcommittee for initial evaluation. The subcommittee has recently started an information-gathering effort to identify logistical issues that might arise if some of the proposed measures in the suggestions for sealing standards were to be adopted.

Draft

D. Proposals for Further Restrictions on the Use of SSNs

Since the 2022 Report, the rules committees have received a suggestion to require full redaction of SSNs in court filings, and the Bankruptcy Rules Committee has received suggestions to eliminate the debtor's partially redacted SSN and address information on some of the notices filed on the court docket and to stop sending the debtor's full SSN to creditors in a bankruptcy case.

D.1 Suggestion from Senator Ron Wyden

As noted in the 2022 Report, in 2015-2016, the Appellate, Bankruptcy, Civil, and Criminal, Rules Committees considered suggested amendments to the privacy rules that would require redaction of an individual's entire SSN in court filings. In evaluating the proposal, participants noted that the rules committees had considered full redaction of such numbers when formulating the privacy rules, but had concluded that the last four digits were needed in bankruptcy proceedings to confirm debtor identity. Given the E-Government Act's requirement to promulgate rules that are uniform "to the extent practicable" in protecting privacy and security issues,[1] the Appellate, Civil, and Criminal Rules Committees followed the lead of the Bankruptcy Rules Committee in requiring redaction of all but the last four digits of an individual's SSN. Based on continued agreement with that analysis, the advisory committees decided not to propose amendments to the privacy rules at that time.

In an August 4, 2022, letter concerning a draft of the 2022 Report, Senator Ron Wyden suggested that the rules committees reconsider a proposal to redact the entire SSN from court filings. The Bankruptcy Rules Committee took the lead in considering Senator Wyden's suggestion at its spring 2023 meeting.

By way of background, in the 1990s, the judiciary considered privacy concerns related to the increasing ease of access to electronic public records through the internet. The CACM Committee – with input from other Judicial Conference Committees, particularly the Bankruptcy Rules Committee, as well as the public – recommended a privacy policy governing the electronic availability of case file information, which reflected a careful balance between public access and individual privacy. The Judicial Conference adopted this policy in 2001 (JCUS-SEP/OCT 2001, pp. 48-50). Among other things, the policy required the modification or partial redaction of SSNs in civil case files and directed the Bankruptcy Rules Committee to amend the rules as necessary to allow a court to collect a debtor's full SSN but display only the last four digits. Under this policy, several amendments to the bankruptcy rules and forms were implemented in 2003 to limit disclosure of a party's SSN or other personally identifiable information. The bankruptcy petition forms, and Official Form 416A, Caption (Full), were modified to include only the last four digits of a debtor's SSN in order "to afford greater privacy to the individual debtor, whose bankruptcy case records may be available on the Internet." *See* 2003 committee notes to Official Bankruptcy Forms 101, 105, and 416A. Rule 1005 was similarly amended to require only the last four digits of the debtor's SSN in the caption of a petition. At the same time, Rule 2002(a)(1) was amended

[1] E-Government Act of 2002, Pub. L. No. 107-347, § 205(c)(3)(A)(ii).

Draft

to require that the debtor's full SSN be included in the official form providing notice of the bankruptcy case that is sent to creditors under 11 U.S.C. § 341 or § 1104(b), but that the filed version of the form include only the last four digits of the SSN. As explained in the committee note (2003) to Rule 2002:

> This will enable creditors and other parties in interest who are in possession of the debtor's social security number to verify the debtor's identity and proceed accordingly. The filed Official Form 9, however, will not include the debtor's full social security number. This will prevent the full social security number from becoming a part of the court's file in the case, and the number will not be included in the court's electronic records. Creditors who already have the debtor's social security number will be able to verify the existence of a case under the debtor's social security number, but any person searching the electronic case files without the number will not be able to acquire the debtor's social security number.

All versions of Official Form 9 (now Official Forms 309A-309I) were amended accordingly to include only the last four digits of the debtor's SSN in the official copy included in the case file.

The Bankruptcy Rules Committee's spring 2023 minutes reflect that in considering Senator Wyden's suggestion, members noted that two statutory provisions preclude a rule change that would require the full redaction of SSNs in all filings. Section 110(c) of the Bankruptcy Code requires bankruptcy petition preparers to include their full SSN on any bankruptcy filing they have prepared for filing in the case. And § 342(c) requires that the last four digits of the debtor's SSN be included on notices "required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court." Outside those statutory constraints, however, the Committee is considering related suggestions that would remove the debtor's partially redacted SSN on some notices sent under Rule 2002, and it is evaluating the need for the partially redacted SSN on some bankruptcy forms where it is currently required. Those proposals are discussed in Part D.2 below.

A working group composed of the rules committees' reporters is also in the beginning stages of considering whether, despite the E-Government Act preference for uniform privacy rules, the rules committees should reconsider fully redacting SSNs from filings in civil and criminal cases irrespective of the need for full or partially redacted SSNs in some bankruptcy filings. (The appellate privacy rule incorporates the privacy rule of the type of case – bankruptcy, civil, or criminal – that is being appealed.) At the spring 2024 meetings of the advisory committees, the working group provided a sketch for a possible amendment to require the full redaction of SSNs in court filings but recommended that such an amendment to the Civil and Criminal Rules should not be taken up in isolation but should be part of a more comprehensive review of the privacy rules. The working group will continue to work with the advisory committees to identify areas of common concern and to assist in coordination of proposed changes.

Draft

D.2 Suggestions That Would Remove Redacted SSNs From Some Bankruptcy Notices and Forms.

Bankruptcy Rule 1005 requires that the caption of the petition contain the name of the court, title of the case, and docket number. It further requires that the title of the case include the debtor's name, employer identification number, last four digits of the debtor's SSN, and all other names used by the debtor within eight years before filing the petition. Bankruptcy Rule 2002(n) requires that the caption of every notice given under Rule 2002 comply with Rule 1005.

In 2023, the Bankruptcy Rules Committee received a suggestion from a group of bankruptcy clerks from the Eighth Circuit suggesting that Rule 2002(n) be amended to eliminate the requirement that the caption of every notice given under Rule 2002 comply with Rule 1005. The AO's Bankruptcy Clerks Advisory Group submitted a second suggestion supporting the clerks' suggestion.

The bankruptcy clerks state that the caption requirements "are substantial and can add a significant amount of length, and therefore cost, to a Rule 2002 notice." They also note that, despite the requirements of Rule 2002(n), there is a long-standing practice of bankruptcy clerks in their circuit to provide the Rule 1005 caption requirements only on the Notice of Bankruptcy Case. Thereafter, the clerk's office uses a shorter caption that "generally follows Official Form 416B" which requires only the debtor's name, and the bankruptcy case and chapter numbers. If the suggestion is adopted, most notices under Rule 2002 would no longer include a field for the debtor's partially redacted SSN. A subcommittee of the Bankruptcy Rules Committee, with the help of the FJC, has surveyed bankruptcy clerks about the desirability of including all the information required by Rule 1005 in routine notices under Rule 2002.

In addition, in connection with Senator Wyden's suggestion, the subcommittee, with the help of the FJC, has begun to survey debtor attorneys, chapter 7, 12, and 13 trustees, creditor attorneys, various tax authorities and representatives of the National Association of Attorneys General about whether bankruptcy forms that currently require inclusion of the debtor's redacted SSN must or should continue to do so.

D.3 Suggestion 23-BK-A to Restrict Dissemination of the Debtor's Full SSN

A staff attorney for a chapter 13 trustee, suggested that Bankruptcy Rule 2002(a)(1) be amended to stop sending the debtor's full SSN to creditors. Similar suggestions were received in 2011 and 2015. In considering the earlier suggestions, although Committee members recognized the importance of protecting debtors from improper disclosure of their full SSN, they also recognized that creditors such as the IRS rely on the full SSN to ensure that they are seeking payment from the correct debtor or to determine whether a debtor from whom they are seeking payment has filed for bankruptcy protection. A subcommittee reviewing the suggestion noted that some creditors continue to use the full SSN to ensure accurate debtor identification. The subcommittee therefore recommended no changes. The Bankruptcy Rules Committee discussed the recommendation at its spring 2023 meeting and decided to take no action on the suggestion.

Draft

E. Proposals to Amend the Civil Rules to Further Protect Privacy Rights and Prevent Cybersecurity Problems

In September 2023, the Lawyers for Civil Justice (LCJ) submitted a suggestion for the comprehensive examination of the Civil Rules and to implement a framework for the court and parties to protect privacy rights and prevent cybersecurity problems at various stages of civil litigation, including discovery. LCJ identified a number of Civil Rules for potential amendments to better protect parties and non-parties from disclosure of personal and confidential information. In November 2023, a private attorney wrote to the rules committees in support of LCJ's proposal. His submission encouraged the Civil Rules Committee to address comprehensively the privacy and cybersecurity risks in civil litigation. The Committee is in the early stages of considering these suggestions.

II. Ongoing Implementation Efforts to Protect Privacy in Court Filings and Opinions

As mentioned above, the privacy rules require that the filer redact certain personal identifiers from court filings. Additionally, due to the pervasive presence of sensitive personal information in Social Security and immigration cases, the privacy rules exempt filings in those matters from the redaction requirement but also limit remote electronic access to those filings. The opinions in these cases, however, are widely available to the public via PACER and other legal research databases that are easily searchable. The CACM Committee and the AO have recently engaged in a number of outreach and educational efforts to protect personal information.

In May 2023, the CACM Committee sent a memorandum to the courts sharing suggested practices to protect personal information in court filings and opinions. With regard to court filings, the memorandum urged the courts to continue or to consider initiating outreach efforts to litigants and members of the bar to ensure they are aware of redaction obligations and the need to minimize the appearance of private identifiers in certain court filings.[2]

The May 2023 memorandum also reminded the courts about a possible concern regarding sensitive personal information in Social Security and immigration opinions and a suggested practice of using only the first name and last initial of any non-government parties in the opinions.[3] Since this suggested practice was first shared with the courts in 2018, many courts have redacted party names in their opinions. In addition, some districts have adopted a local rule or internal

[2] Specifically, similar to a memorandum sent to courts by the CACM Committee in November 2011, the memorandum emphasized that courts should ensure they are aware of (1) filers' redaction obligations under the privacy rules; (2) measures to minimize the appearance of private identifiers in court filings; (3) the obligation to secure a court order before redacting information beyond that specifically identified in the privacy rules; and (4) the obligation to redact private identifiers from transcripts of proceedings.

[3] This suggested practice was developed following extensive consultation with stakeholders inside and outside the judiciary as a way to balance the need to provide public access to Social Security and immigration opinions while protecting personal information. The CACM Committee first shared this suggested practice in a May 2018 memorandum to the courts.

Draft

operating procedure addressing the practice. Finally, the May 2023 memorandum reminded courts about a software change implemented by the AO in 2020 that masks information such as case and party names in extracts of Social Security and immigration opinions provided to the Government Printing Office and the GovInfo database for publication.

Beyond sharing suggested practices directly with the courts, the CACM Committee recently requested that the AO and FJC explore other ways to increase awareness about ways to protect privacy in court filings and opinions. The AO recently updated several sections of the judiciary's internal and public websites to include updated information regarding privacy rule requirements and suggested practices. Furthermore, the FJC is exploring ways to increase references to these suggested practices in its educational materials and trainings for new judges, court unit executives, and law clerks, and it will explore developing a model webpage that courts can include on their local websites to increase awareness among the bar and the public.

Additionally, the current case management system continues to notify filers via a prominent banner titled "Redaction Agreement" that appears immediately after a filer logs in to remind them of the redaction requirements in the Appellate, Bankruptcy, Civil, and Criminal Rules, and that the requirements apply to all documents, including attachments. To proceed, the filer is required to check a box acknowledging that they have read the notice and understand their obligation to comply with the redaction requirements. Thereafter, before a filer electronically submits a document to the court, the system presents a reminder asking "have you redacted?"

Finally, the CACM Committee has urged the AO to implement features in the modernized case management system to automate and facilitate a litigant's review of court filings for compliance with the redaction requirements in the Appellate, Bankruptcy, Civil, and Criminal Rules. The CACM Committee will continue to explore other possible ways to protect private information in court filings and opinions.

III. Federal Judicial Center Research on Unredacted Personal Information

As noted in prior reports on the adequacy of the privacy rules, the FJC has undertaken several studies of compliance with the redaction requirements. The FJC in 2010 conducted a survey of federal court filings to ascertain how often unredacted SSNs appeared in those filings.[4] In 2015, the FJC reported the results of its follow-up study on the same topic.[5] The follow-up study searched 3,900,841 documents filed during a one-month period in late 2013 and found that 5,437 (or less than 0.14 percent of the documents) included one or more unredacted SSNs. This is a greater percentage than was found in the 2010 study; but the 2015 study explained that the difference was due to an improvement in search methodology. In the 2015 study, the researchers

[4] See Memorandum from George Cort & Joe Cecil, Research Division, FJC, to the Privacy Subcommittee of the Judicial Conference Committee on Rules of Practice and Procedure, Social Security Numbers in Federal Court Documents (April 5, 2010).

[5] See Joe S. Cecil et al., Unredacted Social Security Numbers in Federal Court PACER Documents (FJC 2015).

Draft

reprocessed the documents using optical character recognition (OCR), which enabled them to identify SSNs in documents that were originally filed in non-text-searchable format. The researchers noted that, because OCR had not been used for the 2010 study, that study had failed to reflect the full incidence of unredacted SSNs. They observed that a comparison of the two studies' findings, taking into account the difference in methodologies, "suggests that the federal courts have made progress in recent years in reducing the incidence of unredacted Social Security numbers in federal court documents, especially in bankruptcy court documents."[6]

In January 2023, the CACM Committee asked the FJC to update its 2015 study of court filings for adherence to the privacy rules. The FJC's updated study, completed in May 2024 and attached as Exhibit 1, used an expanded sampling procedure, more advanced methodology, and context-specific exemption coding, which limit the ability to make direct comparisons to the 2010 and 2015 studies.

For the updated study, the FJC downloaded and analyzed all documents (4,674,242) filed in the district courts (2,017,908), bankruptcy courts (2,518,202) (including proof of claim filings), and appeals courts (138,132) on 37 randomly selected days in calendar year 2022. The FJC searched these documents for possible instances of unredacted SSNs, and identified 22,391 unredacted SSNs belonging to approximately 8,300 individuals. Of the nearly 4.7 million documents analyzed, just 4,525 (0.10%) contained one or more unredacted SSNs.[7] Moreover, within the set of unredacted SSNs, approximately 22% appear to be exempt from the redaction requirement and an additional 6% belong to pro se parties who waived the privacy protections by filing their own SSN in an unsealed document. The FJC analysis also indicates that a large percentage of the unredacted SSNs occurred in a relatively small number of documents. For example, 45% of the unredacted SSNs (10,042) were found in 17 documents, with just two documents in the same case accounting for nearly 6,200 unredacted SSNs.[8]

In future studies, the FJC intends to report on instances of unredacted private information beyond social-security numbers in court filings. For instance, the FJC will identify documents with unredacted birth dates, minor names, financial account numbers, and (in criminal cases) details of an individual's home address. The FJC also intends to analyze Social Security and immigration opinions for the presence of full names of non-government parties. The FJC will collaborate with the AO to assist with future reports to Congress on the adequacy of the privacy rules.

[6] *Id*. at 11.

[7] The breakdown of unredacted SSNs by court was as follows: district court: 0.12%, bankruptcy court: 0.07%, court of appeals: 0.17%.

[8] In this example, a civil case, a party filed a single document containing 3,099 SSNs twice, using a "redaction" method that is easily circumvented.

