Agenda E-19 (Summary)
Rules
September 2024

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

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:

Agenda E-19
Rules
September 2024

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

The Committee on Rules of Practice and Procedure (Standing Committee or Committee) met on 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);

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.

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

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	

Appendix A – Proposed Amendments to the Federal Rules of Appellate Procedure

Appendix B – Proposed Amendments to the Federal Rules of Bankruptcy Procedure

Appendix C – Proposed Amendments to the Federal Rules of Civil Procedure

Appendix D – 2024 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002 (proposed)

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

Rule 6. Appeal in a Bankruptcy Case or Proceeding

(a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case or Proceeding. An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising original jurisdiction in a bankruptcy case or proceeding under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules. But 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

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

Rules of Bankruptcy Procedure, which may be shorter than the time allowed under the Civil Rules.

(b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case or Proceeding.

(1) **Applicability of Other Rules.** These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d)(1) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction in a bankruptcy case or proceeding under 28 U.S.C. § 158(a) or (b), but with these qualifications:

* * * * *

(C) when the appeal is from a bankruptcy appellate panel, ‘‘district court,’’ as

used in any applicable rule, means ''bankruptcy appellate panel''; and

* * * * *

(2) **Additional Rules.** In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) **Motion for Rehearing.**

* * * * *

(ii) If a party intends to challenge the order disposing of the motion—or the alteration or amendment of a judgment, order, or decree upon the motion—then the party, in ~~compliance~~ accordance with Rules 3(c) and 6(b)(1)(B), must file a notice of appeal or amended notice of appeal.

The notice or amended notice must be filed within the time prescribed by Rule 4—excluding Rules 4(a)(4) and 4(b)—measured from the entry of the order disposing of the motion.

* * * * *

(C) **Making the Record Available.**

* * * * *

(ii) All parties must do whatever else is necessary to enable the clerk to assemble the record and make it available. When the record is made available in paper form, the court of appeals may provide by rule or order that a certified copy

of the docket entries be made available in place of the redesignated record. But at any time during the appeal's pendency, any party may request ~~at any time during the pendency of the appeal~~ that the redesignated record be made available.

(D) **Filing the Record.** When the district clerk or bankruptcy-appellate-panel clerk has made the record available, the circuit clerk must note that fact on the docket. The date as noted ~~on the docket~~ serves as the filing date of the record. The circuit clerk must immediately notify all parties of that ~~the filing~~ date.

(c) Direct Appeal ~~Review~~ from a Judgment, Order, or Decree of a Bankruptcy Court by ~~Permission~~ Authorization Under 28 U.S.C. § 158(d)(2).

(1) **Applicability of Other Rules.** These rules apply to a direct appeal from a judgment, order, or decree of a bankruptcy court by ~~permission~~ authorization under 28 U.S.C. § 158(d)(2), but with these qualifications:

(A) Rules 3–4, 5~~(a)(3)~~ (except as provided in this Rule 6(c)), 6(a), 6(b), 8(a), 8(c), 9–12, 13–20, 22–23, and 24(b) do not apply; and

(B) as used in any applicable rule, ‘‘district court’’ or ‘‘district clerk’’ includes—to the extent appropriate—a bankruptcy court or bankruptcy appellate panel or its clerk~~; and~~

~~(C) the reference to ''Rules 11 and 12(c)'' in Rule 5(d)(3) must be read as a reference to Rules 6(c)(2)(B) and (C).~~

(2) **Additional Rules.** In addition to the rules made applicable by Rule 6(c)(1), the following rules apply:

(A) **Petition to Authorize a Direct Appeal.** Within 30 days after a certification of a bankruptcy court's order for direct appeal to the court of appeals under 28 U.S.C. § 158(d)(2) becomes effective under Bankruptcy Rule 8006(a), any party to the appeal may ask the court of appeals to authorize a direct appeal by filing a petition with the circuit clerk under Bankruptcy Rule 8006(g).

(B) **Contents of the Petition.** The petition must include the material required by Rule 5(b)(1) and an attached copy of:

(i) the certification; and

(ii) the notice of appeal of the bankruptcy court's judgment, order, or decree filed under Bankruptcy Rule 8003 or 8004.

(C) **Answer or Cross-Petition; Oral Argument.** Rule 5(b)(2) governs an answer or cross-petition. Rule 5(b)(3) governs oral argument.

(D) **Form of Papers; Number of Copies; Length Limits.** Rule 5(c) governs the required form, number of copies to be filed, and length limits

applicable to the petition and any answer or cross-petition.

(E) **Notice of Appeal; Calculating Time.** A notice of appeal to the court of appeals need not be filed. The date when the order authorizing the direct appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(F) **Notification of the Order Authorizing Direct Appeal; Fees; Docketing the Appeal.**

(i) When the court of appeals enters the order authorizing the direct appeal, the circuit clerk must notify the bankruptcy clerk and the district court clerk or

bankruptcy-appellate-panel clerk of the entry.

(ii) Within 14 days after the order authorizing the direct appeal is entered, the appellant must pay the bankruptcy clerk any unpaid required fee, including:

- the fee required for the appeal to the district court or bankruptcy appellate panel; and
- the difference between the fee for an appeal to the district court or bankruptcy appellate panel and the fee required

for an appeal to the court of appeals.

(iii) The bankruptcy clerk must notify the circuit clerk once the appellant has paid all required fees. Upon receiving the notice, the circuit clerk must enter the direct appeal on the docket.

(G) **Stay Pending Appeal.** Bankruptcy Rule 8007 governs any stay pending appeal.

~~(A)~~(H) **The Record on Appeal.** Bankruptcy Rule 8009 governs the record on appeal. If a party has already filed a document or completed a step required to assemble the record for the appeal to the district court or

bankruptcy appellate panel, the party need not repeat that filing or step.

~~(B)~~(I) **Making the Record Available.** Bankruptcy Rule 8010 governs completing the record and making it available. When the court of appeals enters the order authorizing the direct appeal, the bankruptcy clerk must make the record available to the circuit clerk.

~~(C)~~ ~~**Stays Pending Appeal.** Bankruptcy Rule 8007 applies to stays pending appeal.~~

~~(D)~~(J) **Duties of the Circuit Clerk.** When the bankruptcy clerk has made the record available, the circuit clerk must note that fact on the docket. The date as noted ~~on the docket~~ serves as

the filing date of the record. The circuit clerk must immediately notify all parties of that ~~the filing~~ date.

~~(E)~~(K) **Filing a Representation Statement.** Unless the court of appeals designates another time, within 14 days after ~~entry of~~ the order ~~granting permission to appeal~~ authorizing the direct appeal is entered, the attorney for each party to the appeal ~~the attorney who sought permission~~ must file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

Committee Note

Subdivision (a). Minor stylistic and clarifying changes are made to subdivision (a). In addition, subdivision (a) is amended to clarify that, when a district court is exercising original jurisdiction in a bankruptcy case or proceeding under 28 U.S.C. § 1334, the time in which to file post-judgment motions that can reset the time to appeal under Rule 4(a)(4)(A) is controlled by the Federal Rules of

Bankruptcy Procedure, rather than the Federal Rules of Civil Procedure.

The Bankruptcy Rules partially incorporate the relevant Civil Rules but in some instances shorten the deadlines for motions set out in the Civil Rules. *See* Fed. R. Bankr. P. 9015(c) (any renewed motion for judgment under Civil Rule 50(b) must be filed within 14 days of entry of judgment); Fed. R. Bankr. P. 7052 (any motion to amend or make additional findings under Civil Rule 52(b) must be filed within 14 days of entry of judgment); Fed. R. Bankr. P. 9023 (any motion to alter or amend the judgment or for a new trial under Civil Rule 59 must be filed within 14 days of entry of judgment).

Motions for attorney's fees in bankruptcy cases or proceedings are governed by Bankruptcy Rule 7054(b)(2)(A), which incorporates without change the 14-day deadline set in Civil Rule 54(d)(2)(B). Under Appellate Rule 4(a)(4)(A)(iii), such a motion resets the time to appeal only if the district court so orders pursuant to Civil Rule 58(e), which is made applicable to bankruptcy cases and proceedings by Bankruptcy Rule 7058.

Motions for relief under Civil Rule 60 in bankruptcy cases or proceedings are governed by Bankruptcy Rule 9024. Appellate Rule 4(a)(4)(A)(vi) provides that a motion for relief under Civil Rule 60 resets the time to appeal only if the motion is made within the time allowed for filing a motion under Civil Rule 59. In a bankruptcy case or proceeding, motions under Civil Rule 59 are governed by Bankruptcy Rule 9023, which, as noted above, requires such motions to be filed within 14 days of entry of judgment.

Civil Rule	Bankruptcy Rule	Time Under Bankruptcy Rule
50(b)	9015(c)	14 days
52(b)	7052	14 days
59	9023	14 days
54(d)(2)(B)	7054(b)(2)(A)	14 days
60	9024	14 days

Of course, the Bankruptcy Rules may be amended in the future. If that happens, the time allowed for the equivalent motions under the applicable Bankruptcy Rule may change.

Subdivision (b). Minor stylistic and clarifying changes are made to the header of subdivision (b) and to subdivision (b)(1). Subdivision (b)(1)(C) is amended to correct the omission of the word "bankruptcy" from the phrase "bankruptcy appellate panel." Stylistic changes are made to subdivision (b)(2).

Subdivision (c). Subdivision (c) was added to Rule 6 in 2014 to set out procedures governing discretionary direct appeals from orders, judgments, or decrees of the bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2).

Typically, an appeal from an order, judgment, or decree of a bankruptcy court may be taken either to the district court for the relevant district or, in circuits that have established bankruptcy appellate panels, to the bankruptcy appellate panel for that circuit. 28 U.S.C. § 158(a). Final orders of the district court or bankruptcy appellate panel resolving appeals under § 158(a) are then appealable as of right to the court of appeals under § 158(d)(1).