Draft

IV. Conclusion

In the two years since the Judicial Conference's 2022 Report to Congress on the adequacy of the privacy rules, the rules committees have considered several proposed rule changes that include privacy-related issues. As described in Part I, the Bankruptcy, Civil, and Criminal Rules Committees are reconsidering the need for the last four digits of SSNs in court filings, and they are also considering whether the privacy rules need to remain uniform with respect to the level of redactions applied to SSNs. One suggestion noted in the 2022 Report, proposed amendments to Appellate Form 4, is now on track to be published for comment in 2024, while several more recent privacy-related suggestions are in the beginning stages of consideration. Part II describes ongoing implementation efforts to protect privacy in court filings and opinions. Among other things, the CACM Committee sent a memorandum to the courts in May 2023 sharing suggested practices to protect privacy and encouraging continued outreach and educational efforts. The memorandum also reminded courts about the possible inclusion of sensitive information in Social Security and immigration opinions and reminded courts of a software fix implemented in 2020 that can mask certain information in extracts of Social Security and immigration opinions. Part II also reports that the CACM Committee has asked the AO and FJC to explore other ways to increase awareness of the need to protect privacy in court filings and opinions, leading to updates in the judiciary's internal and external websites, and efforts by the FJC to address privacy issues in educational materials for new judges. Part III, in turn, discusses the FJC's 2024 update of its studies in 2010 and 2015 concerning the prevalence of unredacted SSNs in court filings. With respect to SSNs, the FJC's 2024 study reveals that non-compliance with the existing privacy rules remains very low. Upcoming FJC studies addressing other aspects of the privacy rules will be considered by the rules committees and the CACM Committee in the coming years and will be addressed in future privacy reports.

Draft

EXHIBIT A2

Unredacted Social Security Numbers in Federal Court PACER Documents

Prepared for the

Judicial Conference of the United States Committee on Court Administration and Case Management

Kristin A. Garri, Roy Germano, Jason A. Cantone, Jana Laks

Federal Judicial Center

April 2024

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. While the Center regards the content as responsible and valuable, this publication does not reflect policy or recommendations of the Board of the Federal Judicial Center.

This report was produced at U.S. taxpayer expense.

Acknowledgements. The authors would like to thank George Cort for his assistance in identifying and downloading the court documents, Alexis Allegra for her assistance in processing the documents, and Marvin Astrada, Bersaveh Belay, Vashty Gobinpersad, Abigail Herzfeld, Marie Leary, Angelia Levy, Rebecca Petroff, Cheena Pongase, and Chelsea Queen for their assistance in coding.

Contents

Summary 4
Background 4
Prior Federal Judicial Center Research 6
Present Study..6
Findings..9
Overview 9
District Courts 10
Bankruptcy Courts..14
Courts of Appeals 16
Comparisons to the 2010 and 2015 Studies 17
Limitations of the Current Study...18
Appendix A: Federal Rules of Procedure Protecting Individual Privacy.............................20
Federal Rule of Civil Procedure Rule 5.2—Privacy Protection for Filings Made with the Court 20
Federal Rule of Criminal Procedure Rule 49.1—Privacy Protection for Filings Made with the Court 22
Federal Rule of Bankruptcy Procedure Rule 9037—Privacy Protection for Filings Made with the Court...24
Federal Rule of Appellate Procedure Rule 25(a)(5)—Filing and Service........................26
Appendix B: Methodology...27
Sample 27
Dataset 27
Search Algorithm Development and Validation 28
Manual Coding of SSNs..30
Manual Coding of Exemptions..30

Summary

In 2024, at the request of the Judicial Conference Committee on Court Administration and Case Management (CACM), the Federal Judicial Center (Center) completed a study of unredacted social security numbers and individual taxpayer identification numbers, collectively referred to here as "SSNs," in federal court documents available in the Public Access to Court Electronic Records (PACER) service. This study was based on all publicly available PACER documents filed on 37 randomly selected days in 2022. It included a total of 4,681,055 documents filed in the federal district, bankruptcy, and appeals courts and in bankruptcy proof of claim registers.

Across all court types, 22,391 unredacted SSNs belonging to approximately 8,300 individuals were identified in these documents. Of the nearly 4.7 million documents analyzed, 4,525 (0.10%) contained at least one unredacted SSN (district court: 0.12%, bankruptcy court: 0.07%, court of appeals: 0.17%). These documents were filed in 3,901 docket entries[1] from 3,521 cases. A large number of unredacted SSNs were found in a relatively small number of documents: 45% in 17 documents.

Seventy-two percent of the unredacted SSNs identified in this study appear to be noncompliant with the privacy rules, while 22% appear to be exempt from the redaction requirement and 6% belong to pro se parties who waived the privacy protections by filing their own SSN in an unsealed document.

Background

In response to the E-Government Act of 2002,[2] the Judicial Conference of the United States (Judicial Conference) adopted rules effective on December 1, 2007, intended to protect private information in case filings, including those that are publicly available via electronic public access. The "privacy rules"—Appellate Rule 25(a)(5), Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1—require redaction of specified information in filings made with the courts (see Appendix A). These rules are based on previously developed judiciary policy that also addresses other privacy concerns.[3] CACM, in conjunction with the Judicial Conference Committee on the Rules of Practice and Procedure (Standing Committee), regularly considers privacy concerns, including possible amendments to the federal rules and Judicial Conference privacy policies.

In 2009, the Executive Committee of the Judicial Conference directed the Standing Committee to report on the operation of the privacy rules. The Standing Committee's Privacy Subcommittee considered the findings of a 2010 empirical study by the Center on

---

[1] Some PACER docket entries contain multiple filings, with each being an individual downloadable PDF.

[2] Pub. L. 107-347, § 205(c) (3) (requiring the federal judiciary to formulate rules "to protect privacy and security concerns relating to electronic filing of documents").

[3] Guide to Judiciary Policy, vol. 10, ch. 3. § 310.20 (b): https://jnet.ao.dcn/policy-guidance/guide-judiciary-policy/volume-10-public-access-and-records/ch-3-privacy

unredacted social security numbers,[4] conducted a miniconference at the Fordham School of Law, and reviewed surveys of judges, clerks of court, and assistant U.S. attorneys regarding their experiences with the operation of the privacy rules. While the Privacy Subcommittee found no general issues regarding the operation of the privacy rules, it recommended that "[t]o ensure continued effective implementation, every other year the [Center] should undertake a random review of court filings for unredacted personal identifier information."[5] In 2015, the Center again undertook an empirical review of court filings for unredacted SSNs at the request of the Privacy Subcommittee.[6]

At its December 2022 meeting, CACM discussed concerns recently raised by Congress and reported in the media that some publicly available court filings, including published opinions in Social Security and immigration cases, include unredacted personal information in violation of the privacy rules. Following the meeting, CACM requested that the Center update the 2015 Center study.

CACM specifically requested that the study estimate (a) the rate of compliance with privacy rules regarding unredacted social security numbers in court filings and (b) the prevalence of personally identifiable information (PII) in Social Security and immigration opinions. CACM indicated an interest in identifying the prevalence of additional types of unredacted PII covered under the privacy rules, including all but the last four digits of a taxpayer identification number; the month and day of an individual's birth; all but the initial letters of a known minor's name; all but the last four digits of a financial account number; and, in criminal cases, all but the city and state of an individual's home address. Finally, CACM requested an analysis of the types of court filings and court filers most often associated with unredacted PII. The Center is taking an iterative approach to this research.

CACM requested an interim report from the Center to inform the Judicial Conference's next congressionally required report on the adequacy of the privacy rules being prepared by the Standing Committee staff, in collaboration with CACM staff. As requested, this interim report includes an analysis of unredacted SSNs in federal appellate, district, and bankruptcy courts (including proof of claims registers).[7]

---

[4] *Social Security Numbers in Federal Court Documents* (2010) is available here: https://www.fjc.gov/content/social-security-numbers-federal-court-documents

[5] Summary of the Report of the Judicial Conference Committee on Rules of Practice and Procedure (March 2011): https://www.uscourts.gov/sites/default/files/fr_import/ST03-2011.pdf

[6] *Unredacted Social Security Numbers in Federal Court PACER Documents* (2015) is available here: https://www.fjc.gov/content/313365/unredacted-social-security-numbers-federal-court-pacer-documents

[7] A proof of claim is a written statement or form (Bankruptcy Form 410) used by the creditor to indicate the amount of the debt owed by the debtor to the creditor on the date of the bankruptcy filing. Proof of claim filings may contain attachments that include documents to show that the debt exists, that a lien secures the debt, or both, as well as any documents that show perfection of any security interest or any assignments or transfers of the debt. The proof of claim register is where claims are filed on the docket of a bankruptcy case. https://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0

Prior Federal Judicial Center Research

In 2010 and 2015, the Center examined whether unredacted social security numbers appeared in federal district and bankruptcy court records available through PACER. The 2010 study used Perl, a programming language, to search for a social security number pattern (i.e., 123-45-6789) in almost 10 million PACER documents filed across all district courts and 98% of bankruptcy courts in November and December 2009. Researchers visually reviewed more than 3,200 documents flagged by Perl and confirmed that 2,899 included one or more unredacted social security numbers. Seventeen percent of those documents appeared to qualify for an exemption from the redaction requirement.

The 2010 study was limited in several ways. First, static-image PDFs were not converted into machine-readable text, and, as a result, an unknown number of documents were not searched. Second, researchers examined only the specific document containing the SSN and not the role of the document in the full context of the case to determine whether an exemption applied. Finally, researchers were unable to identify whether unredacted SSNs belong to and were filed by pro se parties and thus qualified for a waiver.

For the 2015 study, researchers downloaded almost 4 million individual PACER documents filed in November 2013. Each document then underwent optical character recognition (OCR) review to convert static PDF documents into machine-readable text. Some documents (including all documents from one bankruptcy court) were excluded from further analysis because they could not be converted. Researchers used Adobe Acrobat to detect social security number patterns within the included documents, as well as text strings that included "SSN" or "social security." Researchers then visually examined about 17,000 documents to determine if the output identified by Adobe Acrobat searches were indeed social security numbers. This review identified 16,811 instances of unredacted SSNs filed by 5,031 individuals in 5,437 documents.

The 2015 study was also limited in its analysis of exemptions and waivers, as researchers again examined only the specific document containing the SSN and not the role of the document in the full context of the case or the party that filed it.

Compared to the 2010 study, the 2015 study found a higher percentage of documents with unredacted social security numbers (0.14% compared to 0.03% in 2010). However, the report concluded that the use of more powerful search techniques, rather than a change in filing practices, accounted for the apparent increase.

Present Study

This study is based on all publicly available PACER documents filed on 37 randomly selected days in 2022.[8] Center researchers downloaded a total of 4,681,055 publicly

[8] Because there is not a comprehensive list of all documents filed in all courts, researchers could not randomly select documents directly. Instead, a subset of dates in 2022 were randomly selected, and all documents filed on those dates were analyzed. See Appendix B, Methodology.

available PACER documents filed on these days in the federal district, bankruptcy, and appeals courts and in bankruptcy proof of claim registers. They then used Python, a programming language, to render the downloaded PDF files readable and searchable. Of the PDFs that were downloaded, 4,674,242 (99.9%) were successfully converted into searchable text files. Researchers then used Python to identify and extract nine-digit numbers from the text files. This approach yielded about 4.4 million potential SSNs.[9]

A team of researchers then examined more than 120,000 of the nine-digit numbers in context to identify common ways in which SSNs appeared in court documents. The context patterns identified by the research team were then used to write an algorithm in R, another programming language, designed to predict which of the 4.4 million numbers were SSNs. The algorithm labeled over 50,000 of these numbers as likely or possible SSNs, which a team of researchers then manually reviewed to determine which were unredacted.

In the final step, the research team manually inspected the context of the unredacted SSNs to determine whether they were exempt from the redaction requirement at the time they were downloaded. If an SSN was identified as exempt, researchers noted which of the following reasons applied:

[9] In addition to SSNs, two specific types of taxpayer identification numbers are of particular interest in the context of the study, as they are covered by the privacy rules: individual taxpayer identification numbers (ITIN) and adoption taxpayer identification numbers (ATIN). An ITIN is a tax processing number issued by the Internal Revenue Service (IRS) to individuals who are required to have a U.S. taxpayer identification number but who do not have and are not eligible to obtain an SSN. An ATIN is a number issued by the IRS as a temporary taxpayer identification number for the child in a domestic adoption where the adopting taxpayers do not have or are unable to obtain the child's SSN. Very few ITINs and no ATINs were found by the Center.

Figure 1. Exemptions From the Redaction Requirement

- Record of a state court proceeding
- Pro se party filing in a habeas corpus proceeding under 28 U.S.C. §§ 2241, 2254, or 2255
- Criminal charging document/affidavit
- Criminal arrest/search warrant
- Criminal investigation or other document prepared prior to filing of criminal charge
- Non-attorney bankruptcy petition preparer (e.g., Bankruptcy Form 119)
- Filing in appeal of Railroad Retirement Board benefits decision
- Filing in civil social security case (i.e., action for benefits under the Social Security Act)
- Record of administrative agency proceeding (except in bankruptcy cases if record filed with proof of claim)
- Immigration case (i.e., action relating to immigration removal, relief from removal, benefits, or detention)
- Record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed
- Documents filed under seal

An SSN is exempt from the redaction requirement if it appears in the record of an administrative agency proceeding, a state court proceeding, or a court or tribunal, if that record was not subject to the redaction requirement when originally filed. Additionally, an SSN is exempt if it is filed under seal. In criminal cases, SSNs are also exempt from the redaction requirement if filed as part of a charging document and an affidavit filed in support of any charging document; in an arrest or search warrant; or in a court filing that is related to a criminal matter or investigation that is prepared before the filing of a criminal charge or that is not filed as part of any docketed criminal case. In civil cases, SSNs are also exempt from the redaction requirement if they appear in an immigration action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention; an action for benefits under the Social Security Act; or a pro se filing in a habeas corpus proceeding under 28 U.S.C. §§ 2241, 2254, or 2255. In bankruptcy cases, non-attorney bankruptcy petition preparers are exempt from redacting their own SSNs. In appeals cases, SSNs are exempt if they appear in appeals of Railroad Retirement Board benefits decisions.

For those SSNs not qualifying for an exemption from the redaction requirement, researchers determined if the numbers belonged to pro se parties who filed their own SSN.

Under the privacy rules, pro se parties waive the privacy protections when they file their own SSN without redaction and not under seal.

For the complete Federal Rules of Procedure Protecting Individual Privacy, including the relevant sections on exemptions from the redaction requirement, see Appendix A. For a more detailed description of the study's methodology, see Appendix B.

Findings

Overview

Table 1 provides an overview of key findings. It shows that of the nearly 4.7 million documents analyzed across all court types, 4,525 (0.10%) contain at least one unredacted SSN (district court: 0.12%, bankruptcy court: 0.07%, court of appeals: 0.17%). These documents were filed in 3,901 docket entries from 3,521 cases. An estimated 22,391 SSNs belonging to approximately 8,300 individuals were identified in total. Seventy-two percent of the unredacted SSNs appear to be noncompliant with the privacy rules, while 22% appear to be exempt from the redaction requirement, and 6% belong to pro se parties who waived the privacy protections.

Table 1. Unredacted Social Security Numbers in PACER Documents on 37 Randomly Selected Days in Calendar Year 2022

	District Courts*	Bankruptcy Courts**	Appeals Courts	Total All Courts
Documents analyzed	2,017,908	2,518,202	138,132	4,674,242
Documents containing unredacted SSNs	2,451 (0.12%)	1,840 (0.07%)	234 (0.17%)	4,525 (0.10%)
Number of unredacted SSNs identified	15,935	5,615	841	22,391
SSNs noncompliant with privacy rules	11,877 (75%)	4,024 (72%)	322 (38%)	16,223 (72%)
SSNs exempt from redaction requirement	3,205 (20%)	1,361 (24%)	349 (41%)	4,915 (22%)
SSNs with privacy protections waived	853 (5%)	230 (4%)	170 (20%)	1,253 (6%)

* *Includes filings from cases on the civil, criminal, and miscellaneous dockets*
** *Includes proof of claim filings*

A large number of SSNs were found in a relatively small number of documents. Forty-five percent (10,042) of all the unredacted SSNs identified in this study appear in 17 documents. Fifty-one percent (8,052) of unredacted SSNs found in district court filings appear in ten documents from civil cases. A single document filed in a district court case on the miscellaneous docket was found to contain 733 unredacted SSNs. Nineteen percent

(1,072) of unredacted SSNs found in bankruptcy court filings appeared in just three documents.

In one civil case, a single document containing 3,099 SSNs was filed twice. The party who filed the document attempted to redact the SSNs by covering them with a black box. The SSNs can be made visible, however, simply by selecting and deleting the box or by highlighting the page and copying and pasting the text behind it into a word processor. These 6,198 improperly redacted SSNs account for 28% of the SSNs identified in this study. An additional 1,471 improperly redacted SSNs were found in 443 other documents. The vast majority (1,100) appear in proof of claim registers. Of the 7,669 improperly redacted SSNs identified, 6,327 were in district court filings, 1,341 were in bankruptcy court filings, and 1 was in an appeals court filing.

District Courts

The majority of unredacted SSNs identified in this study—15,935 out of 22,391—were found in district court documents. Of the roughly 2 million district court documents analyzed, 2,451 (0.12%) contain unredacted SSNs. Of the unredacted SSNs found in district court documents, 75% appear to be noncompliant with the privacy rules. Twenty percent are exempt from the redaction requirement, and the remaining 5% belong to pro se parties who waived the privacy protections.

Table 2 disaggregates the district court data by cases on the civil, criminal, and miscellaneous dockets.[10]

[10] Cases on the miscellaneous docket are actions that do not qualify as civil cases in federal court, such as uncontested bankruptcy withdrawals or actions to enforce administrative subpoenas and summons heard by a magistrate judge, and those criminal matters not reportable by the federal courts to the Administrative Office of the U.S. Courts (AO), including petty offense cases presided over by magistrate judges, class A misdemeanor cases on the Central Violations Bureau (CVB) docket, and proceedings that are unrelated to the trial or disposition of a defendant for the offense charged, such as supervised release revocation hearings and remands for resentencing.

Table 2. Social Security Numbers in District Court Filings

	Civil Docket	Criminal Docket	Misc. Docket	District Total
Documents analyzed	1,429,939	484,203	103,766	2,017,908
Documents containing unredacted SSNs	1,993 (0.14%)	341 (0.07%)	117 (0.11%)	2,451 (0.12%)
Number of unredacted SSNs identified	14,029	888	1,018	15,935
SSNs noncompliant with privacy rules	10,601 (76%)	465 (52%)	811 (80%)	11,877 (75%)
SSNs exempt from redaction requirement	2,624 (19%)	401 (45%)	180 (18%)	3,205 (20%)
SSNs with privacy protections waived	804 (6%)	22 (3%)	27 (3%)	853 (5%)

Seventy-one percent of district court documents analyzed were from civil cases. Of about 1.4 million civil case documents analyzed, 1,993 (0.14%) contain one or more unredacted SSNs. Nearly 90% (14,029) of the unredacted SSNs identified in district court documents and 63% of all unredacted SSNs across court types appear in civil cases. Of those, 76% appear to be noncompliant with the privacy rules, while 19% are exempt from the redaction requirement, and 6% belong to pro se parties who waived the privacy protections.

Twenty-four percent of district court documents analyzed were from criminal cases. Out of about 500,000 criminal documents analyzed, 341 (0.07%) contain unredacted SSNs. Of the 888 unredacted SSNs identified, 52% appear to be noncompliant with the privacy rules, 45% are exempt from the redaction requirement, and 3% belong to pro se parties who waived the privacy protections.

Five percent of district court documents analyzed were from miscellaneous filings. Out of about 100,000 documents, 117 (0.11%) contain unredacted SSNs. Of the 1,018 unredacted SSNs in miscellaneous filings, 80% appear to be noncompliant with the privacy rules. Eighteen percent of SSNs in miscellaneous filings are exempt from the redaction requirement, and 3% belong to pro se parties who waived the privacy protections.

As described above, there are many reasons why an SSN might be exempt from the redaction requirement, and researchers found that multiple reasons for exemption apply to some SSNs. The reasons for exemption vary depending on whether the SSN appears in a civil case or criminal case.

Table 3. Reasons for Exemptions in Civil Cases

Reason for Exemption	Number of Associated SSNs*
Record of state court proceeding	1,688
Record of an administrative proceeding	758
Action for benefits under Social Security Act	739
Pro se habeas corpus petition	268
Documents filed under seal	1
Court or tribunal record not initially subject to redaction requirement	1
Action relating to immigration removal, relief from removal, benefits, or detention	0

* *Note: Some SSNs are exempt from redaction for more than one reason.*

Table 3 presents the reasons why SSNs are exempt from redaction in civil cases and the number of SSNs associated with each reason. The most common reason for exemption in civil cases is that the SSN appears in state court records. This reason applies to 1,688 of the SSNs found in the civil documents. The next most common reasons are that the SSN appears in the record of an administrative agency proceeding or in a Social Security appeal. These reasons apply, respectively, to 758 and 739 of the SSNs identified in the civil documents, and they often overlap because Social Security appeals tend to include records from Social Security Administration proceedings. A sizable number of the SSNs (268) are also exempt because they appear in pro se habeas corpus petitions. Finally, one SSN appears in a civil document that was filed under seal, and another appears in a court record not initially subject to the redaction requirement.

Table 4. Reasons for Exemptions in Criminal Cases

Reason for Exemption	Number of Associated SSNs*
Documents filed under seal	185
Record of state court proceeding	95
Criminal investigation or other document prepared prior to filing of criminal charge	77
Criminal charging document/affidavit	63
Criminal arrest/search warrant	37
Record of an administrative proceeding	0
Court or tribunal record filed not initially subject to redaction requirement	0

* *Note: Some SSNs are exempt from redaction for multiple reasons*

Table 4 presents the reasons why SSNs are exempt from redaction in criminal cases and the number of SSNs associated with each reason. The most common reason for exemption in criminal cases is that the SSN appears in a document filed under seal. This reason applies to 185 of the SSNs found in the criminal documents. Other reasons for exemption apply to SSNs appearing in state court records (95 SSNs), criminal investigations (77 SSNs), criminal charging documents or affidavits (63 SSNs), and arrest warrants or search warrants (37 SSNs).

Table 5. Reasons for Exemptions in Miscellaneous Cases

Reason for Exemption	Number of Associated SSNs*
Action for benefits under Social Security Act	85
Record of an administrative proceeding	81
Criminal charging document/affidavit	34
Criminal arrest/search warrant	31
Criminal investigation or other document prepared prior to filing of criminal charge	14
Pro se habeas corpus petition	11
Record of state court proceeding	6
Documents filed under seal	0
Action relating to immigration removal, relief from removal, benefits, or detention	0
Court or tribunal record not initially subject to redaction requirement	0
Appeal of a Railroad Retirement Board benefits decision	0

* *Note: Some SSNs are exempt from redaction for multiple reasons.*

As shown in Table 5, the most common reason for exemption in documents on the miscellaneous docket is that the SSN appears in a Social Security appeal (85 SSNs). Eighty-one of these SSNs are also exempt because they appear in the records of administrative agency proceedings. Other SSNs are exempt because they appear in criminal charging documents or affidavits (34 SSNs), arrest warrants or search warrants (31 SSNs), criminal investigations (14 SSNs), pro se habeas corpus petitions (11 SSNs), and the records of state court proceedings (6 SSNs).

Bankruptcy Courts

Relative to the district courts, a smaller percentage of bankruptcy court documents contain unredacted SSNs. Of about 2.5 million bankruptcy court documents analyzed, 1,839 (0.07%) contain unredacted SSNs. Of the 5,615 unredacted SSNs identified in bankruptcy court documents, 72% appear to be noncompliant with the privacy rules, while 24% are exempt from the redaction requirement, and 4% belong to pro se parties who waived the privacy protections.

Table 6 disaggregates the bankruptcy court data by proof of claim filings and all other bankruptcy court filings.

Table 6. Social Security Numbers in Bankruptcy Court Filings

	Proof of Claim Filings	All Other Bankruptcy Filings	Bankruptcy Total
Documents analyzed	428,142	2,090,060	2,518,202
Documents containing unredacted SSNs	809 (0.19%)	1,031 (0.05%)	1,840 (0.07%)
Number of unredacted SSNs identified	1,782	3,833	5,615
SSNs noncompliant with privacy rules	1,743 (98%)	2,281 (60%)	4,024 (72%)
SSNs exempt from redaction requirement	16 (1%)	1,345 (35%)	1,361 (24%)
SSNs with privacy protections waived	23 (1%)	207 (5%)	230 (4%)

Table 6 shows that unredacted SSNs are more prevalent in proof of claim filings than other types of bankruptcy court documents. Specifically, 0.19% of documents filed in proof of claim registers contain unredacted SSNs compared to 0.05% of all other bankruptcy documents. Moreover, 98% of the 1,782 unredacted SSNs that appear in proof of claim filings appear to be noncompliant with the privacy rules.

Of the 3,833 unredacted SSNs identified in all other bankruptcy court filings, 60% appear to be noncompliant with the privacy rules, while 35% are exempt from the redaction requirement, and 5% belong to pro se parties who waived the privacy protections.

Across all bankruptcy documents analyzed, 54 of the 4,024 unredacted SSNs that are noncompliant with the privacy rules appear in Bankruptcy Form 121 (two of which appear in proof of claim registers). Debtors use this form to list any SSNs and individual taxpayer identification numbers (ITINs) they have used. Form 121 requires full, unredacted SSNs and ITINs and instructs debtors not to file the form as part of the public case file. It also assures debtors that the court will not make the form publicly available.

Table 7. Reasons for Exemptions in Bankruptcy Cases

Reason for Exemption	Number of Associated SSNs	
	Proof of Claim Filings	All Other Filings
Record of state court proceeding	16	965
Non-attorney bankruptcy preparer	0	368
Record of an administrative proceeding	0	11
Court or tribunal record not initially subject to redaction requirement	0	1
Documents filed under seal	0	0

Table 7 shows the reasons SSNs are exempt from redaction in bankruptcy cases and the number of SSNs associated with each reason. Sixteen SSNs in the proof of claim filings and 965 SSNs in other bankruptcy documents are exempt because they appear in the records of state court proceedings. Moreover, 368 SSNs are exempt because they belong to non-attorney bankruptcy petition preparers (i.e., filed in Form 119 or Form B2800/2800). Eleven exempt SSNs in bankruptcy documents appear in the context of administrative agency proceedings, and one appears in a document that was filed before the privacy rules went into effect in 2007.

Courts of Appeals

The courts of appeals have the highest percentage of documents with unredacted SSNs. Of 138,132 appeals court documents analyzed, 234 (0.17%) contain unredacted SSNs. A relatively small proportion of the 841 unredacted SSNs in appeals court documents (38%), however, appear to be noncompliant with the privacy rules. This is due both to a relatively high proportion of exempt SSNs in the appeals courts (41%) and a relatively high proportion of pro se parties who waived the privacy protections by filing documents that included their own SSNs (20%).

Table 8. Reasons for Exemptions in Court of Appeals Cases

Reason for Exemption	Number of Associated SSNs*
Record of state court proceeding	134
Record of an administrative proceeding	112
Pro se habeas corpus petition	98
Action for benefits under Social Security Act	23
Criminal investigation or other document prepared prior to filing of criminal charge	5
Criminal charging document/affidavit	4
Criminal arrest/search warrant	2
Documents filed under seal	0
Non-attorney bankruptcy preparer	0
Action relating to immigration removal, relief from removal, benefits, or detention	0
Court or tribunal record not initially subject to redaction requirement	0
Appeal of a Railroad Retirement Board benefits decision	0

* *Note: Some SSNs are exempt from redaction for multiple reasons.*

Table 8 presents reasons why SSNs are exempt from redaction in appeals court cases and the number of SSNs associated with each reason. The most common reasons, appearing in state court and administrative proceeding records, apply to 134 SSNs and 112 SSNs, respectively. Less common exemption reasons include SSNs which appear in pro se habeas corpus petitions (98 SSNs), Social Security appeals (23 SSNs), criminal investigations (5 SSNs), criminal charging documents or affidavits (4 SSNs), and arrest warrants or search warrants (2 SSNs).

Comparisons to the 2010 and 2015 Studies

This study reports information similar to what is reported in the 2010 and 2015 Center studies. However, this study's more advanced methodology limits the ability to make direct comparisons between the counts presented in this study and those presented previously, as detailed below.

> **Additional Court and Filing Types.** This study analyzed documents filed in courts of appeals and proof of claim registers, in addition to all district and bankruptcy courts. The prior studies were based on district and bankruptcy court filings only, and both studies omitted every document from at least one bankruptcy court.

Sampling Procedures. The sampling procedures in this study were different from those used previously. Prior studies were based on analyses of documents filed in the months of November and December, whereas this study is based on a sample of documents filed on 37 randomly selected days throughout the year.

OCR Methods. This study excluded a smaller proportion of documents from the analysis, likely due to improved optical character recognition. The 2015 study was unable to convert 27,424 PDFs from district and bankruptcy cases into searchable text, plus all documents from an entire bankruptcy court. This study, in contrast, was unable to convert 358 PDFs from district and bankruptcy cases and 6,456 PDFs from appellate cases.

Search Algorithms. The algorithms used to search for SSNs in this study were more precise. The 2010 study searched only for strings that correspond to the typical SSN format of 123-45-6789. The 2015 study searched for strings appearing in the typical SSN format and nine-digit numbers appearing near the words "Social Security" and "SSN." This study searched for these patterns and many others, as detailed in Appendix B.

Exemptions. Researchers in the current study manually inspected each of the 22,391 unredacted SSNs in the context of the documents in which they appear. The objective was to determine whether each SSN was exempt from redaction, if it belonged to a pro se party who waived privacy protections, or if it did not comply with the privacy rules. In many instances, researchers consulted docket sheets in PACER to determine who filed the documents and the role of the documents in the context of the proceeding. The 2010 and 2015 studies, in contrast, did not examine each SSN individually or the context in which documents containing SSNs appeared in a proceeding.[11]

Limitations of the Current Study

Compared to previous studies, the more advanced technologies and rigorous methods of this study likely produced a more precise estimate of the actual prevalence of unredacted social security numbers. Nevertheless, some limitations remain.

OCR errors. The OCR tools used in this study are more reliable than those used in 2015, but they are not error free. Even when a document can be converted to searchable text, modern OCR tools sometimes misread or garble the text, especially

[11] The 2010 study labeled entire documents, and all SSNs in them, as either exempt or not exempt. The researchers of the current study found, however, that a small number of documents (especially those with multiple exhibits) contained some exempt SSNs and some non-exempt SSNs. The 2015 study labeled "the first instance" of an SSN as either exempt or not rather than inspecting each instance in which an SSN appeared. In the current study, researchers determined that a small number of SSNs appearing across multiple documents were sometimes exempt from the redaction requirement and sometimes not exempt.

in handwritten and low-resolution documents. It was therefore inevitable that some valid SSNs were not flagged during the initial search for nine-digit number strings.

Ambiguous numbers. It was not always clear whether a nine-digit number was in fact a valid SSN. Researchers used context and other clues to make subjective judgments in ambiguous cases. Additionally, some SSNs had been redacted by filers, but the redaction was done poorly and the SSN could still be identified. In those instances, SSNs were counted as unredacted. Other research teams might resolve these ambiguous cases differently.

Interpretations of the rules. The task of determining whether SSNs are exempt from redaction involves subjective interpretations of the privacy rules. As discussed in Appendix B, researchers interpreted the exemption provisions broadly and generally coded unredacted SSNs as exempt if it was believed that a filing party could have reasonably understood the rules to allow for such an exemption.

Other potential errors. Researchers manually inspected tens of thousands of nine-digit numbers to determine which were valid SSNs. Some human error is to be expected.

Appendix A: Federal Rules of Procedure Protecting Individual Privacy

Federal Rule of Civil Procedure Rule 5.2—Privacy Protection for Filings Made with the Court

(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:

(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by Rule 5.2(c) or (d); and

(6) a pro se filing in an action brought under 28 U.S.C. §§2241, 2254, or 2255.

(c) LIMITATIONS ON REMOTE ACCESS TO ELECTRONIC FILES; SOCIAL-SECURITY APPEALS AND IMMIGRATION CASES. Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:

(1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;

(2) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to:

(A) the docket maintained by the court; and

(B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.

(d) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) PROTECTIVE ORDERS. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) WAIVER OF PROTECTION OF IDENTIFIERS. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

Federal Rule of Criminal Procedure Rule 49.1—Privacy Protection for Filings Made with the Court

(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or the home address of an individual, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials;

(4) the last four digits of the financial-account number; and

(5) the city and state of the home address.