That two-step appeals process can be redundant and time-consuming and could in some circumstances potentially jeopardize the value of a bankruptcy estate by impeding quick resolution of disputes over disposition of estate assets. In the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Congress enacted 28 U.S.C. § 158(d)(2) to provide that, in certain circumstances, appeals may be taken directly from orders of the bankruptcy court to the courts of appeals, bypassing the intervening appeal to the district court or bankruptcy appellate panel.

Specifically, § 158(d)(2) grants the court of appeals jurisdiction of appeals from any order, judgment, or decree of the bankruptcy court if (a) the bankruptcy court, the district court, the bankruptcy appellate panel, or all parties to the appeal certify that (1) "the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance"; (2) "the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions"; or (3) "an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken" *and* (b) "the court of appeals authorizes the direct appeal of the judgment, order, or decree." 28 U.S.C. § 158(d)(2).

Bankruptcy Rule 8006 governs the procedures for certification of a bankruptcy court order for direct appeal to the court of appeals. Among other things, Rule 8006 provides that, to become effective, the certification must be filed in the appropriate court, the appellant must file a notice of appeal of the bankruptcy court order to the district court or bankruptcy appellate panel, and the notice of appeal must become effective. Fed. R. Bankr. P. 8006(a). Once the certification becomes effective under Rule 8006(a), a

petition seeking authorization of the direct appeal must be filed with the court of appeals within 30 days. *Id.* 8006(g).

Rule 6(c) governs the procedures applicable to a petition for authorization of a direct appeal and, if the court of appeals grants the petition, the initial procedural steps required to prosecute the direct appeal in the court of appeals.

As promulgated in 2014, Rule 6(c) incorporated by reference most of Rule 5, which governs petitions for permission to appeal to the court of appeals from otherwise non-appealable district court orders. It has become evident over time, however, that Rule 5 is not a perfect fit for direct appeals of bankruptcy court orders to the courts of appeals. The primary difference is that Rule 5 governs discretionary appeals from district court orders that are otherwise non-appealable, and an order granting a petition for permission to appeal under Rule 5 thus initiates an appeal that otherwise would not occur. By contrast, an order granting a petition to authorize a direct appeal under Rule 6(c) means that an appeal that has already been filed and is pending in the district court or bankruptcy appellate panel will instead be heard in the court of appeals. As a result, it is not always clear precisely how to apply the provisions of Rule 5 to a Rule 6(c) direct appeal.

The new amendments to Rule 6(c) are intended to address that problem by making Rule 6(c) self-contained. Thus, Rule 6(c)(1) is amended to provide that Rule 5 is not applicable to Rule 6(c) direct appeals except as specified in Rule 6(c) itself. Rule 6(c)(2) is also amended to include the substance of applicable provisions of Rule 5, modified to apply more clearly to Rule 6(c) direct appeals. In addition, stylistic and clarifying amendments are made to conform to other provisions of the Appellate Rules and Bankruptcy

Rules and to ensure that all the procedures governing direct appeals of bankruptcy court orders are as clear as possible to both courts and practitioners.

Subdivision (c)—Title. The title of subdivision (c) is amended to change "Direct Review" to "Direct Appeal" and "Permission" to "Authorization," to be consistent with the language of 28 U.S.C. § 158(d)(2). In addition, the language "from a Judgment, Order, or Decree of a Bankruptcy Court" is added for clarity and to be consistent with other subdivisions of Rule 6.

Subdivision (c)(1). The language of the first sentence is amended to be consistent with the title of subdivision (c). In addition, the list of rules in subdivision (c)(1)(A) that are inapplicable to direct appeals is modified to include Rule 5, except as provided in subdivision (c) itself. Subdivision (c)(1)(C), which modified certain language in Rule 5 in the context of direct appeals, is therefore deleted. As set out in more detail below, the provisions of Rule 5 that are applicable to direct appeals have been added, with appropriate modifications to take account of the direct appeal context, as new provisions in subdivision (c)(2).

Subdivision (c)(2). The language "to the rules made applicable by (c)(1)" is added to the first sentence for consistency with other subdivisions of Rule 6.

Subdivision (c)(2)(A). Subdivision (c)(2)(A) is a new provision that sets out the basic procedure and timeline for filing a petition to authorize a direct appeal in the court of appeals. It is intended to be substantively identical to Bankruptcy Rule 8006(g), with minor stylistic changes made in light of the context of the Appellate Rules.

Subdivision (c)(2)(B). Subdivision (c)(2)(B) is a new provision that specifies the contents of a petition to

authorize a direct appeal. It provides that, in addition to the material required by Rule 5, the petition must include an attached copy of the certification under § 158(d)(2) and a copy of the notice of appeal to the district court or bankruptcy appellate panel.

Subdivision (c)(2)(C). Subdivision (c)(2)(C) is a new provision. For clarity, it specifies that answers or cross-petitions are governed by Rule 5(b)(2) and oral argument is governed by Rule 5(b)(3).

Subdivision (c)(2)(D). Subdivision (c)(2)(D) is a new provision. For clarity, it specifies that the required form, number of copies to be filed, and length limits applicable to the petition and any answer or cross-petition are governed by Rule 5(c).

Subdivision (c)(2)(E). Subdivision (c)(2)(E) is a new provision that incorporates the substance of Rule 5(d)(2), modified to take into account that the appellant will already have filed a notice of appeal to the district court or bankruptcy appellate panel. It makes clear that a second notice of appeal to the court of appeals need not be filed, and that the date of entry of the order authorizing the direct appeal serves as the date of the notice of appeal for the purpose of calculating time under the Appellate Rules.

Subdivision (c)(2)(F). Subdivision (c)(2)(F) is a new provision. It largely incorporates the substance of Rules 5(d)(1)(A) and 5(d)(3), with some modifications.

Subdivision (c)(2)(F)(i) now requires that when the court of appeals enters an order authorizing a direct appeal, the circuit clerk must notify the bankruptcy clerk and the clerk of the district court or the clerk of the bankruptcy appellate panel of the order.

Subdivision (c)(2)(F)(ii) requires that, within 14 days of entry of the order authorizing the direct appeal, the appellant must pay the bankruptcy clerk any required filing or docketing fees that have not yet been paid. Thus, if the appellant has not yet paid the required fee for the initial appeal to the district court or bankruptcy appellate panel, the appellant must do so. In addition, the appellant must pay the bankruptcy clerk the difference between the fee for the appeal to the district court or bankruptcy appellate panel and the fee for an appeal to the court of appeals, so that the appellant has paid the full fee required for an appeal to the court of appeals.

Subdivision (c)(2)(F)(iii) then requires the bankruptcy clerk to notify the circuit clerk that all fees have been paid, which triggers the circuit clerk's duty to docket the direct appeal.

Subdivision (c)(2)(G). Subdivision (c)(2)(G) was formerly subdivision (c)(2)(C). It is substantively unchanged, continuing to provide that Bankruptcy Rule 8007 governs stays pending appeal, but reflects minor stylistic revisions.

Subdivision (c)(2)(H). Subdivision (c)(2)(H) was formerly subdivision (c)(2)(A). It continues to provide that Bankruptcy Rule 8009 governs the record on appeal, but adds a sentence clarifying that steps taken to assemble the record under Bankruptcy Rule 8009 before the court of appeals authorizes the direct appeal need not be repeated after the direct appeal is authorized.

Subdivision (c)(2)(I). Subdivision (c)(2)(I) was formerly subdivision (c)(2)(B). It continues to provide that Bankruptcy Rule 8010 governs provision of the record to the court of appeals. It adds a sentence clarifying that when the

court of appeals authorizes the direct appeal, the bankruptcy clerk must make the record available to the court of appeals.

Subdivision (c)(2)(J). Subdivision (c)(2)(J) was formerly subdivision (c)(2)(D). It is unchanged other than a stylistic change and being renumbered.

Subdivision (c)(2)(K). Subdivision (c)(2)(K) was formerly subdivision (c)(2)(E). Because any party may file a petition to authorize a direct appeal, it is modified to provide that the attorney for each party—rather than only the attorney for the party filing the petition—must file a representation statement. In addition, the phrase "granting permission to appeal" is changed to "authorizing the direct appeal" to conform to the language used throughout the rest of subdivision (c), and a stylistic change is made.

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

Rule 39. Costs

(a) ~~Against Whom Assessed~~ Allocating Costs Among the Parties. The following rules apply to allocating taxable costs among the parties unless the law provides, the parties agree, or the court orders otherwise:

(1) if an appeal is dismissed, costs are ~~taxed~~ allocated against the appellant~~, unless the parties agree otherwise~~;

(2) if a judgment is affirmed, costs are ~~taxed~~ allocated against the appellant;

(3) if a judgment is reversed, costs are ~~taxed~~ allocated against the appellee;

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

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, each party bears its own costs ~~costs are taxed only as the court orders~~.

(b) Reconsideration. Once the allocation of costs is established by the entry of judgment, a party may seek reconsideration of that allocation by filing a motion in the court of appeals within 14 days after the entry of judgment. But issuance of the mandate under Rule 41 must not be delayed awaiting a determination of the motion. The court of appeals retains jurisdiction to decide the motion after the mandate issues.

(c) Costs Governed by Allocation Determination. The allocation of costs applies both to costs taxable in the court of appeals under Rule 39(e) and to costs taxable in district court under Rule 39(f).

~~(b)~~**(d) Costs For and Against the United States.** Costs for or against the United States, its agency, or officer will be ~~assessed~~ allocated under Rule 39(a) only if authorized by law.

(e) Costs on Appeal Taxable in the Court of Appeals.

(1) **Costs Taxable.** The following costs on appeal are taxable in the court of appeals for the benefit of the party entitled to costs:

(A) the production of necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f);

(B) the docketing fee; and

(C) a filing fee paid in the court of appeals.

~~(c)~~ (2) **Costs of Copies.** Each court of appeals must, by local rule, set ~~fix~~ the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records

authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

~~(d)~~ (3) **Bill of Costs: Objections; Insertion in Mandate.**

~~(1)~~ (A) A party who wants costs taxed in the court of appeals must—within 14 days after ~~entry of~~ judgment is entered—file with the circuit clerk and serve an itemized and verified bill of those costs.

~~(2)~~ (B) Objections must be filed within 14 days after ~~service of~~ the bill of costs is served, unless the court extends the time.

~~(3)~~ (C) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must—upon the circuit clerk's request—add the statement of costs, or any amendment of it, to the mandate.

~~(e)~~**(f) Costs on Appeal Taxable in the District Court.** The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs ~~under this rule~~:

* * * * *

Committee Note

In *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021), the Supreme Court held that Rule 39 does not permit a district court to alter a court of appeals' allocation of the costs listed in subdivision (e) of that Rule. The Court also

observed that "the current Rules and the relevant statutes could specify more clearly the procedure that such a party should follow to bring their arguments to the court of appeals…." *Id*. at 1638. The amendment does so. Stylistic changes are also made.

Subdivision (a). Both the heading and the body of the Rule are amended to clarify that allocation of the costs among the parties is done by the court of appeals. The court may allow the default rules specified in subdivision (a) to operate based on the judgment, or it may allocate them differently based on the equities of the situation. Subdivision (a) is not concerned with calculating the amounts owed; it is concerned with who bears those costs, and in what proportion. The amendment also specifies a default for mixed judgments: each party bears its own costs.

Subdivision (b). The amendment specifies a procedure for a party to ask the court of appeals to reconsider the allocation of costs established pursuant to subdivision (a). A party may do so by motion in the court of appeals within 14 days after the entry of judgment. The mandate is not stayed pending resolution of this motion, but the court of appeals retains jurisdiction to decide the motion after the mandate issues.

Subdivision (c). Codifying the decision in *Hotels.com*, the amendment also makes clear that the allocation of costs by the court of appeals governs the taxation of costs both in the court of appeals and in the district court.

Subdivision (d). The amendment uses the word "allocated" to match subdivision (a).

Subdivision (e). The amendment specifies which costs are taxable in the court of appeals and clarifies that the procedure in that subdivision governs the taxation of costs taxable in the court of appeals. The docketing fee, currently $500, is established by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1913. The reference to filing fees paid in the court of appeals is not a reference to the $5 fee paid to the district court required by 28 U.S.C. § 1917 for filing a notice of appeal from the district court to the court of appeals. Instead, the reference is to filing fees paid in the court of appeals, such as the fee to file a notice of appeal from a bankruptcy appellate panel.

Subdivision (f). The provisions governing costs taxable in the district court are lettered (f) rather than (e). The filing fee referred to in this subdivision is the $5 fee required by 28 U.S.C. § 1917 for filing a notice of appeal from the district court to the court of appeals.

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

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Jay Bybee, Chair
Advisory Committee on Appellate Rules

RE: Report of the Advisory Committee on Appellate Rules*

DATE: May 13, 2024

I. Introduction

The Advisory Committee on the Appellate Rules met on Wednesday, April 10, 2024, in Denver, Colorado. * * *

The Advisory Committee seeks final approval of amendments to Rule 39, dealing with costs, and Rule 6, dealing with appeals in bankruptcy cases. These

* A copy of the full committee report can be found in the June 2024 Standing Committee agenda book publicly available on www.uscourts.gov.

amendments were published for public comment in August of 2023, and the Advisory Committee recommends final approval as published. (Part II of this report.)

* * * * *

II. Action Items for Final Approval

A. Costs on Appeal (21-AP-D)

In the spring of 2021, the Supreme 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. *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021). The Court also observed that "the current Rules and the relevant statutes could specify more clearly the procedure that such a party should follow to bring their arguments to the court of appeals." *Id.* at 1638.

That fall, the Advisory Committee appointed a subcommittee to examine the issue, and, in June of 2023, the Standing Committee approved publication of proposed amendments to Rule 39. The proposed amended rule is included with this report in Attachment A. The Advisory Committee seeks final approval as published.

The amended Rule is designed to accomplish several things:

First, it clarifies 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) calculating and taxing the dollar amount of costs upon the proper party or parties. It uses the term "allocated" for the former and the term "taxed" for the latter. Rule 39(a) establishes default rules for the allocation of costs; these default rules can be displaced by party agreement or court order.

Second, it codifies 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.

Third, it responds to the need identified in *Hotels.com* for a clearer procedure that a party should follow if it wants to ask the court of appeals to reconsider the allocation of costs. It does this by providing for a motion for reconsideration of the allocation. To prevent delay, it provides that the mandate must not be delayed while awaiting determination of such a motion for reconsideration while making clear that the court of appeals retains jurisdiction to decide the motion.

Fourth, it makes Rule 39's structure more parallel. The current Rule lists the costs taxable in the district court but not the costs taxable in the court of appeals. The proposed amendment lists the costs taxable in the court of appeals.

The proposal does not, however, have a mechanism for making the judgment winner in the district court aware of the magnitude of the costs it might face under Rule 39 (or even the obligation to pay such costs) early enough to ask the court of appeals to reallocate the costs. While most costs on appeal are so modest that this is not a serious concern, one such cost—the premium paid for a supersedeas bond—can run into the millions of dollars. In our report requesting publication, the Appellate Rules Committee noted that it believed that the easiest time for disclosure is when the bond is before the district court for approval and had requested the Advisory Committee on Civil Rules to consider amending Civil Rule 62 to require that disclosure.

The Advisory Committee received three comments. Two of them are positive; one is negative.

The Minnesota State Bar Association's Assembly, its policy-making body, voted to support the proposed rule. The Committee on Appellate Courts of the California Lawyers Association's Litigation Section "believes that the proposal provides clarity to courts and practitioners regarding the respective authority of circuit courts and district courts to allocate and tax costs," and "cogently addresses the issues regarding FRAP 39 raised" by the Supreme Court in *Hotels.com*. And it "agrees that the Rules Committee should explore an amendment to Federal Rules of Civil Procedure 62."

Andrew Straw suggested that no costs should be allocated against a party who was allowed to proceed in forma pauperis. However, the IFP statute provides, "Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings," 28 U.S.C. § 1915(f)(1).

The Advisory Committee does not believe that these public comments warrant any changes to the proposed amendments. Instead, it unanimously recommends final approval of the proposed amendments as published.[1]

In addition, it notes that, to the extent there are reasons not to amend Civil Rule 62(b) to require disclosure of the premium paid for a supersedeas bond, perhaps the Advisory Committee on Civil Rules might consider adding a cross-reference to Appellate Rule 39 in Civil Rule 62(b) so that litigants seeking district court approval of a supersedeas bond are alerted to this possibility.

[1] After the meeting of the Advisory Committee, an additional comment was submitted and docketed as a new suggestion. This comment was circulated to the members of the Advisory Committee with a question whether any member wanted to reopen the matter. None did.

B. Appeals in Bankruptcy Cases (no number assigned)

These proposed amendments to Rule 6, dealing with appeals in bankruptcy cases, arose from requests by the Advisory Committee on Bankruptcy Rules. In June of 2023, the Standing Committee approved publication of proposed amendments to Rule 6. * * * The Advisory Committee seeks final approval as published.

The proposed amendments address two different concerns.

Resetting Time to Appeal

The first concern involves resetting the time to appeal in cases where a district court is exercising original jurisdiction in a bankruptcy case. Federal Rule of Appellate Procedure 4(a)(4)(A) resets the time to appeal if various post-judgment motions are timely made in the district court. To be timely in an ordinary civil case, the motion must be made within 28 days of the judgment. Fed. R. Civ. P. 50(b), 52(b), 59. But in a bankruptcy case, the equivalent motions must be made within 14 days of the judgment. Fed. R. Bankr. P. 7052, 9015(c), 9023.

So what happens if a district court itself—rather than a bankruptcy court—decides a bankruptcy proceeding in the first instance and a post-judgment motion is made on the 20th day after judgment? Does the motion have resetting effect or not?

The proposed amendment to Appellate Rule 6(a)—the rule that deals with bankruptcy appeals where the district court exercised original jurisdiction—makes clear that it does not. It provides 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 Rule of Bankruptcy Procedure. And it warns that this time may be shorter than the time allowed under the Civil Rules. The Committee Note provides a table of the equivalent motions and the time allowed under the current version of the applicable Bankruptcy Rules.

Direct Appeals

The second concern involves direct appeals in bankruptcy cases. Appeals in bankruptcy are governed by 28 U.S.C. § 158. The default rule for appeals from an order of the bankruptcy court is that such appeals go either to the district court for the district where the bankruptcy court is located or (in the circuits that have established a bankruptcy appellate panel (BAP)) to the BAP for that circuit. Under § 158, the losing party then has a further appeal as of right to the court of appeals from a final judgment of the district court or BAP.

In some circumstances, however, a direct appeal to the court of appeals can be authorized under § 158(d)(2). The requirements are similar to, but looser than, the

standards for certification under 28 U.S.C. § 1292(b), which permits courts of appeals to hear appeals of interlocutory orders of the district courts in certain circumstances. Moreover, the certification can be made by the bankruptcy court, district court, BAP, or the parties. Under the Bankruptcy Rules, even if a bankruptcy court order has been certified for direct appeal to the court of appeals, the appellant must still file a notice of appeal to the district court or BAP in order to render the certification effective. As with § 1292(b), the court of appeals must also authorize the direct appeal.

Under this structure, a court of appeals' decision to authorize a direct appeal does not determine whether an appeal will go forward, but instead in what court the appeal will be heard. The party asking that the appeal from the bankruptcy court be heard directly in the court of appeals might be an appellee rather than an appellant. Accordingly, the Advisory Committee on Bankruptcy Rules is seeking final approval of a clarifying amendment to Bankruptcy Rule 8006(g) providing that any party to the appeal may file a request that the court of appeals authorize a direct appeal.