(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:

(1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by Rule 49.1(d);

(6) a pro se filing in an action brought under 28 U.S.C. §§2241, 2254, or 2255;

(7) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;

(8) an arrest or search warrant; and

(9) a charging document and an affidavit filed in support of any charging document.

(c) IMMIGRATION CASES. A filing in an action brought under 28 U.S.C. §2241 that relates to the petitioner's immigration rights is governed by Federal Rule of Civil Procedure 5.2.

(d) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) PROTECTIVE ORDERS. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) WAIVER OF PROTECTION OF IDENTIFIERS. A person waives the protection of Rule 49.1(a) as to the person's own information by filing it without redaction and not under seal.

Federal Rule of Bankruptcy Procedure Rule 9037—Privacy Protection for Filings Made with the Court

(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:

(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding unless filed with a proof of claim;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by subdivision (c) of this rule; and

(6) a filing that is subject to §110 of the Code.

(c) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record.

(d) PROTECTIVE ORDERS. For cause, the court may by order in a case under the Code:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. An entity making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and

specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) WAIVER OF PROTECTION OF IDENTIFIERS. An entity waives the protection of subdivision (a) as to the entity's own information by filing it without redaction and not under seal.

(h) MOTION TO REDACT A PREVIOUSLY FILED DOCUMENT

(1) *Content of the Motion; Service*. Unless the court orders otherwise, if an entity seeks to redact from a previously filed document information that is protected under subdivision (a), the entity must:

(A) file a motion to redact identifying the proposed redactions;

(B) attach to the motion the proposed redacted document;

(C) include in the motion the docket or proof-of-claim number of the previously filed document; and

(D) serve the motion and attachment on the debtor, debtor's attorney, trustee (if any), United States trustee, filer of the unredacted document, and any individual whose personal identifying information is to be redacted.

(2) *Restricting Public Access to the Unredacted Document; Docketing the Redacted Document*. The court must promptly restrict public access to the motion and the unredacted document pending its ruling on the motion. If the court grants it, the court must docket the redacted document. The restrictions on public access to the motion and unredacted document remain in effect until a further court order. If the court denies it, the restrictions must be lifted, unless the court orders otherwise.

Federal Rule of Appellate Procedure Rule 25(a)(5)—Filing and Service

(a) FILING.

(5) *Privacy Protection.* An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case. The provisions on remote electronic access in Federal Rule of Civil Procedure 5.2(c)(1) and (2) apply in a petition for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act.

Appendix B: Methodology

Sample

This study is based on an analysis of all documents filed in the federal district, bankruptcy, and appeals courts on 37 randomly selected days in calendar year 2022.[12] Because there is not a comprehensive list of all documents filed in all courts, we could not randomly select documents directly. Instead, we randomly selected a subset of dates in 2022 and analyzed all documents filed on those dates. We set the number of dates to 37, or about 10% of the total number of days in 2022.

Approximately 97% of district and bankruptcy court documents and 99% of appellate briefs are filed on non-holiday weekdays.[13] In an effort to mirror that distribution, we randomly selected 36 dates from a list of all non-holiday weekdays and one date from a list of all weekends and federal holidays. Document filings furthermore tend to be evenly distributed across quarters.[14] Correspondingly, we randomly selected nine weekday dates from each quarter.

Using these procedures, we randomly selected the following dates in calendar year 2022:

Q1	Q2	Q3	Q4
January 18	April 2*	July 18	October 18
January 25	April 15	July 25	October 25
February 4	April 22	August 4	November 4
February 8	May 4	August 8	November 8
February 11	May 6	August 11	November 14
March 14	May 11	September 9	December 14
March 15	June 9	September 12	December 15
March 21	June 10	September 16	December 21
March 30	June 16	September 27	December 27
	June 28		

*Weekend day

Dataset

To construct our dataset, we first downloaded PDFs of the 4,681,055 documents filed in the federal district, bankruptcy, and appeals courts on the 37 dates in our sample. For the purposes of this study, we considered a document to be the entire contents of a single PDF filed with the court.[15] We then used the Python library PyPDF to convert the PDFs into

[12] In contrast, the 2010 and 2015 Center studies were based on nonprobability samples. The 2010 study examined all documents filed in district and bankruptcy courts in November and December of 2009. The 2015 study examined all documents filed in district and bankruptcy courts in November 2013.

[13] Tim Reagan, et al., "Electronic Filing Times in Federal Courts," Federal Judicial Center, April 25, 2022, https://www.fjc.gov/content/365889/electronic-filing-times-federal-courts.

[14] Ibid.

[15] Some PACER docket entries contain multiple filings, with each being an individual downloadable PDF.

searchable text files. PDFs that could not be converted using PyPDF were converted using the Tesseract OCR engine in Python. Of the 4,681,055 PDFs we downloaded, 4,674,242 (99.9%) were successfully converted into searchable text files. The vast majority (95%, 6,456) of PDFs that could not be converted were documents from appellate cases.

Next, we ran a Python script that extracted nine-digit numbers from the text files, along with the 200 characters that preceded and followed the numbers. We also extracted information about each document and case, including the court name, division, docket number, docket entry, and docket sequence numbers. We used this information to create 292 spreadsheets: one for each of the 94 district courts; one for each of the 89 unconsolidated bankruptcy courts, as well as individual spreadsheets for bankruptcy filings in the Eastern and Western Districts of Arkansas (which share a bankruptcy court but docket cases separately) and for the three territorial courts;[16] one for each of the 12 regional courts of appeals; and one for each of the 89 unconsolidated bankruptcy courts with proof of claim registers, as well as one each for the proof of claim registers in the Eastern and Western Districts of Arkansas and the territorial court in Guam.[17]

Each row of these spreadsheets represented either an instance of a nine-digit number found in the documents or a single entry for a document in which no nine-digit numbers had been found. The full dataset contained 30.2 million rows. We discovered that about 21.6 million of these rows were related to a particular type of nine-digit number that appeared regularly in 3M Products Liability Litigation (MDL No. 2885) cases filed in the Northern District of Florida. This number was not a valid SSN, so these rows were omitted. We also found that 4.2 million rows represented documents with no identified nine-digit numbers. The remaining 4.4 million rows included nine-digit numbers that we analyzed further to determine if they were valid SSNs.

Search Algorithm Development and Validation

We developed a search algorithm in the R programming language to help us identify which of the 4.4 million nine-digit numbers were mostly likely to be valid SSNs.

To begin, a team of researchers manually inspected documents that contained 123,911 identified numbers (rows) across 27 district court datasets and labeled them as valid or invalid SSNs. We observed that valid SSNs tended to appear in predictable contexts or formats. We used these patterns to write an algorithm that predicted whether a row was likely a tax identification number (TIN), possibly a TIN, or likely not a valid TIN.

The algorithm predicted that a nine-digit number was “likely” or “possibly” a TIN if any of the following conditions were met:

[16] Bankruptcy cases in the district courts of Guam, the Virgin Islands, and the Northern Mariana Islands are heard by district court judges or visiting bankruptcy judges.
[17] The territorial courts of the Virgin Islands and the Northern Mariana Islands did not have any proof of claim filings on the dates in the sample.

- **Number appeared in a common TIN context.** A row was labeled LIKELY TIN if the number appeared within eight characters of any of the following strings (not case sensitive):

“EIN,” “Employer Identification,” “Employer Identification No,” “Employer ID,” “Employer I.D,” “Employer 1D,” “Employer 1.D,” “Employer Identification Number,” “Employer Number,” “Employer ID Number,” “Employee Identification Number,” “Tax ID,” “Tax I.D,” “tax identification number,” “tax identification,” “tax identification no,” “Tax ID#,” “Tax#,” “Tax ID Number,” “Tax I.D. Number,” “Tx ID,” “Tx I.D,” “TaxID,” “Tax. ID,” “Tax1D,” “Tax 1D,” “Tax 1.D,” “Taxpayer ID,” “Taxpayer I.D,” “Taxpayer ID No,” “Taxpayer ID Number,” “Taxpayer I.D. Number,” “Taxpayer ID#,” “Taxpayer 1D,” “Taxpayer 1.D,” “Taxpayer Number,” “Taxpayer No,” “Taxpayer Identification,” “Taxpayer Identification Number,” “Taxpayer Identification Number (US),” “IRS,” “IRS No,” “IRS Number,” “Internal Revenue Service,” “Internal Revenue Service Number,” “I.R.S,” “I.R.S. Number,” “I.R.S. No,” “FEIN,” “ITIN,” “EID,” “TID,” “ATIN,” “PTIN,” “TIN,” “FIN,” “SSI,” “S.S.I,” “SSI Number,” “SSI No,” “S.S.I. Number,” “SSI ID,” “SS Number,” “SS No,” “S.S. No,” “S.S. NUMBER,” “SS#,” “SS Nbr,” “SSA,” “SSA Number,” “Social Security,” “Social Security No,” “Social Security Number,” “social security account number,” “social security acct no,” “social security account no,” “SSN,” “SSN/SIN,” “*SSN,” “(SSN),” “[SSN,” “SS,” “‘SS,” “(SSN,” “8.8.N,” “soc. sec. no,” “SOC.SEC,” “soc sec,” “soc. sec,” “socsec,” “SOC.”

- **Number appeared in a common TIN format.** A row was labeled LIKELY TIN if it followed either of these formats: 123-45-6789 and 12-3456789.
- **Number appeared in a less common TIN format.** A row was labeled POSSIBLE TIN if it followed either of these formats: 123.45.6789 and 123 45 6789.
- **The same number matched a previous condition.** In the last step, the algorithm copied the number strings and then removed all punctuation and spaces from the strings so they appeared in the same format. For example, the numbers 123-45-6789, 123 45 6789, and 123456789 were all formatted to appear as 123456789. The algorithm then sorted and grouped the resulting standardized numbers. If any member of a group had previously been labeled LIKELY TIN or POSSIBLE TIN, all other members of the group were also labeled as such. For example, if the number 123456789 appeared in four rows and it was labeled LIKELY TIN in one row because it had appeared after the term “SSN#,” the other three rows would be updated to reflect that they were also LIKELY TIN.

Finally, we ran multiple tests to validate the algorithm’s predictions. Human coders who were assisted by the algorithm’s predictions identified an estimated 99% of valid SSNs in the district court data, 99% in the bankruptcy court data, and 100% in the appeals court data. By comparison, human coders working without the assistance of the algorithm’s

predictions found 92% of valid SSNs in the district court data, 97% in the bankruptcy court data, and 83% in the appeals court data. The search algorithm therefore not only made the process of identifying SSNs more efficient, it also improved accuracy.

Manual Coding of SSNs

The search algorithm predicted that 51,894 of the 4.4 million nine-digit numbers could be valid tax identification numbers. To make a final determination, each of those observations that had been flagged by the algorithm were double-coded by researchers who independently inspected each row. In many cases, researchers referenced the original document to view the number in context. Researchers coded observations as "SSN," "ITIN," "EIN," "TIN Unspecified," or "Not Valid." Researchers also had the option of using the code "Follow Up" for any observations they were unsure about. In most cases, the two coders assigned the same label. When the coders disagreed or when one or both coders labeled an observation "Follow Up," senior members of the research team attempted to make a final determination to the extent possible. This process identified 22,391 SSNs and ITINs.

Manual Coding of Exemptions

Next, for each case with an identified SSN, data from the Center's Integrated Database (IDB)[18] were linked and used to flag possible exemptions and waivers. Cases were flagged as potentially exempt if they were removals from state court, social security cases, civil immigration cases, habeas corpus cases with a pro se party, or administrative agency cases or appeals. Cases were flagged as potential waivers if they included one or more pro se parties.

All 22,391 SSNs and ITINs were then double-coded by researchers who independently inspected each row to determine whether the number was or was not exempt under the Privacy Rules. Some numbers were exempt for multiple reasons. We noted each of these reasons using the exemption codes below. Disagreements between coders were inspected and resolved by a senior member of the research team.

We interpreted the exemption provisions of the privacy rules broadly and generally counted unredacted SSNs as exempt if a filing party could have reasonably understood the rules as providing an exemption. We used an expansive understanding of the terms "official record" and "state-court proceedings" to include any document that appears to be all or part of a record of any type of proceeding from a state court. We also interpreted the criminal rules as exempting SSNs appearing in non-federal charging documents filed in criminal proceedings in federal court. Finally, we treated SSNs found in attachments to warrants and charging documents as exempt under the criminal rules.

[18] The IDB contains data on civil case and criminal defendant filings and terminations in district, bankruptcy, and appellate courts and associated case information from 1970 to the present. The Center receives regular updates of the case-related data as routinely reported by the courts to the AO. The Center then post-processes the data, consistent with the policies of the Judicial Conference governing access to these data, into a unified longitudinal database, the IDB. It is available here: https://www.fjc.gov/research/idb

Exemption Codes

Miscellaneous
1 = Record of a state court proceeding
14 = Documents filed under seal

Pro se documents
2 = Filer included own SSN (suggesting waiver of the privacy protections)

Criminal documents (including attachments)
5 = Criminal charging document/affidavit
6 = Criminal arrest/search warrant
7 = Criminal investigation or other document prepared prior to filing of criminal charge

Bankruptcy documents
8 = Non-attorney bankruptcy petition preparer (e.g., Bankruptcy Form 119)

Appeals documents
9 = Filing in appeal of Railroad Retirement Board benefits decision

Civil documents
4 = Pro se party filing in a habeas corpus proceeding under 28 U.S.C. §§ 2241, 2254, or 2255
10 = Filing in civil social security case (i.e., action for benefits under the Social Security Act)
11 = Record of an administrative agency proceeding (except in bankruptcy cases if record filed with proof of claim)
12 = Immigration case (i.e., action relating to immigration removal, relief from removal, benefits, or detention)
13 = Record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed

EXHIBIT B1
Clerk Survey

Clerk Social Security Redaction Survey Summary

The survey was sent out to all clerks on February 27, 2024, and 23 clerks completed it.

Respondents were first asked if they supported the suggestion to limit the requirement for a full Rule 1005 caption to only the Notice of Bankruptcy Case and instead allow the use of the Official Form 416B caption on all other Rule 2002 notices. Of the 23 respondents, 21 respondents answered this question and 90% (19 of 21 respondents) supported the limitation.

Table 1: Do you support the limitation of the Rule 1005 caption?

	f	%
Yes	19	90%
No	2	10%
Not Sure	0	0%
Total Responses	21	

Respondents were given the opportunity to explain their answers, and 9 did so.

Caption Limit Question	ID #
Some Rule 2002 notices should receive the full caption.	**1**
This is our current practice, which works well for our Court.	**3**
1. FRBP 1005 may need to be re-written. Specifically, the first sentence, "... petition.... shall contain... and the docket number." Assuming "docket number" = "case number," this number is not assigned until after the petition is filed; therefore, it is impossible to comply with this Rule. 2. Because we do not know what information is needed when creditors or other parties process notices received, I would not want to take away information that may be valuable to the party in order to identify the debtor's account outside of the case number itself. 3. There are instances where a bankruptcy case may change debtor names after case filing. Without the full title caption, this may be confusing for parties receiving notice. See case example: 22-40087 - Wind Down TV, LLC. This case was originally filed as Black News Channel, LLC and later became Wind Down TV, LLC.	**5**
That is the practice our currently follows and has been successful with.	**6**
The 341 meeting notice should be sufficient notice to parties on all known names and tax payer identification. To continue to require full caption increases noticing costs without great benefit and provides access to limited personal identifiers.	**8**
This change will streamline forms and protect privacy of address and SSN information.	**10**
Our interest is in keeping the notice to a single page. Seems like this change would help do that.	**15**
It will save funds expended on noticing by making the form shorter and is currently the common practice in many districts.	**16**
Brevity will reduce noticing lengths, which means fewer pages in many notices, thereby saving noticing costs (and trees). Also, the additional information is unnecessary for subsequent notices because creditors will have received the key information as part of the original 309 form. (Unnecessary in this context means not necessary for practical purposes vis-a-vis legal requirements. Compare 11 U.S.C. Â§ 342(c)(1).) Protecting personal information from unnecessary disclosure would benefit debtors, whose personal information is already being widely shared as part of the bankruptcy process.	**21**

Next, respondents were asked if their court had any guidance such as a local rule or general procedure that would bear on captions for Rule 2002 notices. Most respondents (70% or 16 of 23 respondents) said *no*.