Current Appellate Rule 6(c), which governs direct appeals, largely relies on a cross-reference to Rule 5, which governs appeals by permission. But the proposed amendment to the Bankruptcy Rules revealed that Appellate Rule 5 is not a good fit for direct appeals in bankruptcy cases. That's because Rule 5 was designed for the situation in which the court of appeals is deciding whether to allow an appeal at all. But in the direct appeal context, that's not the question. Instead, in the direct appeal context, there is an appeal; the question is which court is going to hear that appeal.

More generally, experience with direct appeals shows considerable confusion in applying the Appellate Rules. This is primarily due to the manner in which Rule 6(c) cross-references Rule 5 and to its failure to take into account that an appeal of the bankruptcy court order in question is already proceeding in the district court or BAP, which results in uncertainty about precisely what steps are necessary to perfect an appeal after the court of appeals authorizes a direct appeal.

For these reasons, the proposed amendments overhaul Rule 6(c) and make it largely self-contained. Parties will not need to refer to Rule 5 unless Rule 6(c) expressly refers to a specific provision of Rule 5. Rule 6(c) makes Rule 5 inapplicable except to the extent provided for in other parts of Rule 6(c).

The proposed amendments also spell out in more detail how parties should handle initial procedural steps in the court of appeals once authorization for a direct appeal is granted, taking into account that an appeal from the same order will already be pending in the district court or BAP. The proposed Rule 6(c)(2) permits any party to the appeal to ask the court of appeals to authorize a direct appeal. It also adds provisions governing contents of the petition, answer or cross-petition, oral argument, form of papers, number of copies, and length limits and provides for calculating time, notification of the order authorizing a direct appeal, and payment of fees. It adds a provision governing stays pending appeal, makes clear that steps already taken in

pursuing the appeal need not be repeated, and provides for making the record available to the circuit clerk. It requires all parties, not just the appellant or applicant for direct appeal, to file a representation statement. Additional changes in language are made to better match the relevant statutes.

None of these are intended to make major changes to existing procedures but to clarify those procedures.

We received only one public comment. The Minnesota State Bar Association's Assembly, its policy-making body, voted to support the proposed rule. It stated that the proposed changes "will foster transparency and possibly efficiency between parties and the court." The Advisory Committee on Bankruptcy Rules has not received any comments objecting to the amendments either.

The Advisory Committee unanimously recommends final approval of the proposed amendments as published.

* * * * *

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

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

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

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

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

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

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

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

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

~~modify this requirement.~~

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

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

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

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

(ii) include a reconciliation amount to account for any

overpayment or underpayment during the prior year.

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

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

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

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

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

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

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

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

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

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

~~• the debtor;~~

~~• the debtor's attorney; and~~

~~• the trustee.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

payments that came due during the pendency of the case and whether such payments are current as of the date of the notice; and

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

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

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

(3) ***Response.*** The claim holder must file a response to the notice within 28 days after its service. The response, which is not subject to Rule 3001(f), must be filed as a supplement to the claim holder's proof of

claim. The response must be prepared using Form 410C13-NR and be served on the individuals listed in (b)(1).

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

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

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

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

(A) *Motion*. Within 45 days after service of the response under (g)(3) or after service of the trustee's notice under (g)(1) if no response is filed by the claim holder, the debtor or trustee may file a motion to determine whether the debtor has cured all

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

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

(C) *Court Determination.* After notice and a hearing, the court must determine whether the debtor has cured all defaults and paid all required postpetition amounts. If the

claim holder does not respond to the motion or files a response agreeing with the facts set forth in it, the court may enter an appropriate order based on those facts.

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

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

~~(A) indicates whether:~~

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

~~(ii) the debtor is otherwise current on all payments under § 1322(b)(5); and~~

~~(B) itemizes the required cure or~~

~~postpetition amounts, if any, that the claim holder contends remain unpaid as of the statement's date.~~

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

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

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

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

(~~i~~h) Claim Holder's Failure to Give Notice or

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

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

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

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

Committee Note

The rule is amended to encourage a greater degree of compliance with its provisions and to allow assessments of a mortgage claim's status while a chapter 13 case is pending in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred. Stylistic changes are made throughout the rule, and its title and

subdivision headings have been changed to reflect the amended content.

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

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

As a sanction for noncompliance, subdivision (b)(3) now provides that late notices of a payment increase do not go into effect until the first payment due date after the required notice period (at least 21 days) expires. The claim

holder will not be permitted to collect the increase for the interim period. There is no delay, however, in the effective date of an untimely notice of a payment decrease. It may even take effect retroactively, if the actual due date of the decreased payment occurred before the claim holder gave notice of the change.

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

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

Under subdivision (g), within 45 days after the last plan payment is made to the trustee, the trustee must file an

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

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

Subdivision (h) was previously subdivision (i). It has been amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule. Stylistic changes have also been made to the subdivision.

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

Rule 8006. Certifying a Direct Appeal to the Court of Appeals[2]

* * * * *

(g) Request <u>After Certification</u> for ~~Leave to Take a Direct Appeal to~~ a Court of Appeals ~~After Certification~~ <u>to Authorize a Direct Appeal</u>. Within 30 days after the certification has become effective under (a), ~~a request for leave to take a direct appeal to a court of appeals must be filed~~ <u>any party to the appeal may ask the court of appeals to authorize a direct appeal by filing a petition</u> with the circuit clerk in accordance with Fed. R. App. P. 6(c).

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

[2] The changes indicated are to the restyled version of Rule 8006, not yet in effect.

Committee Note

Rule 8006(g) is revised to clarify that any party to the appeal may file a request that a court of appeals authorize a direct appeal. There is no obligation to do so if no party wishes the court of appeals to authorize a direct appeal.

United States Bankruptcy Court

_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim

The [trustee/debtor] states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

2. As of the date of this motion, [I have/the trustee has] disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: $ _____

b. Total amount of the prepetition arrearage disbursed, if known: $ _____

c. Allowed amount of postpetition arrearage, if any: $ _____

d. Total amount of postpetition arrearage disbursed, if known: $ _____

e. Total amount of arrearages disbursed: $ _____

3. As of the date of this motion, [I have/the trustee has] disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges noticed under Rule 3002.1(c) and not disallowed: $ _____

b. Amount of postpetition fees, expenses, and charges disbursed: $ _____

4. As of the date of this motion, [I have/the trustee has] made the following payments on the postpetition obligations: $ _____

[5. If needed, add other information relevant to the motion.]

6. I ask the court for an order under Rule 3002.1(f)(3) determining the status of the mortgage claim addressed by this motion and whether the payments required by the plan to be made as of the date of this motion have been made.

Signed: _____ Date: ____/____/_____

(Trustee/Debtor)

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

United States Bankruptcy Court
_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim

_____ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

2. Arrearages

The total amount received to cure any arrearages as of the date of this response is

$_____.

Check all that apply:

- ❑ As of the date of this response, the debtor has paid in full the amount required to cure any arrearage on this mortgage claim.
- ❑ As of the date of this response, the debtor has not paid in full the amount required to cure any prepetition arrearage on this mortgage claim. The total prepetition arrearage amount remaining unpaid as of the date of this response is:

  $ _____.
- ❑ As of the date of this response, the debtor has not paid in full the amount required to cure any postpetition arrearage on the mortgage claim. The total postpetition arrearage amount remaining unpaid on the date of this response is:

  $ _____.

3. Postpetition Payments

(a) Check all that apply:

- ❑ The debtor is current on all postpetition payments, including all fees, charges, expenses, escrow, and costs.
- ❑ The debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/_____.
- ❑ The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing.

(b) The claim holder attaches a payoff statement and provides the following information as of the date of this response:

i. Date last payment was received on the mortgage: ____/_____/_____

ii. Date next postpetition payment from the debtor is due: ____/_____/_____

iii. Amount of the next postpetition payment that is due: $_____

iv. Unpaid principal balance of the loan: $_____

v. Additional amounts due for any deferred or accrued interest: $_____

vi. Balance of the escrow account: $_____

vii. Balance of unapplied funds or funds held in a suspense account: $_____

viii. Total amount of fees, charges, expenses, negative escrow amounts, or costs remaining unpaid: $_____

4. Itemized Payment History

Include if applicable:

Because the claim holder asserts that the arrearages have not been paid in full or states that the debtor is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;

- all fees, costs, escrow, and expenses that the claim holder asserts are recoverable against the debtor or the debtor's principal residence; and
- all amounts the claim holder contends remain unpaid.

[5. If needed, add other information relevant to the response.]

_____ Date ____/_____/_____
Signature

Print _____ Title _____
Name

Company _____

If different from the notice address listed on the proof of claim to which this response applies:

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

The person completing this response must sign it. Check the appropriate box:

- ❑ I am the claim holder.
- ❑ I am the claim holder's authorized agent.

United States Bankruptcy Court

_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of the Mortgage Claim

The [trustee/debtor] states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

2. As of the date of this motion, [I have/the trustee has] disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: $ _____

b. Total amount of the prepetition arrearage disbursed, if known: $ _____

c. Allowed amount of postpetition arrearage, if any: $ _____

d. Total amount of postpetition arrearage disbursed, if known: $ _____

e. Total amount of arrearages disbursed $ _____

3. As of the date of this motion, [I have/the trustee has] disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges noticed under Rule 3002.1(c) and not disallowed: $ _____

b. Amount of postpetition fees, expenses, and charges disbursed: $ _____

4. As of the date of this motion, [I have/the trustee has] made the following payments on the postpetition obligations: $ _____

[5. If needed, add other information relevant to the motion.]

6. I ask the court for an order under Rule 3002.1(g)(4) determining whether the debtor has cured all arrearages, if any, and paid all postpetition amounts required by the plan to be made as of the date of this motion.

Signed: _____
(Trustee/Debtor)

Date: ____/____/_____

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

United States Bankruptcy Court
_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Response to [Trustee's/Debtor's] Motion to Determine Final Cure and Payment of the Mortgage Claim

_____ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

2. Arrearages

The total amount received to cure any arrearages as of the date of this response is

$_____.

Check all that apply:

- ❑ As of the date of this response, the debtor has paid in full the amount required to cure any arrearage on this mortgage claim.
- ❑ As of the date of this response, the debtor has not paid in full the amount required to cure any prepetition arrearage on this mortgage claim. The total prepetition arrearage amount remaining unpaid as of the date of this response is:

  $ _____.
- ❑ As of the date of this response, the debtor has not paid in full the amount required to cure any postpetition arrearage on this mortgage claim. The total postpetition arrearage amount remaining unpaid as of the date of this response is:

  $ _____.

3. Postpetition Payments

(a) Check all that apply:

- ❑ The debtor is current on all postpetition payments, including all fees, charges, expenses, escrow, and costs.
- ❑ The debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/_____.
- ❑ The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing.

(b) The claim holder attaches a payoff statement and provides the following information as of the date of this response:

i. Date last payment was received on the mortgage: ___/___/____

ii. Date next postpetition payment from the debtor is due: ___/___/____

iii. Amount of the next postpetition payment that is due: $_____

iv. Unpaid principal balance of the loan: $_____

v. Additional amounts due for any deferred or accrued interest: $_____

vi. Balance of the escrow account: $_____

vii. Balance of unapplied funds or funds held in a suspense account: $_____

viii. Total amount of fees, charges, expenses, negative escrow amounts, or costs remaining unpaid: $_____

4. Itemized Payment History

Include if applicable:

Because the claim holder disagrees that the arrearages have been paid in full or states that the debtor is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;

- the application of all payments received;
- all fees, costs, escrow, and expenses that the claim holder asserts are recoverable against the debtor or the debtor's principal residence; and
- all amounts the claim holder contends remain unpaid.

[5. If needed, add other information relevant to the response].

_____ Date ____/_____/_____
Signature

Print _____ Title _____
Name

Company _____

If different from the notice address listed on the proof of claim to which this response applies:

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

The person completing this response must sign it. Check the appropriate box:

- ❑ I am the claim holder.
- ❑ I am the claim holder's authorized agent.

Fill in this information to identify the case:
Debtor 1 _____
Debtor 2 (Spouse, if filing) _____
United States Bankruptcy Court for the: _____ District of _____ (State)
Case number _____

Official Form 410C13-N

Trustee's Notice of Disbursements Made

12/25

The trustee must file this notice in a chapter 13 case within 45 days after the debtor completes all payments due to the trustee. Rule 3002.1(g)(1).

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Statement of Completion

The debtor has completed all payments due the trustee under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder is attached or may be accessed here: _____ (web address).

Part 3: Arrearages

	Amount
a. Allowed amount of prepetition arrearage:	$ _____
b. Total amount of prepetition arrearage disbursed by the trustee:	$ _____
c. Total amount of postpetition arrearage disbursed by the trustee:	$ _____
d. Total amount of arrearages disbursed by the trustee:	$ _____

Part 4: Postpetition Payments

Check one:

- ❑ Postpetition payments are made by the debtor.
- ❑ Postpetition payments are paid through the trustee.
- ❑ Other: _____

If the trustee has disbursed postpetition payments, complete a and b below; otherwise leave blank.

a. Total amount of postpetition payments disbursed by the trustee as of date of notice: $ _____

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

Part 5: Postpetition Fees, Expenses, and Charges

Amount of postpetition fees, expenses, and charges disbursed by the trustee: $ _____

Part 6: A Response Is Required by Bankruptcy Rule 3002.1(g)(3)

Within 28 days after service of this notice, the holder of the claim must file a response using Official Form 410C13-NR.

✘ _____ Date ____/_____/_____
Signature

Trustee _____
First Name Middle Name Last Name

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

Fill in this information to identify the case:
Debtor 1 _____
Debtor 2 (Spouse, if filing) _____
United States Bankruptcy Court for the: _____ District of _____ (State)
Case number _____

Official Form 410C13-NR

Response to Trustee's Notice of Disbursements Made

12/25

The claim holder must respond to the Trustee's Notice of Payments Made within 28 days after it was served. Rule 3002.1(g)(3).

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Arrearages

The total amount received to cure any arrearages as of the date of this response: $_____.

Check all that apply:

- ❑ The amount required to cure any prepetition arrearage has been paid in full.
- ❑ The amount required to cure the prepetition arrearage has not been paid in full. Amount of prepetition arrearage remaining unpaid as of the date of this notice: $ _____.
- ❑ The amount required to cure any postpetition arrearage has been paid in full.
- ❑ The amount required to cure the postpetition arrearage has not been paid in full. Amount of postpetition arrearage remaining unpaid as of the date of this notice: $ _____.

Part 3: Postpetition Payments

(a) *Check all that apply:*

❑ The debtor is current on all postpetition payments, including all fees, charges, expenses, escrow, and costs.

❑ The debtor is not current on all postpetition payments. The claim holder asserts that the debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/_____.

❑ The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing.

(b) The claim holder attaches a payoff statement and provides the following information as of the date of this response:

i. Date last payment was received on the mortgage: ____/_____/_____

ii. Date next postpetition payment from the debtor is due: ____/_____/_____

iii. Amount of the next postpetition payment that is due: $_____

iv. Unpaid principal balance of the loan: $_____

v. Additional amounts due for any deferred or accrued interest: $_____

vi. Balance of the escrow account: $_____

vii. Balance of unapplied funds or funds held in a suspense account: $_____

viii. Total amount of fees, charges, expenses, negative escrow amounts, or costs remaining unpaid: $_____

Part 4 Itemized Payment History

If the claim holder disagrees that the prepetition arrearage has been paid in full, states that the debtor is not current on all postpetition payments, or states that fees, charges, expenses, escrow, and costs are due and owing, it must attach an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses that the claim holder asserts are recoverable against the debtor or the debtor's principal residence; and
- all amounts the claim holder contends remain unpaid.

Part 5: Sign Here

The person completing this response must sign it. Check the appropriate box:

- ❑ I am the claim holder.
- ❑ I am the claim holder's authorized agent.

I declare under penalty of perjury that the information provided in this response is true and correct to the best of my knowledge, information, and reasonable belief.

✘ _____ Date ____/_____/_____
Signature

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

_____
City State ZIP Code

Contact phone _____ Email _____

Committee Note

Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R are new. They are adopted to implement new and revised provisions of Rule 3002.1 that prescribe procedures for determining the status of a home mortgage claim in a chapter 13 case.

Official Forms 410C13-M1 and 410C13-M1R implement Rule 3002.1(f). Form 410C13-M1 is used if either the trustee or the debtor moves to determine the status of a home mortgage at any time during a chapter 13 case prior to the trustee's Notice of Disbursements Made. If the trustee files the motion, she must disclose the payments she has made to the holder of the mortgage claim so far in the case. If the debtor, rather than the trustee, has been making the postpetition payments, the trustee should state in part 4 that she has paid $0. If the debtor files the motion, he should provide information about any payments he has made and any payments made by the trustee of which the debtor has knowledge.

Within 28 days after service of the trustee's or debtor's motion, the holder of the mortgage claim must file a response, using Official Form 410C13-M1R, if it disputes any facts set forth in the motion. *See* Rule 3002.1(f)(2). The claim holder must indicate whether the debtor has paid the full amount required to cure any arrearage and whether the debtor is current on all postpetition payments. The claim holder must provide a payoff statement, and, if the claim holder says that the debtor is not current on all payments, it must attach an itemized payment history for the postpetition period.

Official Form 410C13-N is to be used by a trustee to provide the notice required by Rule 3002.1(g)(1) to be filed at the end of the case. This notice must be filed within 45

days after the debtor completes all payments due to the trustee, and it requires the trustee to report on the amounts the trustee paid to cure any arrearage, for postpetition mortgage obligations, and for postpetition fees, expenses, and charges. The trustee must also provide her disbursement ledger for all payments she made to the claim holder or provide the web address where it can be accessed.

Within 28 days after service of the trustee's notice, the holder of the mortgage claim must file a response using Official Form 410C13-NR. *See* Rule 3002.1(g)(3). The claim holder must indicate whether the debtor has paid the full amount required to cure any arrearage and whether the debtor is current on all postpetition payments. It must also provide a payoff statement. If the claim holder says that the debtor is not current on all payments, it must attach an itemized payment history for the postpetition period. The response, which is not subject to Rule 3001(f), must be filed as a supplement to the claim holder's proof of claim.

Official Forms 410C13-M2 and 410C13-M2R implement Rule 3002.1(g)(4). Form 410C13-M2 is used if either the trustee or the debtor moves at the end of the case to determine whether the debtor has cured all arrearages and paid all required postpetition amounts. If the trustee files the motion, she must disclose the payments she has made to the holder of the mortgage claim. If the debtor, rather than the trustee, has been making the postpetition payments, the trustee should state in part 4 that she has paid $0. If the debtor files the motion, he should provide information about any payments he has made and any payments made by the trustee of which the debtor has knowledge.

Within 28 days after service of the trustee's or debtor's motion, the holder of the mortgage claim must file a response, using Official Form 410C13-M2R, if it disputes

any facts set forth in the motion. *See* Rule 3002.1(g)(4)(B). The claim holder must indicate whether the debtor has paid the full amount required to cure any arrearage and whether the debtor is current on all postpetition payments. The claim holder must provide a payoff statement, and, if the claim holder says that the debtor is not current on all payments, it must attach an itemized payment history for the postpetition period.

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

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

Case number _____

Official Form 410

Proof of Claim

12/24

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

   _____
   Name of the current creditor (the person or entity to be paid for this claim)

   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

   ❑ No
   ❑ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
_____ Name	_____ Name
_____ Number Street	_____ Number Street
_____ City State ZIP Code	_____ City State ZIP Code
Contact phone _____	Contact phone _____
Contact email _____	Contact email _____

Uniform claim identifier (if you use one):

__ __

4. **Does this claim amend one already filed?**

   ❑ No
   ❑ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

   ❑ No
   ❑ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ❑ No
   - ❑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $_____. **Does this amount include interest or other charges?**
   - ❑ No
   - ❑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

   Limit disclosing information that is entitled to privacy, such as health care information.