Table 2: Local guidance.

	f	%
Yes	5	22%
No	16	70%
Not Sure	2	9%
Total Responses	23	

Respondents were given the option to further describe any local guidance related to Rule 2002 captions, and four did so.

Local Rules	**ID #**
The only other related guidance is in our Administrative Procedures Manual. It is specific to adding the Section of the Court into the caption.	**3**
Our Local Rule 9004-2	**4**
N.D. Fla. LBR 1005-1: "A petition filed on behalf of an individual or an individual and such individual's spouse shall not include the name of any corporation, partnership, limited partnership, or joint venture. (Party compliance with this local rule is an ongoing issue.) N.D. Fla. LBR 2002-2(B)(2): ...."Contain a negative notice legend prominently displayed immediately following the title of the paper..."	**5**
Bankr. D. Kan. Local Bankruptcy Rule 1005.2 also requires the caption of each petition to state the full and correct name of the debtor. This does not seem relevant to this issue, though.	**21**

Respondents were then asked if they supported certain amendments to Rule 2002(a) and (b) to limit delegation authority. The most common answer for each proposal was *no* (43% for the first proposal and 45% for the second), but nearly a third chose *not sure* for each option as well.

Table 3: Delegation authority

	Yes	**No**	**Not Sure**	**Total Responses**
1. "...some other person - *other than the debtor* - as the court may direct..."	6 26%	10 43%	7 30%	23
2. "...some other person - *other than an **individual** debtor* - as the court may direct..."	4 18%	10 45%	8 36%	22

Then, respondents were asked which of the listed forms they believed the truncated SSN could be removed from, and which should retain that information. The most common choice for each of the listed options was *yes*, it could be removed (ranging from 43% (10 respondents) to 74% (17 respondents).

Fewer than half of the responding clerks endorsed eliminating the truncated SSN for two forms:

- 43% (10 respondents) said that the truncated SSN could be eliminated from Form 2040, Notice of Need to File Proof of Claim Due to Recovery of Assets (Table 4, item 4), and
- 48% (11 respondents) said that the truncated SSN could be eliminated from Form 2060, Certificate of Commencement of Case (Table 4, item 6).

Just over half of the responding clerks endorsed eliminating the truncated SSN for another two forms:

- 52% (12 respondents) said that the truncated SSN could be eliminated Form 2050, Notice to Creditors and Other Parties in Interest (Table 4, item 5), and
- 52% (12 respondents) said that the truncated SSN could be eliminated Form 2530, Order for Relief in an Involuntary Case (Table 4, item 12).

It is worth noting, though, that with 23 respondents, a single respondent can cause a rather large swing in percentages, and between 13% (3 respondents) and 22% (5 respondents) of respondents chose *not sure* for every listed form. Thus, while the weight of opinion was that truncating the SSN would be appropriate on most of the listed forms, this agreement was not universal and did vary from form to form.

Table 4: SSN Inclusion on forms.

	Yes	No	Not Sure	Total Responses
1. Official Forms 312, 313, 314, 315, 3130S, and 3150S C11 notices and orders	14	5	4	23
	61%	22%	17%	
2. Official Forms 417A, 417B Appellate Forms	16	3	4	23
	70%	13%	17%	
3. Official Forms 420A and 420B Notice of motion or objection, and Notice of objection to Claim	15	5	3	23
	65%	22%	13%	
4. Form 2040 Notice of Need to File Proof of Claim Due to Recovery of Assets	10	9	4	23
	43%	39%	17%	
5. Form 2050 Notice to Creditors and Other Parties in Interest	12	7	4	23
	52%	30%	17%	
6. Form 2060 Certificate of Commencement of Case	11	7	5	23
	48%	30%	22%	
7. Form 2070 Certificate of Retention of Debtor in Possession	13	6	4	23
	57%	26%	17%	
8. Form 2300A Order Confirming Chapter 12 Plan	15	4	4	23
	65%	17%	17%	
9. Form 2300B Order Confirming C13 Plan	16	4	3	23
	70%	17%	13%	
10. Form 2310A Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	16	3	4	23
	70%	13%	17%	
11. Form 2310B Order Fixing Time to Object to Proposed Modification of Chapter 13 plan	17	3	3	23
	74%	13%	13%	
12. Form 2530 Order for Relief in an Involuntary Case	12	6	5	23
	52%	26%	22%	
13. Form 2700 Notice of Filing of Final Report of Trustee	15	4	4	23
	65%	17%	17%	
14. Form 2710 Final Decree	15	4	3	22
	68%	18%	14%	

Lastly, respondents were asked if they had any further thoughts on the issues raised in this survey, and 6 respondents provided a response.

Final Thoughts	**ID #**
Appellate matters do not need to include the SSN. Chapter 11 notices should, as well as any involuntary notice.	**1**
If a party was added via amended schedules and debtor did not comply with proper notice of the 341, these other forms may be the first filing they receive and should have as much identifying information as possible to allow the party to identify debtor's account.	**5**
The value added by including the redacted taxpayer information is not greater than the possible detriment of having the redacted tax payer information repeatedly noticed throughout a case proceeding.	**8**
For more than two decades the vast majority of captions in our court have not included truncated SSNs or ITINs and I am not aware of any concerns raised by creditors or other interested parties.	**11**
I checked with my staff on listing (or not listing) the redacted social on all of the forms reflected in this survey. They did not feel strongly one way or the other. They did feel strongly that it should be consistent. So whatever approach is taken should be reflect on all of these forms rather than having different requirements for each form. Life is too short to have to remember where it is required and where it is not required.	**15**
The primary reason in favor of including these numbers on the forms is to help reduce ambiguity about the debtor's identity, because many individuals have the same name, and many businesses have similar names. That is why many businesses (especially medical providers and financial institutions) ask for a name and either a birthdate or SSNs to confirm identity. That said, in bankruptcy cases, every caption of every notice will always have the case number, which will help remove ambiguity because the case number is not only unique but could also be used to look up the truncated SSN or ITIN or the EIN by looking at the 309 Form that was sent earlier in the case, or to look up those numbers using PACER. Thus, the issue could be framed as a question of whether it is better to freely distribute the truncated personal identifying numbers throughout the life of a bankruptcy case to make it more convenient for creditors to process bankruptcy notices, or to restrict such	**21**

distribution to better protect debtors' PII. It would also reduce noticing costs somewhat within the bankruptcy universe if notices can be shorter because a smaller caption would not cause the notice to spill over onto another page.	

EXHIBIT B2
Survey of Attorneys and Trustees

Social Security Inclusion Survey Report

The survey was sent to Chapter 13, Chapter 7, and Subchapter V Trustees, creditors/attorneys for multiple agencies, collection agencies and other third party debt collectors, debtor attorneys, state agency representatives, and creditors/attorneys for unsecured creditors. We received 87 responses.

Respondents were first asked which industry best described them. Just under half of the respondents (45% or 38 of 85 respondents) indicated being a Chapter 7 Trustee. The next largest group was Chapter 13 Trustees (22% or 19 of 85 respondents), closely followed by debtors' attorneys (15% or 13 of 85 respondents).

Table 1: Industry

	f	%
Judge, Court, Court Staff	0	0%
Chapter 7 Trustee	38	45%
Chapter 13 Trustee	19	22%
Subchapter V Trustee	5	6%
Creditor/Attorney in Banking Industry	5	6%
Creditor/Attorney in Mortgage Industry	0	0%
Creditor/Attorney in Auto Loan Industry	0	0%
Creditor/Attorney for Unsecured Creditors	1	1%
Collection Agencies, Debt Buyers, Third Party Debt Collection	1	1%
Attorney for Debtors	13	15%
State Agency Representative	3	4%
Total Responses	85[1]	

[1] While 87 respondents completed the survey, respondents could skip any question they chose, and each question was skipped by some number of respondents.

Next, respondents were asked if a truncated SSN would be sufficient on the Notice of Bankruptcy Case (Form 309) that was sent to them. Here, we see a nearly even split, with just over half of respondents (55% or 47 of 86 respondents) saying, *no*, it would not be sufficient, and nearly half (45% or 39 of 86 respondents) saying *yes*, it would be.

Table 2: Truncated on Form 309

	f	%
Yes	39	45%
No	47	55%
Not Sure	0	0%
Total Responses	86	

However, this pattern changes when the industry groups are examined separately. Nearly three-quarters (71% or 27 of 38 respondents) of Chapter 7 Trustee respondents said *no*, it would not be sufficient. Chapter 13 Trustee respondents show a pattern of responses closer to the overall responses, though a slightly higher percentage (58% or 11 of 19 respondents) of the Chapter 13 Trustee respondents said *no*, it would not be sufficient. Conversely, 100% (13 of 13 respondents) of the debtors' attorney respondents said *yes*, it would be sufficient. Thus, the even split of the overall responses masks important differences across the different industries.[2]

[2] Breakdowns are not done by the other industry groups because the number of respondents in those groups is too low to show reliable patterns.

Respondents were then asked whether they would agree that the truncated SSN could be eliminated on a series of listed forms, or whether they believed the truncated SSN was needed. The majority of respondents (ranging from 50% or 43 respondents to 78% or 67 respondents) said they would agree to eliminate the truncated SSN on all but two forms. The two forms which did not get majority support for truncated SSN elimination were:

- 38% (32 of 84 respondents) agreed to eliminate the truncated SSN on Docketed versions of Forms 309A-I, Notice of Bankruptcy Case (Table 3, item 1), and
- 49% (42 of 86 respondents) agreed to eliminate the truncated SSN on Form 2040, Notice of Need to File Proof of Claim Due to Recovery of Assets (Table 3, item 6).[3]

Docketed versions of Forms 309A-I, Notice of Bankruptcy Case (Table 3, item 1) were the only listed forms which the majority of respondents (58% or 49 respondents) said needed the truncated SSN.

More than a third of respondents said they needed the truncated SSN on six of the listed forms. These were:

- 48% (41 of 86 respondents) said they needed the truncated SSN on Form 2040, Notice of Need to File Proof of Claim Due to Recover of Assets (Table 3, item 6),
- 45% (39 of 86 respondents) said they needed the truncated SSN on Forms 318 and 3180F-3180WH, Discharge Forms (Table 3, item 3),
- 44% (38 of 86 respondents) said they needed the truncated SSN on Form 2050, Notice to Creditors and Other Parties in Interest (Table 3, item 7),[4]
- 42% (36 of 86 respondents) said they needed the truncated SSN on Form 2060, Certificate of Commencement of Case (Table 3 item 8), [5]
- 39% (33 of 85 respondent) said they needed the truncated SSN on Form 2530, Order for Relief in an Involuntary Case (Table 3, item 14),[6] and
- 34% (29 of 85 respondents) said they needed the truncated SSN on Form 2710 Final Decree (Table 3, item 16).

[3] Fewer than half (43% or 10 respondents) of the respondents to the Clerk of Court version of this survey said that the truncated SSN should be eliminated from Form 2040, Notice of Need to File Proof of Claim Due to Recovery of Assets.
[4] Just over half (52% or 12 respondents) of the respondents to the Clerk of Court version of this survey said that the truncated SSN should be eliminated from Form 2050, Notice to Creditors and Other Parties in Interest.
[5] Fewer than half (48% or 11 respondents) of the respondents to the Clerk of Court version of this survey said that the truncated SSN should be eliminated from Form 2060, Certificate of Commencement of Case.
[6] Just over half (52% or 12 respondents) of the respondents to the Clerk of Court version of this survey said that the truncated SSN should be eliminated from Form 2530, Order for Relief in an Involuntary Case.

Between 1% (1 respondent) and 14% (12 respondents) chose *not sure* for each form listed. Thus, while most respondents thought the truncated SSN could be eliminated from most of the listed forms, a sizable minority disagreed.

Table 3: SSN Inclusion on forms.

	Agree to Eliminate	Need Truncated SSN	Not Sure	Total Responses
1. Docketed versions of Forms 309A-I, Notice of Bankruptcy Case	32	49	3	84
	38%	58%	4%	
2. Forms 312, 313, 314, 315, 3130S, and 3150S C11 notices and orders	61	21	4	86
	71%	24%	5%	
3. Forms 318 and 3180F-3180WH, Discharge Forms	45	39	2	86
	52%	45%	2%	
4. Forms 417A, 417B Appellate Forms	62	18	6	86
	72%	21%	7%	
5. Forms 420A and 420B Notice of motion or objection, and Notice of objection to Claim	67	18	1	86
	78%	21%	1%	
6. Form 2040 Notice of Need to File Proof of Claim Due to Recover of Assets	42	41	3	86
	49%	48%	3%	
7. Form 2050 Notice to Creditors and Other Parties in Interest	43	38	5	86
	50%	44%	6%	
8. Form 2060 Certificate of Commencement of Case	45	36	5	86
	52%	42%	6%	
9. Form 2070 Certificate of Retention of Debtor in Possession	58	18	10	86
	67%	21%	12%	
10. Form 2300A Order Confirming Chapter 12 Plan	57	15	12	84
	68%	18%	14%	
11. Form 2300B Order Confirming C13 Plan	57	18	9	84
	68%	21%	11%	
12. Form 2310A Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	56	16	12	84
	67%	19%	14%	
13. Form 2310B Order Fixing Time to Object to Proposed Modification of Chapter 13 plan	60	16	8	84
	71%	19%	10%	

14. Form 2530 Order for Relief in an Involuntary Case	44 52%	33 39%	8 9%	85
15. Form 2700 Notice of Filing of Final Report of Trustee	58 68%	24 28%	3 4%	85
16. Form 2710 Final Decree	51 60%	29 34%	5 6%	85

As with the prior question, however, the pattern changes when different industry groups are considered. Across all the listed forms, Chapter 7 Trustee respondents were less likely to agree that the truncated SSN could be eliminated (ranging from 32% or 12 respondents to 71% or 27 respondents). For five of the listed forms, Chapter 7 Trustee respondents were most likely to say they needed the truncated SSN.[7] These forms were:

- 66% (25 of 38 respondents) said the truncated SSN was needed on Form 2040 Notice of Need to File Proof of Claim Due to Recover of Assets (Table 4, item 6),
- 61% (22 of 36 respondents) said the truncated SSN was needed on Docketed versions of Forms 309A-I, Notice of Bankruptcy Case (Table 4, item 1),
- 53% (20 of 38 respondents) said the truncated SSN was needed on Forms 318 and 3180F-3180WH, Discharge Forms (Table 4, item 3),
- 50% (19 of 38 respondents) said the truncated SSN was needed on Form 2050, Notice to Creditors and Other Parties in Interest (table 4, item 7), and
- 46% (17 of 37 respondents) said the truncated SSN was needed on Form 2530, Order for Relief in an Involuntary Case (Table 4, item 14).

The number of respondents who chose *not sure* varied from 0% (0 respondents) to 25% (9 respondents).

[7] For Form 2710 Final Decree, only 49% (18 of 37 respondents) agreed that eliminating the truncated SSN was appropriate, but this was still the majority answer (Table 4, item 16).

Table 4: SSN Inclusion on forms- **Chapter 7 Trustees Only**.

	Agree to Eliminate	Need Truncated SSN	Not Sure	Total Responses
1. Docketed versions of Forms 309A-I, Notice of Bankruptcy Case	13	22	1	36
	36%	61%	3%	
2. Forms 312, 313, 314, 315, 3130S, and 3150S C11 notices and orders	24	11	3	38
	63%	29%	8%	
3. Forms 318 and 3180F-3180WH, Discharge Forms	18	20	0	38
	47%	53%	0%	
4. Forms 417A, 417B Appellate Forms	25	10	3	38
	66%	26%	8%	
5. Forms 420A and 420B Notice of motion or objection, and Notice of objection to Claim	27	10	1	38
	71%	26%	3%	
6. Form 2040 Notice of Need to File Proof of Claim Due to Recover of Assets	12	25	1	38
	32%	66%	3%	
7. Form 2050 Notice to Creditors and Other Parties in Interest	15	19	4	38
	39%	50%	11%	
8. Form 2060 Certificate of Commencement of Case	20	14	4	38
	53%	37%	11%	
9. Form 2070 Certificate of Retention of Debtor in Possession	21	10	7	38
	55%	26%	18%	
10. Form 2300A Order Confirming Chapter 12 Plan	21	6	9	36
	58%	17%	25%	
11. Form 2300B Order Confirming C13 Plan	19	8	9	36
	53%	22%	25%	
12. Form 2310A Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	19	8	9	36
	53%	22%	25%	
13. Form 2310B Order Fixing Time to Object to Proposed Modification of Chapter 13 plan	22	6	8	36
	61%	17%	22%	
14. Form 2530 Order for Relief in an Involuntary Case	14	17	6	37
	38%	46%	16%	

15. Form 2700 Notice of Filing of Final Report of Trustee	21	13	3	37
	57%	35%	8%	
16. Form 2710 Final Decree	18	14	5	37
	49%	38%	14%	

When considering just the Chapter 13 Trustee respondents, we also see a different pattern. The Chapter 13 Trustee respondents were generally more likely than either respondents overall or the Chapter 7 Trustee respondents to agree that the truncated SSN could be eliminated.