   _____

9. **Is all or part of the claim secured?**
   - ❑ No
   - ❑ Yes. The claim is secured by a lien on property.

     Nature of property:
     - ❑ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
     - ❑ Motor vehicle
     - ❑ Other. Describe: _____

     Basis for perfection: _____

     Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

     Value of property: $_____

     Amount of the claim that is secured: $_____

     Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

     Amount necessary to cure any default as of the date of the petition: $_____

     Annual Interest Rate (when case was filed)_____%
     - ❑ Fixed
     - ❑ Variable

10. **Is this claim based on a lease?**
    - ❑ No
    - ❑ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ❑ No
    - ❑ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- ❑ No
- ❑ Yes. *Check one:*

	Amount entitled to priority
❑ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
❑ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
❑ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
❑ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
❑ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
❑ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(3) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ❑ I am the creditor.
- ❑ I am the creditor's attorney or authorized agent.
- ❑ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ❑ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date _____
MM / DD / YYYY

_____
Signature

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

_____
City State ZIP Code

Contact phone _____ Email _____

Committee Note

The last line of Part 1, Box 3, is amended to permit use of the uniform claim identifier for all payments in cases filed under all chapters of the Code, not merely electronic payments in chapter 13 cases. In addition, a conforming amendment is made to the second paragraph of the margin note in Part 3 to conform to the restyled Rules: the reference to Rule 5005(a)(2) is changed to Rule 5005(a)(3).

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

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Rebecca B. Connelly, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules[*]

DATE: May 10, 2024

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Denver on April 11, 2024. Two Committee members attended remotely; the rest of the Committee met in person. * * *

At the meeting, the Advisory Committee voted to give final approval to amendments to Bankruptcy Rules 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case) and Bankruptcy Rule 8006 (Certifying a

[*] A copy of the full committee report can be found in the June 2024 Standing Committee agenda book publicly available on www.uscourts.gov.

Direct Appeal to a Court of Appeals), as well as to six new Official Forms related to the proposed Rule 3002.1 amendments (Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R) and amendments to Official Form 410 (Proof of Claim).

* * * * *

Part II of this report presents those action items. They are organized as follows:

A. Items for Final Approval

Rules and Forms published for comment in August 2023:

- Rule 3002.1;
- Rule 8006;
- Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R; and
- Official Form 410.

* * * * *

II. Action Items

A. Items for Final Approval

The Advisory Committee recommends that the following rule and form amendments and new Official Forms that were published for public comment in 2023 and are discussed below be given final approval. Bankruptcy Appendix A includes the rules and forms that are in this group, along with summaries of the comments that were submitted.

Action Item 1. Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case). After proposed amendments to Rule 3002.1 were published in 2021, the Advisory Committee made significant revisions in response to the comments that were received. The rule with revised amendments was republished in 2023. Ten sets of comments concerning the rule were submitted. They ranged from addressing specific wording issues and proposed deadlines to raising some broader issues, such as the scope of the rule and whether limitations should be placed on the authority to file a motion to determine the status of a mortgage.

The Advisory Committee considered these comments during its spring meeting, along with the Consumer Subcommittee's recommendations. It now recommends that the revised rule be given final approval, with the changes to the published version of the rule discussed below.

Subdivision (a) – In General. The Advisory Committee voted to delete the word "contractual" in the first sentence of subdivision (a) so that the end of the sentence now reads,

"for which the plan provides for the trustee or debtor to make payments on the debt." Several comments were submitted suggesting this deletion. They explained that sometimes home mortgages may be modified in chapter 13—such as those paid in full or short-term mortgages—and they are paid according to the terms of the plan, rather than strictly according to the terms of the contract. The Advisory Committee thought that the rule should apply in these situations and that making this change would not require republication. The Advisory Committee also approved a change to the Committee Note's discussion of subdivision (a) that clarifies that the amended rule applies to reverse mortgages.

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

Subdivision (b) – Notice of a Payment Change; Home-Equity Line of Credit; Effect of an Untimely Notice; Objection. In response to several of the mortgage organizations' comments, the Advisory Committee voted to state in subdivision (b)(3)(B) that a payment decrease is effective on the actual payment due date, even if that date is in the past. There are instances where a payment decrease is retroactively applied, and the debtor should get the benefit of that decrease. As revised, (b)(3)(B) would state that the effective date of the new payment amount is, "when the notice concerns a payment decrease, on the actual payment due date, even if prior to the notice."

Subdivision (f) – Motion to Determine Status; Response; Court Determination. The Advisory Committee voted to make two changes to this subdivision. First, in (f)(2) it changed the deadline for responding to a trustee's or debtor's motion from 21 to 28 days. Mortgage organizations commented that they need that amount of time to respond properly, and it is the amount of time that subdivision (g)(3) provides for responding to the trustee's end-of-case notice.

Second, the Advisory Committee agreed with the National Bankruptcy Conference's comment that the phrase "and enter an appropriate order" should be added at the end of subdivision (f)(3) to be consistent with other provisions in the rule about the court's determination.

Mortgage organizations suggested a number of limitations that they thought should be added to prevent the abusive use of this subdivision. Those restrictions included limiting the time period during which a motion to determine the status of a mortgage could be filed or limiting the number of times it could be filed, specifying potential remedies for the mortgage claimant if the provision is misused, providing that a pro se debtor must provide an attestation as to the facts set forth in the motion, and providing that it is a ground for setting aside an adverse order if the movant failed to name and serve the correct mortgage claimant/servicer. The

Advisory Committee made no changes in response to these comments. If a debtor, debtor's attorney, or trustee files a motion under this provision, Rule 9011 applies and could result in sanctions if the court determines that the motion was filed "for any improper purpose" or that the factual allegations lack evidentiary support. Furthermore, relief would be available outside of this rule if an adverse order is entered against a party that was not served.

Subdivision (g) – Trustee's End-of-Case Notice of Payments Made; Response; Court Determination. The Advisory Committee voted to change the words "payments" and "paid" in the title and in subdivision (g)(1) to "disbursements" and "disbursed." That terminology better describes the role of chapter 13 trustees. The Advisory Committee also deleted two uses of "contractual" in (g)(1)(B) to be consistent with the recommended change to subdivision (a).

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

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

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

Committee Note. In addition to the changes discussed above, the Advisory Committee made conforming changes to the Committee Note.

Action Item 2. Rule 8006(g) (Request After Certification for a Court of Appeals to Authorize a Direct Appeal). Last August the Standing Committee published an amendment to Fed. R. Bankr. P. 8006(g) suggested by Bankruptcy 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 of a case that has been certified for direct appeal may submit a request to the court of appeals to accept the 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 only comment on the published amendment was a submission from the Minnesota State Bar Association's Assembly supporting it (and the other published proposed amendments to the Bankruptcy Rules, Appellate Rules, and Civil Rules).

The Advisory Committee approved the amendment to Rule 8006(g) as published.

Action Item 3. Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R (Rule 3002.1 Forms). Last August the Standing Committee published for comment six new Official Forms that were proposed to implement proposed amendments to Rule 3002.1. Ten sets of comments concerning these forms were submitted.

In response to the comments submitted, the Forms Subcommittee's recommendations, changes to Rule 3002.1, and the discussion at the Advisory Committee meeting, the Advisory Committee approved the forms with the changes to the published versions discussed below.

Changes to the Motion Forms:

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

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

- In Part 3a "and allowed" was deleted before "under," and the phrase "and not disallowed" was added 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.

- The word "contractual" was deleted in Part 4 before "obligations." This change conforms to the change to Rule 3002.1(a).

- A new Part 5 was added in brackets to allow the trustee or debtor to add other relevant information. This change was made in order to accommodate plans that provide for a less conventional treatment of the home mortgage.

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

- In addition to the changes listed above, the following change was made to Form 410C13-M2: "the" was added before "Mortgage" in the title of the form to be consistent with the other forms.

Changes to the Motion Response Forms:

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

- At the beginning of Part 2, the following sentence was added: "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, separate responses for prepetition and postpetition arrearages were created to correspond with the breakdown of those amounts in the motion.

- The direction in Part 2 was changed to "Check all that apply" since now more than one statement could be asserted.

- Part 3 was rearranged in response to 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.

- The word "contractual" was deleted before "payments" in Part 3a to conform to the change to Rule 3002.1(a).

- The second sentence of the third box in Part 3a was moved to a new viii in Part 3b as a more appropriate place to provide that information.

- In Part 4 the requirement to use the format of Official Form 410A, Part 5, was deleted. 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, the phrase "assessed to the mortgage" was changed 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.

- A catch-all provision was added in brackets as Part 5 to allow the claim holder to add other information relevant to the response.

Changes to the Trustee's Notice:
Official Form 410C13-N (Trustee's Notice of Payments Made)

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

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

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

- For the same reason, the request in Part 3 for "Allowed amount of postpetition arrearage, if any," was deleted. Also deleted was the question asking whether the debtor has cured all arrearages.

- In Part 3a and 3c, "if any" was deleted to conform to changes made to Rule 3002.1.

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

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

- A check box for "other" in Part 4 was added to allow for hybrid situations.

- In Part 4, the word "made" was changed to "disbursed" in two places.

- The statement that was formerly Part 4b about the debtor being current was removed because the trustee may lack this information. Former Part 4c was changed to Part 4b, and the instruction was updated to say "…complete a and b below;" instead of a-c.

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

- In Part 5, the item "Amount of allowed postpetition fees, expenses, and charges" was deleted because the trustee may not have this information.

- The phrase "as of the date of this notice" in Part 5 was deleted as unnecessary.

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

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

- In the first line, the citation was corrected.

- The title of Part 2 was changed to "Arrearages" to correspond with Part 3 of the notice.

- At the beginning of Part 2, the following sentence was added: "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, "contractual" was deleted for the reason previously stated.

- Part 3 was rearranged to respond to 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.

- The second sentence of the third box in Part 3a was moved to a new viii in Part 3b as a more appropriate place for that information, and the phrase "due and owing" was changed to "remaining unpaid" to conform to the other response forms.

- In Part 4, the requirement to use the format of Official Form 410A, Part 5 was deleted. 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, the phrase "assessed to the mortgage" was changed 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.