However, there were two forms for which the majority of Chapter 13 Trustee respondents said they needed the truncated SSN. These forms were:

- 53% (10 respondents) said that the truncated SSN could not be eliminated from Docketed versions of Forms 309A-I, Notice of Bankruptcy Case (Table 5, item 8), and
- 53% (10 respondents) said that the truncated SSN could not be eliminated from Form 2060, Certificate of Commencement of Case (Table 5, item 1).

The Docketed versions of Forms 309A-I, Notice of Bankruptcy Case was one of the forms that a majority of Chapter 7 Trustee respondents indicated needed the truncated SSN as well. It was also the only form that a majority of respondents overall indicated needed the truncated SSN.

One caveat is that only 19 Chapter 13 Trustees responded to the survey, and caution should always be used when drawing conclusions from such a small group.

Table 5: SSN Inclusion on forms- **Chapter 13 Trustees Only**.

	Agree to Eliminate	Need Truncated SSN	Not Sure	Total Responses
1. Docketed versions of Forms 309A-I, Notice of Bankruptcy Case	7	10	2	19
	37%	53%	11%	
2. Forms 312, 313, 314, 315, 3130S, and 3150S C11 notices and orders	15	3	1	19
	79%	16%	5%	
3. Forms 318 and 3180F-3180WH, Discharge Forms	11	6	2	19
	58%	32%	11%	
4. Forms 417A, 417B Appellate Forms	15	2	2	19
	79%	11%	11%	
5. Forms 420A and 420B Notice of motion or objection, and Notice of objection to Claim	18	1	0	19
	95%	5%	0%	
6. Form 2040 Notice of Need to File Proof of Claim Due to Recover of Assets	14	3	2	19
	74%	16%	11%	
7. Form 2050 Notice to Creditors and Other Parties in Interest	11	7	1	19
	58%	37%	5%	
8. Form 2060 Certificate of Commencement of Case	8	10	1	19
	42%	53%	5%	
9. Form 2070 Certificate of Retention of Debtor in Possession	15	1	1	17
	88%	6%	6%	
10. Form 2300A Order Confirming Chapter 12 Plan	15	1	3	19
	79%	5%	16%	
11. Form 2300B Order Confirming C13 Plan	17	2	0	19
	89%	11%	0%	
12. Form 2310A Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	15	1	3	19
	79%	5%	16%	
13. Form 2310B Order Fixing Time to Object to Proposed Modification of Chapter 13 plan	18	1	0	19
	95%	5%	0%	
14. Form 2530 Order for Relief in an Involuntary Case	12	5	2	19
	63%	26%	11%	

15. Form 2700 Notice of Filing of Final Report of Trustee	15 79%	4 21%	0 0%	19
16. Form 2710 Final Decree	12 63%	7 37%	0 0%	19

When considering only debtors' attorneys, we again see a different pattern than that seen overall or from either of the Trustee respondent groups. The majority of debtors' attorneys (ranging from 77% or 10 respondents to 100% or 13 respondents) indicated that they would agree that the truncated SSN could be eliminated from all the listed forms. No debtors' attorney respondent chose *not sure* for any of the listed forms.

Thus, Chapter 7 Trustee respondents display the most caution about eliminating the truncated SSN, Chapter 13 Trustee respondents exhibit slightly less, and debtors' attorney's less still. However, it is worth remembering that both the Chapter 13 and debtors' attorney respondent groups are small, and caution should be used when drawing conclusions from small groups.

Table 6: SSN Inclusion on forms- Debtors' Attorneys **Only**.

	Agree to Eliminate	Need Truncated SSN	Not Sure	Total Responses
1. Docketed versions of Forms 309A-I, Notice of Bankruptcy Case	10	3	0	13
	77%	23%	0%	
2. Forms 312, 313, 314, 315, 3130S, and 3150S C11 notices and orders	12	1	0	13
	92%	8%	0%	
3. Forms 318 and 3180F-3180WH, Discharge Forms	10	3	0	13
	77%	23%	0%	
4. Forms 417A, 417B Appellate Forms	13	0	0	13
	100%	0%	0%	
5. Forms 420A and 420B Notice of motion or objection, and Notice of objection to Claim	12	1	0	13
	92%	8%	0%	
6. Form 2040 Notice of Need to File Proof of Claim Due to Recover of Assets	11	2	0	13
	85%	15%	0%	
7. Form 2050 Notice to Creditors and Other Parties in Interest	10	3	0	13
	77%	23%	0%	
8. Form 2060 Certificate of Commencement of Case	11	2	0	13
	85%	15%	0%	
9. Form 2070 Certificate of Retention of Debtor in Possession	12	1	0	13
	92%	8%	0%	
10. Form 2300A Order Confirming Chapter 12 Plan	12	1	0	13
	92%	8%	0%	
11. Form 2300B Order Confirming C13 Plan	12	1	0	13
	92%	8%	0%	
12. Form 2310A Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	13	0	0	13
	100%	0%	0%	
13. Form 2310B Order Fixing Time to Object to Proposed Modification of Chapter 13 plan	12	1	0	13
	92%	8%	0%	
14. Form 2530 Order for Relief in an Involuntary Case	11	2	0	13
	85%	15%	0%	

15. Form 2700 Notice of Filing of Final Report of Trustee	13 100%	0 0%	0 0%	13
16. Form 2710 Final Decree	12 92%	1 8%	0 0%	13

Lastly, respondents were given the opportunity to share any thoughts they had related to the issues raised in the survey, and 41 respondents did so.

Final Thoughts	ID #
Although redacting the full SS number from filings (last 4 numbers) is prudent, the complete SS number of all individual debtors (or LLC and similar pass-through debtors) must remain available to regulatory authorities and creditors from the Bankruptcy Clerk's Office on written request. This will enable regulatory authorities and creditors to assure the reliability of the debtor's filings and to determine whether a debtor has "forgotten" to list certain assets in the case or has improperly transferred assets during the timeframes covered under the Code and applicable State law. This protection is necessary because the current process does not adequately check the veracity of the filings.	**3**
Nobody should be using SSNs for any purpose other than administering the social security program and collecting taxes. It was not designed to be a credit-related identifier. If it is needed to distinguish people of the same name, the last 4 digits should suffice, and for that, only the notice of commencement should include that.	**6**
My responses are based on the assumption that form 309I, which is mailed by snail mail, will continue to be received to allow me to check on prior cases filed by the same debtor.	**7**
I feel that when initial and/final notice of the commencement/closure of case is filed, as much information needs to be given to avoid debtor confusion and/or misrepresentation,	**8**
The full SSN is needed on the initial notice for purposes of identifying the debtor and assuring that the bankruptcy reporting is done appropriately. Once the initial identification is done, we can utilize the case number for purposes of identifying the debtor. Creditors may have a bigger issue in matching payments utilizing only the case number and the last four digits of an account number if the redacted SSN is omitted. Also, some State Child Support Recovery Agencies have requested a full	**11**

SSN in order to identify a debtor, even when a redacted SSN has been included.	
I oppose the use of the full social security number on any document and believe it is irresponsible to distribute any documents with the full social security number. I believe a truncated SSN on the initial notice of filing or 341a notice is the only place the last 4-digits of the SSN is needed. Thank you for addressing this important issue.	**12**
I am primarily a debtor's attorney, but also at chapter 7 and 12 Trustee. I don't think that the Social Security number is beneficial for other parties. As a trustee, I can view it on form 121 which is not made public and which I only used to verify the debt identification, when they send me proof of their Social Security. I think that the Social Security number should be eliminated from other forms, and that it is not necessary for other parties to have that information through Bankruptcy Court.	**13**
The only form the Chapter 13 Trustee needs to have the full social security number is on the form B121 in order to accurately confirm the debtor's identity. Otherwise, we have no need for the social security number on other filings	**14**
I have a vague recollection that an SSN is not to be used for identification purposes. Not that anyone follows that rule, if true.	**15**
I think the current policy has worked well for years. I have never heard of someone misusing a debtor's SSN.	**18**
As a Chapter 13 Trustee I have no need for the SSN beyond the UST requirements to initially identify the debtor at the 341 meeting. Any rule changes should be coordinated with the UST in that regard. 11 USC 342(c)(1) requires a full SSN be sent to a creditor by a debtor if a debt is added to the case. It is not clear (or at least I could not find) a reference in the code that the full number had to be sent out initially to all creditors.	**20**
I have worked as a creditors' attorney representing credit card, retail card, and personal loan lenders, along with debt purchasers, for many years. These companies rely on the Social Security Number to identify the correct debtor in their databases. I fear that any reduction in providing this information will prevent bankruptcies from being properly identified by creditors, thus increasing the number of stay violations and decreasing the number of claims filed in both chapter 7 and 13 cases. Those of us who work with bankruptcy all day, every day, can often find ways around	**22**

using Social Security Numbers because we have access to the bankruptcy information. However, bankruptcy departments at large companies that work on systems not specifically built for bankruptcies, will be severely hindered by these changes.	
Trustees need the full social security number, and the Advisory Committee should seek and confer with the Trustee management software providers to insure that whatever changes are made, will allow the software companies access as to populate the Trustee's software with that information. When the forms were changed around 2015, one of the purposes of the change was to provide availability of the data as uploaded with the filing of the petition, whether by .txt file or by .html, Unfortunately, the decision was made not to make the direct data available to either the Trustees or their software providers, or the Judiciary as well. This very much appeared as a "bait and switch" for the new forms leaving the users with nothing in return for the effort. Here assurances should be made the any elimination of the 9 digit SSN doesn't adversely impact the ability for the Court or the Trustee to easily be able to verify that Debtor's identification.	**25**
the full SSN is useful in conducting asset searches of Chapter 7 debtors	**26**
As a chapter 7 trustee, in issuing tax intercepts with the IRS, filing tax returns, and administering assets of the debtor, the full social security number is needed. Also, creditors frequently need the last four of the social to help identify the debtors' accounts	**29**
If the complete number is not to be provided, then the requirement for a Trustee to verify Debtor's correct social security number should be eliminated and/or give this requirement to the Clerk of the Court to verify as they receive the complete number and can verify the same. Also, the social security number is required for verification under SCRA, as we do not have Debtor's date of birth. Will motions that require the SCRA verification no longer require it? For example, Objection to Claims, Objection to Discharge, Motions to Dismiss, etc.	**33**
As a Chapter 7 trustee and Standing Chapter 12 Trustee, I use the SSN to run a Lexis report for each debtor. The most reliable results arise from using the SSN. Many debtors have the same or similar names, former names, changed names and using SSN works best for me.	**34**

The last four numbers of the SSN are sufficient as the Chapter 7 Trustee is provided a copy of the social security card of the debtor to compare that to the truncated four numbers on the bankruptcy forms.	**37**
As I am a chapter 7 trustee, I need to verify the debtor's identity so I need the full social to verify to compare to the social security card or other documents. As for the proof of claim, clients will pull from social security numbers to find the debtor.	**38**
Full SS needed for verification . required to be on DSO letters.	**45**
I think the PII pendulum has swung too far. It is very difficult to identify debtors, especially those with common names, without the SSN. This is true both for speaking with creditors regarding cases as well as for ferreting out Debtor fraud.	**52**
All documents filed with the court should not include full SS or truncated version; however, the BNC sent to all parties should include the full SSN in order to properly identify debtors. Furthermore, the discharge order to be sent to debtors should include the truncated version of the SS not the one filed with the court.	**55**
I need the entire SSN in order to do asset and lien searches.	**57**
As a 7T I have the debtor's full SSN in my software. As long as that continues, all I need is a case number.	**58**
Any form of a debtor's SSN should be eliminated from most documents (the full must appear on the initial case filing), but should appear as truncated on important documents (i.e. the discharge order) so as to avoid confusion with other similarly-named debtors. Thank you.	**59**
In addition to the full SSN on the Form 309, we need to continue to receive the truncated SSN as we use this for verification purposes to determine if the SSN has changed.	**62**
We believe that it is important to provide the debtor's full SSN on the Notice of Case Filing. A truncated SSN may be sufficient on other forms. Creditors need a full SSN at the outset of a case to ensure accuracy in coding accounts as included in bankruptcy. Anything less than a full SSN will increase the volume of low confidence matches provided to creditors by Bankruptcy Notification Provides such as Lexis Nexis, American Infosource etc. These low confidence matches require extra research	**63**

which takes additional time and results in a delay in coding an account which would increase the risk of inadvertent violations of the automatic stay.	
I am a Chapter 7 Trustee. I need the full social number when checking military status for relief from stay issues, etc. and when I need to call the IRS for debtor tax matters. Occasionally, I am contacted by creditors who cannot locate their debtor record without the social security number. I only need the number on the petition. It is not necessary on other forms.	**67**
Removing the SSN number will be hard for identification of it is the correct borrower. Could be a Jr vs Sr living at the same address.	**68**
The Handbook for Chapter 7 Trustees and related materials currently require trustees to confirm the debtor's social security number matches the Notice of Bankruptcy.	**69**
I need the full social security number to verify the debtor's social security number at the 341. Currently, the full number imports into my trustee system. The notice I receive has the truncated number. This process works well. As a trustee, I don't believe I need the truncated number on any other documents.	**71**
It is extremely important to continue to be able to search the full social security number in PACER. It is also important to include the truncated social on the Voluntary Petition and Notice of Case filing forms, so that we are able to quickly and accurately identify a borrower's case filing and correctly code the account for the bankruptcy. Many servicers have automation that proactively completes daily searches of bankruptcy filings, and the social security number is the primary data field used for these daily searches. If we lose this ability to search the full social security number in PACER and/or lose the truncated social on the Voluntary Petition and Notice of Case Filing forms, then this could harm debtors by making positive matches more difficult and resulting in more manual reviews and could result in false bankruptcy identification and setup. This may have negative downstream impact, including impact to on-going account servicing and credit reporting. For non-mortgage accounts, this becomes even more important because we may not be able to match a borrower's mailing address with the address listed in the petition. At least with mortgage accounts, we are able to match the property address with the address listed in the petition, but we lose this ability with non-mortgage accounts. There would not be a significant impact if the	**72**

committee chose to remove the truncated SSN from most of the documents after the initial case filing but removing it from those initial documents would create additional risk and time in identifying bankruptcy cases.	
In my chapter 13 office, we have no need to see a debtor's full or truncated social security number once we have completed verification prior to the 341 meeting. We presently eliminate the number from our system immediately after the 341 meeting and do not reference it, or need to reference it, on other pleadings in a case.	**76**
An individual's social security number (SSN) is a vital data point needed to confirm the identity of customers who file for bankruptcy protection. If the SSN is removed from current bankruptcy form captions, creditors will be limited to an individual's first, middle (if listed), and last name to reconcile against vast customer records. Alone, this information would be insufficient to rely upon with any certainty as first and last names are too common and are subject to change based on life events such as marriage/divorce or the use of AKAs. Conversely, SSNs are fixed, permanently tied to an individual, and can be reconciled against internal business records. The proposed change could result in the wrong consumer being incorrectly labeled as in bankruptcy or could require additional research to identify the correct customer, resulting in potential stay violations. It's worth noting that the survey and information set forth in the Advisory Committee on Bankruptcy Rules for April 11, 2024 specifically reference the removal of the SSN from court "filings" however, both are silent as to whether there is an intention to also eliminate the SSN from the Debtor information (name, address, SSN/ITIN) displayed on PACER's Docket Report. Many creditors have worked with technology vendors to create automation in an effort to preemptively identify customer bankruptcy filings. This automation is heavily reliant on the BK Debtor's SSN displayed on PACER to reconcile against customer records. The elimination of the SSN from the PACER Docket Report would have drastic consequences on a creditor's ability to accurately and timely identify its customers in bankruptcy.	**77**
As a high volume national creditor participant in the consumer and commercial bankruptcy process, we have a long established bankruptcy scrub process that enables us to receive electronic notification of	**78**