- In Part 5, a line was added for the title of the person signing the form.

Changes to the Committee Note

Changes were made to the forms' Committee Note to conform to the changes proposed to be made to the forms and Rule 3002.1 and in response to comments.

Action Item 4. Official Form 410 (Proof of Claim). In August 2023 the Standing Committee published a proposed amendment to Official Form 410 based on a suggestion from Dana C. McWay, Chair of the Administrative Office of the U.S. Courts' Unclaimed Funds Expert Panel. She suggested that Part 1, Box 3 be modified to change the line referring to the uniform claim identifier so that it is no longer limited to use in chapter 13. The published amendment implemented that suggestion but went further than the suggestion, eliminating the entire phrase "for electronic payments in chapter 13." This would allow the UCI to be used for paper checks as well as electronic payments without regard to the bankruptcy chapter.

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

The Advisory Committee approved the amendment to Official Form 410 as published.

* * * * *

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]

Rule 16. Pretrial Conferences; Scheduling; Management

* * * * *

(b) Scheduling and Management.

* * * * *

(3) ***Contents of the Order.***

* * * * *

(B) *Permitted Contents*.

* * * * *

(iv) include the timing and method for complying with Rule 26(b)(5)(A) and any agreements the parties reach for asserting claims of

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

privilege or of protection as trial-preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502;

* * * * *

Committee Note

Rule 16(b) is amended in tandem with an amendment to Rule 26(f)(3)(D). In addition, two words – "and management" – are added to the title of this rule in recognition that it contemplates that the court will in many instances do more than establish a schedule in its Rule 16(b) order; the focus of this amendment is an illustration of such activity.

The amendment to Rule 26(f)(3)(D) directs the parties to discuss and include in their discovery plan a method for complying with the requirements in Rule 26(b)(5)(A). It also directs that the discovery plan address the timing for compliance with this requirement, in order to avoid problems that can arise if issues about compliance emerge only at the end of the discovery period.

Early attention to the particulars on this subject can avoid problems later in the litigation by establishing case-specific procedures up front. It may be desirable for the Rule 16(b) order to provide for "rolling" production that may

identify possible disputes about whether certain withheld materials are indeed protected. If the parties are unable to resolve those disputes, it is often desirable to have them resolved at an early stage by the court, in part so that the parties can apply the court's resolution of the issues in further discovery in the case.

Because the specific method of complying with Rule 26(b)(5)(A) depends greatly on the specifics of a given case there is no overarching standard for all cases. In the first instance, the parties themselves should discuss these specifics during their Rule 26(f) conference; these amendments to Rule 16(b) recognize that the court can provide direction early in the case. Though the court ordinarily will give much weight to the parties' preferences, the court's order prescribing the method for complying with Rule 26(b)(5)(A) does not depend on party agreement. But the parties may report that it is too early to settle on a specific method, and the court should be open to modifying its order should modification be warranted by evolving circumstances in the case.

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

Rule 16.1. Multidistrict Litigation

(a) Initial Management Conference. After the Judicial Panel on Multidistrict Litigation transfers actions, the transferee court should schedule an initial management conference to develop an initial plan for orderly pretrial activity in the MDL proceedings.

(b) Report for the Conference.

(1) ***Submitting a Report.*** The transferee court should order the parties to meet and to submit a report to the court before the conference.

(2) ***Required Content: the Parties' Views on Leadership Counsel and Other Matters.*** The report must address any matter the court designates — which may include any matter

[1] New material is underlined.

in Rule 16 — and, unless the court orders otherwise, the parties' views on:

(A) whether leadership counsel should be appointed and, if so:

(i) the timing of the appointments;

(ii) the structure of leadership counsel;

(iii) the procedure for selecting leadership and whether the appointments should be reviewed periodically;

(iv) their responsibilities and authority in conducting pretrial activities and any role in facilitating resolution of the MDL proceedings;

(v) the proposed methods for regularly communicating with and reporting to the court and nonleadership counsel;

(vi) any limits on activity by nonleadership counsel; and

(vii) whether and when to establish a means for compensating leadership counsel;

(B) any previously entered scheduling or other orders that should be vacated or modified;

(C) a schedule for additional management conferences with the court;

(D) how to manage the direct filing of new actions in the MDL proceedings; and

(E) whether related actions have been — or are expected to be — filed in other courts, and whether to adopt methods for coordinating with them.

(3) ***Additional Required Content: the Parties' Initial Views on Various Matters.*** Unless the court orders otherwise, the report also must address the parties' initial views on:

(A) whether consolidated pleadings should be prepared;

(B) how and when the parties will exchange information about the factual bases for their claims and defenses;

(C) discovery, including any difficult issues that may arise;

(D) any likely pretrial motions;

(E) whether the court should consider any measures to facilitate resolving some or all actions before the court;

(F) whether any matters should be referred to a magistrate judge or a master; and

(G) the principal factual and legal issues likely to be presented.

(4) ***Permitted Content***: The report may include any other matter that the parties wish to bring to the court's attention.

(c) Initial Management Order. After the conference, the court should enter an initial management order addressing the matters in Rule 16.1(b) and, in the court's discretion, any other matters. This order controls the course of the proceedings unless the court modifies it.

Committee Note

The Multidistrict Litigation Act, 28 U.S.C. § 1407, was adopted in 1968. It empowers the Judicial Panel on Multidistrict Litigation to transfer one or more actions for coordinated or consolidated pretrial proceedings to promote the just and efficient conduct of such actions. The number of civil actions subject to transfer orders from the Panel has increased since the statute was enacted but has leveled off in recent years. These actions have accounted for a substantial portion of the federal civil docket. There has been no reference to multidistrict litigation (MDL proceedings) in the Civil Rules. The addition of Rule 16.1 is designed to provide a framework for the initial management of MDL proceedings.

Not all MDL proceedings present the management challenges this rule addresses, and, thus, it is important to maintain flexibility in managing MDL proceedings. Of course, other multiparty litigation that did not result from a Judicial Panel transfer order may present similar management challenges. For example, multiple actions in a single district (sometimes called related cases and assigned by local rule to a single judge) may exhibit characteristics similar to MDL proceedings. In such situations, courts may find it useful to employ procedures similar to those Rule 16.1 identifies in handling those multiparty proceedings. In both MDL proceedings and other multiparty litigation, the Manual for Complex Litigation also may be a source of guidance.

Rule 16.1(a). Rule 16.1(a) recognizes that the transferee judge regularly schedules an initial management conference soon after the Judicial Panel transfer occurs. One purpose of the initial management conference is to begin to develop an initial management plan for the MDL

proceedings and, thus, this initial conference may only address some of the matters referenced in Rule 16.1(b)(2)-(3). That initial MDL management conference ordinarily would not be the only management conference held during the MDL proceedings. Although holding an initial management conference in MDL proceedings is not mandatory under Rule 16.1(a), early attention to the matters identified in Rule 16.1(b)(2)-(3) should be of great value to the transferee judge and the parties.

Rule 16.1(b)(1). The court ordinarily should order the parties to meet to submit a report to the court about the matters designated in Rule 16.1(b)(2)-(3) prior to the initial management conference. This should be a single report, but it may reflect the parties' divergent views on these matters.

Rule 16.1(b)(2). Unless the court orders otherwise, the report must address all of the matters identified in Rule 16.1(b)(2) (as well as all those in 16.1(b)(3)). The court also may direct the parties to address any other matter, whether or not listed in Rule 16.1(b) or in Rule 16. Rules 16.1(b) and 16 provide a series of prompts for the court and do not constitute a mandatory checklist for the transferee judge to follow.

The rule distinguishes between the matters identified in Rule 16.1(b)(2)(B)-(E) and in Rule 16.1(b)(3) because court action on a matter identified in Rule 16.1(b)(3) may be premature before leadership counsel is appointed, if that is to occur. For this reason, 16.1(b)(2) calls for the parties' views on the matters designated in (b)(2) whereas 16.1(b)(3) requires only the parties' initial views on those matters listed in (b)(3).

Rule 16.1(b)(2)(C) directs the parties to suggest a schedule for additional management conferences during

which the same or other matters may be addressed, and the Rule 16.1(c) initial management order controls only until it is modified. The goal of the initial management conference is to begin to develop an initial management plan, not necessarily to adopt a final plan for the entirety of the MDL proceeding. Experience has shown, however, that the matters identified in Rule 16.1(b)(2)(B)-(E) and Rule 16.1(b)(3) are often important to the management of MDL proceedings.

Rule 16.1(b)(2)(A). Appointment of leadership counsel is not universally needed in MDL proceedings, and the timing of appointments may vary. But, to manage the MDL proceedings, the court may decide to appoint leadership counsel and many times this will be one of the early orders the transferee judge enters. Rule 16.1(b)(2)(A) calls attention to several topics the court should consider if appointment of leadership counsel seems warranted.

The first topic is the timing of appointment of leadership. Ordinarily, transferee judges enter orders appointing leadership counsel separately from orders addressing the matters in Rule 16.1(b)(2)(B)-(E) and 16.1(b)(3).

In some MDL proceedings it may be important that leadership counsel be organized into committees with specific duties and responsibilities. Rule 16.1(b)(2)(A)(ii) therefore prompts counsel to provide the court with specific suggestions on the leadership structure that should be employed.

The procedure for selecting leadership counsel is addressed in item (iii). There is no single method that is best for all MDL proceedings. The transferee judge is responsible to ensure that the lawyers appointed to leadership positions

are able to do the work and will responsibly and fairly discharge their leadership obligations. In undertaking this process, a transferee judge should consider the benefits of geographical distribution as well as differing experiences, skills, knowledge, and backgrounds. Courts have considered the nature of the actions and parties, the needs of the litigation, and each lawyer's qualifications, expertise, and access to resources. They have also taken into account how the lawyers will complement one another and work collectively.