bankruptcy cases (and conversions, dismissals, discharges, closings) using the full SSN information available on the Notice of Filing. This process enables us to quickly and efficiently match our customers with bankruptcy information and automation to code\flag the appropriate accounts, across multiple portfolios. This process enables us to quickly stop foreclosure, repossession, garnishment and collection activity. Without the full SSN, our matching process would not be as robust, would require manual review and would be delayed. Inclusion of the redacted SSN information on the Discharge Notices and the Asset Case notification would enable us to better match those notices, particularly in instances where we were not originally listed as a creditor or where the account has been sold or transferred during a case.	
The Chapter 13 Trustee only needs Official Form 121 regarding social security numbers that provides the Trustee with the full social security number. After verification, my office does not need any other documents that display the redacted social security number.	**80**
The new DOE regulations provide: "A bankruptcy forbearance under § 685.205(b)(6)(viii) on or after July 1, 2024 if the borrower made the required payments on a confirmed bankruptcy plan. See 34 C.F.R. § 685.209(k)(4)(iv)(K)." These regulations require the Debtor to give to the DOE the Trustee's final report to verify that they should receive credit for the months they were in Chapter 13. Without the last 4 of the SSN, I doubt the DOE will be able to match up the Debtor and the student loans they have- given the changes in last name for marriage, divorce, etc.	**81**
I use the debtor's ss# for various search topics in my trusteeship, but I have worked with my software vendor to have all PII removed from my main system and have it encrypted on a side server so that if I am ever hacked, the debtor's PII cannot be compromised. In addition to taking this step, I only give a limited number of people in my office access to the debtor's PII. In this day and age, I feel it imperative to go beyond simple cyber security measures to protect PII. At the same time though, our customers (the creditors) need this information to find the debtors in their systems so it cannot be totally eliminated from our system.	**82**
We need the full social which we receive from the clerk’s office at the beginning of the case. It helps us identify the correct debtor. I do not need it for Ch 13 administration after this.	**86**

Creditors may at the beginning of the case as well. Outside of bankruptcy - It is ironic that we are so worried about the social yet the IRS uses it as we all pay our taxes and insists that the social security no. be on any check.	
Given the issues with mail being stolen and identity theft, I don't think anything that is mailed should include the full social security number. At to what is filed in the docket, I don't think items on the docket should have a full social security number on the docket available to anyone who accesses the electronic docket. There are certain categories of persons who will need the un-masked social security number, such as the Chapter 7 trustee. There should be process whereby a creditor can send a inquiry to ask for access on a case by case basis for the entire social security number.	**87**

TAB 7B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: TECHNOLOGY, PRIVACY, AND PUBLIC ACCESS SUBCOMMITTEE

SUBJECT: 23-BK-D and 23-BK-J– PROPOSAL TO AMEND RULE 2002(o)

DATE: JULY 30, 2024

We have received a suggestion from the Clerk of Court for the Bankruptcy Court for the District of Minnesota, in which clerks of court for eight other bankruptcy courts in the Eighth Circuit joined, suggesting that Rule 2002(n) (which will be Rule 2002(o) after the restyled rules become effective) be amended to eliminate the requirement that the caption of every notice given under Rule 2002 comply with Rule 1005. The Bankruptcy Clerks Advisory Group submitted a second suggestion supporting that of the Clerk of Court for the Minnesota Bankruptcy Court and her colleagues.

Rule 1005 reads as follows:

Rule 1005. Caption of a Petition; Title of the Case[1]

(a) Information. A petition's caption must contain the name of the court, the title of the case, and the case number (if known).The title must include the following information about the debtor:

(1) name;

(2) employer-identification number;

(3) the last 4 digits of the social-security number or individual taxpayer-identification number;

(4) any other federal taxpayer-identification number; and

(5) all other names the debtor has used within 8 years before the petition was filed.

(b) Petition Not Filed by the Debtor. A petition not filed by the debtor must include all names that the petitioner knows have been used by the debtor.

The restyled version of Rule 2002(o) (formerly Rule 2002(n)) reads as follows:

(o)[2] **Caption.** The caption of a notice given under this Rule 2002 must conform to Rule 1005. The caption of a debtor's notice to a creditor must also include the information that § 342(c) requires.

---

[1] The restyled versions of the Bankruptcy Rules, on track to go into effect December 1, 2024, are used throughout this memo.

[2] Because Congress enacted Bankruptcy Rule 2002(n) in P.L. 98-353, 98 Stat. 357, § 321 (1984), it was returned to that designation in the restyling process and what was formerly Rule 2002(n) became Rule 2002(o).

The clerks of court state that the caption requirements "are substantial and can add a significant amount of length, and therefore cost, to a Rule 2002 notice." They also note that, despite the requirements of Rule 2002(n), the "general long-standing practice for the bankruptcy courts in the Eighth Circuit is to only provide the Rule 1005 caption requirements on the Notice of Bankruptcy Case [Official Forms 309A-309I]." Thereafter, the clerk's office uses a shorter caption that "generally follows Official Form 416B." Official Form 416B includes a caption setting forth the court's name; the debtor's name; the case number, the chapter under which the case was filed; and a brief designation of the document's character.

The same concern was expressed at the time Rule 2002(n) (formerly Rule 2002(m)) was amended in 1991. The following appears in the Minutes of March 15-16, 1990, meeting of Advisory Committee on Bankruptcy Rules, included in the Agenda Book for the Sept. 17-18, 1992:

> The Seventh Circuit bankruptcy clerks suggested providing at Rule 2002(n) that the caption of a notice shall comply with Rule 9004(b) instead of Rule 1005. The clerks indicated that the social security number, employer's tax ID number, and other names used by the debtor, which are included in the Rule 1005 caption, are not needed in routine notices. Creditors have been apprised of this information in the § 341 meeting of creditors notice. The Reporter opposed changing the Rule because some creditors rely on the social security number to identify the debtors. Professor King stressed the importance of the information in the full caption and opposed the proposed change. It was moved to leave the rule as it is. The motion carried without objection.

When it last considered the suggestions, the Subcommittee decided to survey bankruptcy clerks on their reaction to the suggestion. The results of that survey are attached as Exhibit A. The clerks overwhelmingly (19 out of the 21 respondents) stated that they endorsed the suggestion and, in fact, many ignore the requirements of Rule 2002(n) in their current practice.

The Subcommittee recommends an amendment to restyled Rule 2002(o) to the Advisory Committee for publication. The amended rule would read as follows:

> **(o) Caption.** The caption of a notice given under this Rule 2002 must include the information that Form 416B requires. The caption of a debtor's notice to a creditor must also include the information that § 342(c) requires.

Committee Note

The amendment eliminates the requirement that all notices given under Rule 2002 include the caption required for the bankruptcy petition under Rule 1005. That caption requires, among other things, the debtor's employer-identification number, last four digits of the debtor's social security number or individual debtor's taxpayer-identification number, any other federal taxpayer-identification number and all other names used within eight years before filing the petition. Instead, most Rule 2002 notices may use the caption described in Official Form 416B, which requires only the court's name, the name of the debtor, the case number, the chapter under which the case was filed, and a brief description of the document's character. Rule 2002 notices sent by the debtor must also include the information that § 342(c) of the Code requires. The notice of the meeting of creditors, Rule 2002(a)(1), will continue to include all information required by Official Forms 309(A-I).

EXHIBIT A
Clerk Survey

Clerk Social Security Redaction Survey Summary

The survey was sent out to all clerks on February 27, 2024, and 23 clerks completed it.

Respondents were first asked if they supported the suggestion to limit the requirement for a full Rule 1005 caption to only the Notice of Bankruptcy Case and instead allow the use of the Official Form 416B caption on all other Rule 2002 notices. Of the 23 respondents, 21 respondents answered this question and 90% (19 of 21 respondents) supported the limitation.

Table 1: Do you support the limitation of the Rule 1005 caption?

	f	%
Yes	19	90%
No	2	10%
Not Sure	0	0%
Total Responses	21	

Respondents were given the opportunity to explain their answers, and 9 did so.

Caption Limit Question	ID #
Some Rule 2002 notices should receive the full caption.	**1**
This is our current practice, which works well for our Court.	**3**
1. FRBP 1005 may need to be re-written. Specifically, the first sentence, "... petition.... shall contain... and the docket number." Assuming "docket number" = "case number," this number is not assigned until after the petition is filed; therefore, it is impossible to comply with this Rule. 2. Because we do not know what information is needed when creditors or other parties process notices received, I would not want to take away information that may be valuable to the party in order to identify the debtor's account outside of the case number itself. 3. There are instances where a bankruptcy case may change debtor names after case filing. Without the full title caption, this may be confusing for parties receiving notice. See case example: 22-40087 - Wind Down TV, LLC. This case was originally filed as Black News Channel, LLC and later became Wind Down TV, LLC.	**5**
That is the practice our currently follows and has been successful with.	**6**
The 341 meeting notice should be sufficient notice to parties on all known names and tax payer identification. To continue to require full caption increases noticing costs without great benefit and provides access to limited personal identifiers.	**8**
This change will streamline forms and protect privacy of address and SSN information.	**10**
Our interest is in keeping the notice to a single page. Seems like this change would help do that.	**15**
It will save funds expended on noticing by making the form shorter and is currently the common practice in many districts.	**16**
Brevity will reduce noticing lengths, which means fewer pages in many notices, thereby saving noticing costs (and trees). Also, the additional information is unnecessary for subsequent notices because creditors will have received the key information as part of the original 309 form. (Unnecessary in this context means not necessary for practical purposes vis-a-vis legal requirements. Compare 11 U.S.C. Â§ 342(c)(1).) Protecting personal information from unnecessary disclosure would benefit debtors, whose personal information is already being widely shared as part of the bankruptcy process.	**21**

Next, respondents were asked if their court had any guidance such as a local rule or general procedure that would bear on captions for Rule 2002 notices. Most respondents (70% or 16 of 23 respondents) said *no*.

Table 2: Local guidance.

	f	%
Yes	5	22%
No	16	70%
Not Sure	2	9%
Total Responses	23	

Respondents were given the option to further describe any local guidance related to Rule 2002 captions, and four did so.

Local Rules	**ID #**
The only other related guidance is in our Administrative Procedures Manual. It is specific to adding the Section of the Court into the caption.	**3**
Our Local Rule 9004-2	**4**
N.D. Fla. LBR 1005-1: "A petition filed on behalf of an individual or an individual and such individual's spouse shall not include the name of any corporation, partnership, limited partnership, or joint venture. (Party compliance with this local rule is an ongoing issue.) N.D. Fla. LBR 2002-2(B)(2): ...."Contain a negative notice legend prominently displayed immediately following the title of the paper..."	**5**
Bankr. D. Kan. Local Bankruptcy Rule 1005.2 also requires the caption of each petition to state the full and correct name of the debtor. This does not seem relevant to this issue, though.	**21**

Respondents were then asked if they supported certain amendments to Rule 2002(a) and (b) to limit delegation authority. The most common answer for each proposal was *no* (43% for the first proposal and 45% for the second), but nearly a third chose *not sure* for each option as well.

Table 3: Delegation authority

	Yes	**No**	**Not Sure**	**Total Responses**
1. "...some other person - *other than the debtor* - as the court may direct..."	6	10	7	23
	26%	43%	30%	
2. "...some other person - *other than an **individual** debtor* - as the court may direct..."	4	10	8	22
	18%	45%	36%	

Then, respondents were asked which of the listed forms they believed the truncated SSN could be removed from, and which should retain that information. The most common choice for each of the listed options was *yes*, it could be removed (ranging from 43% (10 respondents) to 74% (17 respondents).

Fewer than half of the responding clerks endorsed eliminating the truncated SSN for two forms:

- 43% (10 respondents) said that the truncated SSN could be eliminated from Form 2040, Notice of Need to File Proof of Claim Due to Recovery of Assets (Table 4, item 4), and
- 48% (11 respondents) said that the truncated SSN could be eliminated from Form 2060, Certificate of Commencement of Case (Table 4, item 6).

Just over half of the responding clerks endorsed eliminating the truncated SSN for another two forms:

- 52% (12 respondents) said that the truncated SSN could be eliminated Form 2050, Notice to Creditors and Other Parties in Interest (Table 4, item 5), and
- 52% (12 respondents) said that the truncated SSN could be eliminated Form 2530, Order for Relief in an Involuntary Case (Table 4, item 12).

It is worth noting, though, that with 23 respondents, a single respondent can cause a rather large swing in percentages, and between 13% (3 respondents) and 22% (5 respondents) of respondents chose *not sure* for every listed form. Thus, while the weight of opinion was that truncating the SSN would be appropriate on most of the listed forms, this agreement was not universal and did vary from form to form.

Table 4: SSN Inclusion on forms.

	Yes	No	Not Sure	Total Responses
1. Official Forms 312, 313, 314, 315, 3130S, and 3150S C11 notices and orders	14	5	4	23
	61%	22%	17%	
2. Official Forms 417A, 417B Appellate Forms	16	3	4	23
	70%	13%	17%	
3. Official Forms 420A and 420B Notice of motion or objection, and Notice of objection to Claim	15	5	3	23
	65%	22%	13%	
4. Form 2040 Notice of Need to File Proof of Claim Due to Recovery of Assets	10	9	4	23
	43%	39%	17%	
5. Form 2050 Notice to Creditors and Other Parties in Interest	12	7	4	23
	52%	30%	17%	
6. Form 2060 Certificate of Commencement of Case	11	7	5	23
	48%	30%	22%	
7. Form 2070 Certificate of Retention of Debtor in Possession	13	6	4	23
	57%	26%	17%	
8. Form 2300A Order Confirming Chapter 12 Plan	15	4	4	23
	65%	17%	17%	
9. Form 2300B Order Confirming C13 Plan	16	4	3	23
	70%	17%	13%	
10. Form 2310A Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	16	3	4	23
	70%	13%	17%	
11. Form 2310B Order Fixing Time to Object to Proposed Modification of Chapter 13 plan	17	3	3	23
	74%	13%	13%	
12. Form 2530 Order for Relief in an Involuntary Case	12	6	5	23
	52%	26%	22%	
13. Form 2700 Notice of Filing of Final Report of Trustee	15	4	4	23
	65%	17%	17%	
14. Form 2710 Final Decree	15	4	3	22
	68%	18%	14%	

Lastly, respondents were asked if they had any further thoughts on the issues raised in this survey, and 6 respondents provided a response.

Final Thoughts	**ID #**
Appellate matters do not need to include the SSN. Chapter 11 notices should, as well as any involuntary notice.	**1**
If a party was added via amended schedules and debtor did not comply with proper notice of the 341, these other forms may be the first filing they receive and should have as much identifying information as possible to allow the party to identify debtor's account.	**5**
The value added by including the redacted taxpayer information is not greater than the possible detriment of having the redacted tax payer information repeatedly noticed throughout a case proceeding.	**8**
For more than two decades the vast majority of captions in our court have not included truncated SSNs or ITINs and I am not aware of any concerns raised by creditors or other interested parties.	**11**
I checked with my staff on listing (or not listing) the redacted social on all of the forms reflected in this survey. They did not feel strongly one way or the other. They did feel strongly that it should be consistent. So whatever approach is taken should be reflect on all of these forms rather than having different requirements for each form. Life is too short to have to remember where it is required and where it is not required.	**15**
The primary reason in favor of including these numbers on the forms is to help reduce ambiguity about the debtor's identity, because many individuals have the same name, and many businesses have similar names. That is why many businesses (especially medical providers and financial institutions) ask for a name and either a birthdate or SSNs to confirm identity. That said, in bankruptcy cases, every caption of every notice will always have the case number, which will help remove ambiguity because the case number is not only unique but could also be used to look up the truncated SSN or ITIN or the EIN by looking at the 309 Form that was sent earlier in the case, or to look up those numbers using PACER. Thus, the issue could be framed as a question of whether it is better to freely distribute the truncated personal identifying numbers throughout the life of a bankruptcy case to make it more convenient for creditors to process bankruptcy notices, or to restrict such	**21**

distribution to better protect debtors' PII. It would also reduce noticing costs somewhat within the bankruptcy universe if notices can be shorter because a smaller caption would not cause the notice to spill over onto another page.	

TAB 8

TAB 8A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE OB BUSINESS ISSUES

SUBJECT: SUGGESTION TO CREATE RULE REGARDING ASSIGNMENT OF MEGA BANKRUPTCY CASES

DATE: AUGUST 6, 2024

A group of nine individuals and one organization, calling itself the Creditor Rights Coalition, has submitted Suggestion 24-BK-B, which requests the promulgation of a new Bankruptcy Rule "requiring random assignment of all mega bankruptcy cases to all bankruptcy judges within a particular district." Such a rule would prohibit the practice of some districts of assigning large bankruptcy cases to a member of a pre-selected panel of judges or limiting assignment to the judge or judges sitting within the division where the case was filed. The suggestion posits that "[l]ocal judicial assignment rules that concentrate mega bankruptcy cases within a district to small subsets of bankruptcy judges undermine public confidence in the Chapter 11 system."

The Subcommittee recommends that the Advisory Committee table consideration of this suggestion pending consideration of a similar issue by the Committee on the Administration of the Bankruptcy System ("the Bankruptcy Committee").

The Bankruptcy Committee decided at its June 2024 meeting to work with the Committee on Court Administration and Case Management in developing policy and guidance on the practice of assigning chapter 11 cases to panels. While those committees will not be looking at the practice of assigning cases based on divisional location, the Subcommittee

concluded that there is sufficient overlap with the suggestion to make it advisable to await any action by those committees before considering the suggestion.

The Subcommittee also noted that it is not clear that the assignment of cases within a district comes within the bankruptcy rulemaking authority under 28 U.S.C. § 2075, which does not allow the Bankruptcy Rules to supersede statutes. Section 154(a) of Title 28 provides that "[e]ach bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court." Whether that statute leaves room for a national rule prescribing how bankruptcy cases are to be assigned within a district is a question that will need to be explored if and when the Advisory Committee takes up consideration of the Creditor Rights Coalition's suggestion.

TAB 8B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: SUGGESTIONS FOR AMENDING RULE 9031 (USING MASTERS NOT AUTHORIZED)

DATE: AUGUST 6, 2024

Two suggestions to amend Rule 9031 have been submitted to the Advisory Committee, one by Chief Bankruptcy Judge Michael B. Kaplan of the District of New Jersey (24-BK-A) and the other by the American Bar Association (24-BK-C). These suggestions propose amendments that would allow masters to be used in bankruptcy cases and proceedings, a matter that the Advisory Committee has considered several times in the past and declined to propose. At its spring meeting, the Advisory Committee discussed the suggestions and agreed with the Subcommittee that they should be considered further.

The consensus at the meeting was that the Subcommittee should gather more information before making a recommendation. Specifically, it was agreed that a survey of bankruptcy judges should be undertaken to learn whether the judges thought the rules should allow masters to be used in bankruptcy cases and in what circumstances, if any, they had ever needed such assistance. Carly Giffin of the Federal Judicial Center offered the FJC's services in creating and conducting such a survey, and she suggested that it might be helpful to begin with interviews of some bankruptcy judges in order to determine the types of questions that might be asked in the survey. There was also a suggestion at the meeting that a separate survey might be conducted of district judges to learn how they had used masters.

At the Subcommittee's July 26 meeting, members agreed that it would be helpful for Dr. Giffin to begin by interviewing a group of bankruptcy judges regarding the need for masters in

bankruptcy cases. The Subcommittee suggested the names of several bankruptcy judges from a variety of districts and with differing points of view. Dr. Giffin hopes to complete the interviews before the fall meeting and to be able to report on them then. Informed by those interviews, the Subcommittee will then assist Dr. Giffin in devising a survey to send to all bankruptcy judges.

Summary of Interviews Concerning Amending Rule 9031

The Advisory Committee on Bankruptcy Rules received two separate suggestions to amend Rule 9031 to allow for the use of special masters[1] in bankruptcy cases and proceedings. Chief Bankruptcy Judge Michael B. Kaplan of the District of New Jersey (24-BK-A) submitted one, and the American Bar Association (24-BK-C) submitted the other. The Committee decided to collect more information from bankruptcy judges on the perceived need for special masters, concerns about their use, and potential guidelines to consider if Rule 9031 were to be amended.

At the Committee's request, a researcher from the Federal Judicial Center (Center) began gathering information by speaking with bankruptcy judges suggested by the Committee's Business Subcommittee. [2] The Center researcher spoke with nine bankruptcy judges to get their opinions on the benefits and concerns associated with amending Rule 9031.[3] All judges interviewed were asked what role they could see special masters serving in the bankruptcy system, concerns they had about the use of special masters in the bankruptcy system, and what guidelines they thought would be helpful to incorporate into an amended rule, if an amendment were made.

The nine judges spoken with offered a range of input, but their small number means that this input may not represent the views of all bankruptcy judges. Gathering more information would provide more definitive information.

Arguments for Amendment

Judges interviewed noted that large discovery disputes are becoming more common in bankruptcy cases. Law clerks or judges themselves can review the related material, but doing so can take a great deal of time. In especially large cases, it may entirely consume the time of a law clerk, leaving the clerk unavailable to perform other tasks and work on other cases. Similarly, judges who must focus on particularly voluminous or difficult discovery are unable to devote time and attention to other work, potentially delaying other matters. The ability to appoint a special master could alleviate this burden.

Special masters can also be potentially beneficial for claims estimation or valuation. These kinds of calculations can be vital to getting agreement on a plan. Judges noted that while bankruptcy judges are certainly capable of adjudicating such issues, doing

---

[1] Some have suggested that a term other than "special master" be used to describe this role. However, new nomenclature has not been agreed upon so this report uses the current term.
[2] One judge suggested by the Subcommittee did not think they could add anything to the discussion, but recommended another judge who agreed to an interview.
[3] One of the nine judges submitted a written summary of their thoughts rather than sit for an interview.

this detailed work on top of their other responsibilities can be difficult and lead to delays.

Judges noted that the tools bankruptcy judges have available serve different roles than those that would be served by a special master. For example, an examiner is typically asked to give a neutral opinion, but they work for the estate, not the court. There is a benefit to having someone who owes their responsibility to the court. An expert appointed under Rule 706 is subject to discovery and simply issues a report, just like experts for either side. This can lead to a "battle of the experts" which costs more money and time. Further, an expert would not be the appropriate role to deal with voluminous discovery, and providing assistance in cases with large volumes of discovery was one use for special masters frequently cited by interviewees.

Related to several of the previous points, judges also noted that use of special masters could speed up cases, ultimately saving the estate money and benefiting all parties. One judge interviewed had previously referred a particularly difficult discovery dispute to a recently retired bankruptcy judge. This retired judge had developed an expertise in the relatively uncommon area of law at issue, and that judge's expertise helped to resolve the dispute, with the interviewee noting that they did not believe the dispute could have been resolved without the retired judge's assistance. Another judge had appointed someone under 327(e) to estimate claims. This interviewee similarly did not believe the case in question would have settled without that work.[4] In both of these instances, the parties all agreed that help was needed and did not object to that person being paid out of the estate.

Judges noted that part of the reason special masters could speed up a case was because they might have expertise that the presiding bankruptcy judge did not. While bankruptcy judges are often expected to learn about new areas of law for their cases, utilizing an expert's knowledge could help the judge make decisions and speed the case along. For instance, one judge noted that cases that involve cryptocurrency and the blockchain are likely to be on the rise, and this is a complicated area in which some outside expertise could be immensely helpful. One judge, though, was concerned that the use of a special master due to their possession of an expertise that the presiding bankruptcy judge lacked could prevent bankruptcy judges from growing and learning because they could turn to a special master rather than try to grasp the issues

[4] These judges noted that they were not certain about the extent of their authority to make such appointments under current bankruptcy law, but all parties all agreed that help was needed and none objected.

themselves. Even this judge, though, acknowledged that in some instances a special master would lend a great deal of efficiency to proceedings.

Judges noted that special masters can also devote more time and attention to particular matters than a bankruptcy judge overseeing all parts of the case might be able to. This gives parties and claimants another person who is listening to their concerns and thinking carefully about the issues at hand.

One judge noted that while special masters are generally thought of as a tool to help judges, their use would also benefit attorneys. In addition to greater speed and efficiency in their cases, attorneys who served as special masters would gain valuable experience and be able to see the system from a different vantage point.

Several judges noted that the real need for a special master is difficult to describe because it is precisely in the case you do not see coming, that is not routine, in which you would need a special master.

Concerns about Amending

Judges were concerned about the increased cost that would be associated with appointing a special master. One judge said this felt as if it would be charging the estate for work that otherwise they would do themselves for free. Even some judges who generally supported having the ability to use a special master noted that one should only be used when the efficiency of the case would be improved by appointing a special master and when the case was large enough to absorb the associated cost. Judges in favor of amendment noted that they and their colleagues were experts at making balancing decisions that kept the health of the estate in mind, and that this would be no different.

Another concern was that appointing a special master would deprive parties of a judicial decision on some matters of import to the case. Judges expressed that parties in a case want their day in court and to be heard, and they typically expect to be heard by a judicial officer. While a judicial officer could review the special master's findings, and need not take their recommendation,[5] the use of a special master would still deprive parties of the opportunity to make their case directly to the judicial officer. One judge said they would be additionally concerned if judges were having *in camera* discussions with special masters that were not known to the parties.

---

[5] Most judges interviewed took the view that a special master's findings would be subject to *de novo* review and could be rejected. However, at least one judge interviewed was concerned that a rule amendment might allow special masters to make decisions rather than recommendations.

Judges expressed concern about how special masters would be appointed. These judges noted that repeated appointment of the same, or same few, people could give the appearance that the judge had favorites who were benefiting from the new rule. However, even some of the same judges who expressed this concern felt confident that the rule could be structured to avoid it, or that appointments in any one district would be relatively rare, making it unlikely that a strong repeat market would form.

Judges also expressed uncertainty about whether bankruptcy judges have the authority to appoint special masters under the Bankruptcy Code. Issues of authority are discussed in greater detail below.

Relatedly, judges expressed some concern that, even if they had the authority, it was odd for them to further delegate. The sentiment was that bankruptcy cases have already been referred to the bankruptcy court, and it was odd to refer part of these cases to a special master. Two judges in favor of amendment found this contention particularly objectionable, believing that it devalued the role of a bankruptcy judge by suggesting they were equivalent to a special master assigned one particular task.

Authority to Appoint a Special Master

Perceptions of authority to appoint a special master varied greatly among the judges interviewed. Some judges expressed some concern that bankruptcy judges did not have the authority to appoint a special master. These judges argued that they did not believe that this authority was given by the bankruptcy code, and thus they felt the rules could not effect this change, that it would have to be statutory.

Most of the judges interviewed felt that the only thing preventing them from having the authority to appoint a special master was Rule 9031, such that amending the rule *would* provide them this authority. One judge noted that under the current rules they did not believe they had the authority to appoint even an expert.

One judge interviewed felt that they had the inherent authority to appoint a special master, and that the only effect of Rule 9031 was to say that the restrictions imposed by Civil Rule 53 did not apply. This judge said that the title of Rule 9031 did not match its content, and if they were interpreting a statute in which the title did not match the content, they would say the content controlled. Thus, they were against amending Rule 9031 because they felt it would constrain authority they already had.[6]

---

[6] This judge was further concerned that if the rule were changed to use the nomenclature “court appointed neutral” instead of “special master” that the “neutral” phrasing could encompass a number of roles, including mediators so changes in that regard should be considered carefully.

One judge noted that the range of opinions on exactly what authority bankruptcy judges did have – to appoint special masters or even experts – argued for amending the rule so that all bankruptcy judges would be operating under the same clear, acknowledged parameters.

Guidelines or Boundaries to Consider

All nine judges, even those who did not favor amending the rule, were asked what limitations, boundaries, or guidance they thought would be helpful for the rule to provide were it to be amended. A few judges thought the provisions of Civil Rule 53 would be sufficient. However, others provided specific suggestions they thought could be incorporated into an amended rule or its Committee Note.

One suggestion was for the rule to delineate the factors to consider when deciding whether to use a special master, such as the cost to the estate and the time that might be saved or added. Moreover, it might be beneficial to require a bankruptcy judge appointing a special master to make written findings as to why they believed such an appointment was in the best interest of the parties, perhaps even using an official form. The written finding should also include a delineation of the role the special master was going to serve.

Another suggestion was to provide guidelines about who could be appointed as a special master or what factors should be considered in their appointment. This could go some way towards combating impressions that judges are picking favorites. Other judges expressed concern about going too far in this direction, noting they would not want parties to have too much control over their appointments, such as by requiring agreement of the parties.

Providing clarity about who could request a special master was another suggestion. Would the parties be able to move to do that, or would this have to be judge initiated? One judge expressed concern that if parties were allowed to move for a special master, some might do so strategically to slow down proceedings.

Use of Other Bankruptcy Judges as Masters

One early interviewee suggested that other bankruptcy judges, or even recalled bankruptcy judges, could potentially serve as special masters, if their caseloads allowed. This judge, and other judges asked about the possibility, felt that this could alleviate some of the concerns surrounding the proposition.

If another bankruptcy judge served as a special master, the concerns about the cost to the estate would be alleviated, as would concerns about judges playing favorites when

appointing a special master. It would also mean that a judicial officer would still be presiding over all parts of the case. One judge said they felt that sometimes, parties needed to hear something from a judge to really accept it.

While nearly all judges saw some benefit to this suggestion, some also expressed concern. Judges were not sure they would feel comfortable asking other judges, who also have their own caseloads, to perform a task that they had essentially deemed too time consuming for themselves. Judges questioned how other bankruptcy judges would be chosen, would the judge in need of a special master ask whomever they wished or would there be some kind of volunteer list with an assignment wheel? Judges also expressed concern that if the judge being appointed as special master were in another district, as might be necessary in smaller or one judge districts, there would have to be an inter-circuit assignment process which can take time, necessarily delaying progress on the case.

One judge noted that if a matter were referred to another bankruptcy judge, it would make clear that the task could be done by a bankruptcy judge, so, in essence "why don't you just do it?" Another judge noted that bankruptcy judges may not always have the required expertise, such as in valuation of claims, that might be needed in a special master.

One point brought up by a number of judges was that if bankruptcy judges were serving as special masters, the rule and associated procedures would need to be carefully constructed to preserve judicial immunity.

Conclusion

All the judges interviewed, even judges who argue that Rule 9031 should be amended, agreed special masters would be utilized in few cases. Some judges against amending the rule point this out to note that this is not a huge issue within the bankruptcy system, and, thus, that the potential disadvantages outweigh the potential benefits. Judges arguing for amending the rule say the infrequency of use argues in favor of amendment, noting that this would not be used regularly or indiscriminately, but that bankruptcy judges should have this tool available for the rare occasions on which it is needed.

The final question judges were asked is whether they believed:

1. the rule should be amended to allow special masters,
2. the rule should **not** be amended, or

3. while they did not imagine themselves using a special master, they thought other bankruptcy judges should be able to appoint them if they wished.

Three of the judges interviewed said yes, the rule should be amended to allow for the use of special masters. Two said they did not perceive themselves needing to appoint a special master, but they were not against a rule amendment so that others could. Three judges said they did not believe that the rule should be amended to allow for the use of special masters. One judge said they would have no objection to other bankruptcy judges serving as a special master, but that they were otherwise against amending Rule 9031.

Thus, five of the nine judges interviewed are for amending the rule to allow for the use of special masters in the bankruptcy system, though two do not believe they would use them. All judges interviewed acknowledged that they could think of times when having such a tool could be useful, but all also expressed concern, at least about cost. The judges interviewed also had a range of opinions about what authority they currently possess to appoint special masters or even experts. Whether or not the Rule 9031 is amended, some effort to clarify authority may be helpful.