MDL proceedings do not have the same commonality requirements as class actions, so substantially different categories of claims or parties may be included in the same MDL proceeding and leadership may be comprised of attorneys who represent parties asserting a range of claims in the MDL proceeding. For example, in some MDL proceedings there may be claims by individuals who suffered injuries and also claims by third-party payors who paid for medical treatment. The court may need to take these differences into account in making leadership appointments.

Courts have selected leadership counsel through combinations of formal applications, interviews, and recommendations from other counsel and judges who have experience with MDL proceedings.

The rule also calls for advising the court whether appointment to leadership should be reviewed periodically. Transferee courts have found that appointment for a term is useful as a management tool for the court to monitor progress in the MDL proceedings.

Item (iv) recognizes that another important role for leadership counsel in some MDL proceedings is to facilitate resolution of claims. Resolution may be achieved by such

means as early exchange of information, expedited discovery, pretrial motions, bellwether trials, and settlement negotiations.

An additional task of leadership counsel is to communicate with the court and with nonleadership counsel as proceedings unfold. Item (v) directs the parties to report how leadership counsel will communicate with the court and nonleadership counsel. In some instances, the court or leadership counsel have created websites that permit nonleadership counsel to monitor the MDL proceedings, and sometimes online access to court hearings provides a method for monitoring the proceedings.

Another responsibility of leadership counsel is to organize the MDL proceedings in accordance with the court's initial management order under Rule 16.1(c). In some MDL proceedings, there may be tension between the approach that leadership counsel takes in handling pretrial matters and the preferences of individual parties and nonleadership counsel. As item (vi) recognizes, it may be necessary for the court to give priority to leadership counsel's pretrial plans when they conflict with initiatives sought by nonleadership counsel. The court should, however, ensure that nonleadership counsel have suitable opportunities to express their views to the court, and take care not to interfere with the responsibilities nonleadership counsel owe their clients.

Finally, item (vii) addresses whether and when to establish a means to compensate leadership counsel for their added responsibilities. Courts have entered orders pursuant to the common benefit doctrine establishing specific protocols for the management of case staffing, timekeeping, cost reimbursement, and related common benefit issues. But it may be best to defer entering a specific order relating to a

common benefit fee and expenses until well into the proceedings, when the court is more familiar with the effects of such an order and the activities of leadership counsel.

If proposed class actions are included within the MDL proceeding, Rule 23(g) applies to appointment of class counsel should the court eventually certify one or more classes, and the court may also choose to appoint interim class counsel before resolving the certification question. In such MDL proceedings, the court must be alert to the relative responsibilities of leadership counsel under Rule 16.1 and class counsel under Rule 23(g). Rule 16.1 does not displace Rule 23.

Rule 16.1(b)(2)(B)-(E) and (3). Rule 16.1(b)(2) and (3) identify a number of matters that often are important in the management of MDL proceedings. The matters identified in Rule 16.1(b)(2)(B)-(E) frequently call for early action by the court. The matters identified by Rule 16.1(b)(3) are in a separate paragraph of the rule because, in the absence of appointment of leadership counsel should appointment be warranted, the parties may be able to provide only their initial views on these matters at the conference.

Rule 16.1(b)(2)(B). When multiple actions are transferred to a single district pursuant to 28 U.S.C. § 1407, those actions may have reached different procedural stages in the district courts from which they were transferred. In some, Rule 26(f) conferences may have occurred and Rule 16(b) scheduling orders may have been entered. Those scheduling orders are likely to vary. Managing the centralized MDL proceedings in a consistent manner may warrant vacating or modifying scheduling orders or other orders entered in the transferor district courts, as well as any scheduling orders previously entered by the transferee judge.

Rule 16.1(b)(2)(C). The Rule 16.1(a) conference is the initial management conference. Although there is no requirement that there be further management conferences, courts generally conduct management conferences throughout the duration of the MDL proceeding to effectively manage the litigation and promote clear, orderly, and open channels of communication between the parties and the court on a regular basis.

Rule 16.1(b)(2)(D). When large numbers of tagalong actions (actions that are filed in or removed to federal court after the Judicial Panel has created the MDL proceeding) are anticipated, some parties have stipulated to "direct filing" orders entered by the court to provide a method to avoid the transferee judge receiving numerous cases through transfer rather than direct filing. If a direct filing order is entered, it is important to address other matters that can arise, such as properly handling any jurisdictional or venue issues that might be presented, identifying the appropriate district court for remand at the end of the pretrial phase, how time limits such as statutes of limitations should be handled, and how choice of law issues should be addressed. Sometimes liaison counsel may be appointed specifically to report on developments in related litigation (e.g., state courts and bankruptcy courts) at the case management conferences.

Rule 16.1(b)(2)(E). On occasion there are actions in other courts that are related to the MDL proceeding. Indeed, a number of state court systems have mechanisms like § 1407 to aggregate separate actions in their courts. In addition, it may happen that a party to an MDL proceeding is a party to another action that presents issues related to or bearing on issues in the MDL proceeding.

The existence of such actions can have important consequences for the management of the MDL proceeding. For example, the coordination of overlapping discovery is often important. If the court is considering adopting a common benefit fund order, consideration of the relative importance of the various proceedings may be important to ensure a fair arrangement. It is important that the MDL transferee judge be aware of whether such actions in other courts have been filed or are anticipated.

Rule 16.1(b)(3). As compared to the matters listed in Rule 16.1(b)(2)(B)-(E), Rule 16.1(b)(3) identifies matters that may be more fully addressed once leadership is appointed, should leadership be recommended, and thus, in their report the parties may only be able to provide their initial views on these matters.

Rule 16.1(b)(3)(A). For case management purposes, some courts have required consolidated pleadings, such as master complaints and answers, in addition to short form complaints. Such consolidated pleadings may be useful for determining the scope of discovery and may also be employed in connection with pretrial motions, such as motions under Rule 12 or Rule 56. The Rules of Civil Procedure, including the pleading rules, continue to apply in all MDL proceedings. The relationship between the consolidated pleadings and individual pleadings filed in or transferred to the MDL proceedings depends on the purpose of the consolidated pleadings in the MDL proceeding. Decisions regarding whether to use master pleadings can have significant implications in MDL proceedings, as the Supreme Court noted in *Gelboim v. Bank of America Corp.*, 574 U.S. 405, 413 n.3 (2015).

Rule 16.1(b)(3)(B). In some MDL proceedings, concerns have been raised on both the plaintiff side and the

defense side that some claims and defenses have been asserted without the inquiry called for by Rule 11(b). Experience has shown that in many cases an early exchange of information about the factual bases for claims and defenses can facilitate efficient management. Some courts have utilized "fact sheets" or a "census" as methods to take a survey of the claims and defenses presented, largely as a management method for planning and organizing the proceedings. Such methods can be used early on when information is being exchanged between the parties or during the discovery process addressed in Rule 16.1(b)(3)(C).

The level of detail called for by such methods should be carefully considered to meet the purpose to be served and avoid undue burdens. Early exchanges may depend on a number of factors, including the types of cases before the court. And the timing of these exchanges may depend on other factors, such as motions to dismiss or other early matters and their impact on the early exchange of information. Other factors might include whether there are issues that should be addressed early in the proceeding (e.g., jurisdiction, general causation, or preemption) and the number of plaintiffs in the MDL proceeding.

This court-ordered exchange of information may be ordered independently from the discovery rules, which are addressed in Rule 16.1(b)(3)(C). Alternatively, in some cases, transferee judges have ordered that such exchanges of information be made under Rule 33 or 34. Under some circumstances – after taking account of whether the party whose claim or defense is involved has reasonable access to needed information – the court may find it appropriate to employ expedited methods to resolve claims or defenses not supported after the required information exchange.

Rule 16.1(b)(3)(C). A major task for the MDL transferee judge is to supervise discovery in an efficient manner. The principal issues in the MDL proceeding may help guide the discovery plan and avoid inefficiencies and unnecessary duplication.

Rule 16.1(b)(3)(D). Early attention to likely pretrial motions can be important to facilitate progress and efficiently manage the MDL proceedings. The manner and timing in which certain legal and factual issues are to be addressed by the court can be important in determining the most efficient method for discovery.

Rule 16.1(b)(3)(E). The court may consider measures to facilitate the resolution of some or all actions before the court. In MDL proceedings, in addition to mediation and other dispute resolution alternatives, focused discovery orders, timely adjudication of principal legal issues, 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.

Rule 16.1(b)(3)(F). MDL transferee judges may refer matters to a magistrate judge or a master to expedite the pretrial process or to play a part in facilitating communication between the parties, including but not limited to settlement negotiations. It can be valuable for the court to know the parties' positions about the possible appointment of a master before considering whether such an appointment should be made. Rule 53 prescribes procedures for appointment of a master.

Rule 16.1(b)(3)(G). Orderly and efficient pretrial activity in MDL proceedings can be facilitated by early identification of the principal factual and legal issues likely

to be presented. Depending on the issues presented, the court may conclude that certain factual issues should be pursued through early discovery, and certain legal issues should be addressed through early motion practice.

Rule 16.1(b)(4). In addition to the matters the court has directed counsel to address, the parties may choose to discuss and report about other matters that they believe the transferee judge should address at the initial management conference.

Rule 16.1(c). Effective and efficient management of MDL proceedings benefits from a comprehensive management order. An initial management order need not address all matters designated under Rule 16.1(b) if the court determines the matters are not significant to the MDL proceeding or would better be addressed in a subsequent order. There is no requirement under Rule 16.1 that the court set specific time limits or other scheduling provisions as in ordinary litigation under Rule 16(b)(3)(A). Because active judicial management of MDL proceedings must be flexible, the court should be open to modifying its initial management order in light of developments in the MDL proceedings. Such modification may be particularly appropriate if leadership counsel is appointed after the initial management conference under Rule 16.1(a).

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]

Rule 26. Duty to Disclose; General Provisions Governing Discovery

* * * * *

(f) Conference of the Parties; Planning for Discovery.

* * * * *

(3) ***Discovery Plan.*** A discovery plan must state the parties' views and proposals on:

* * * * *

(D) any issues about claims of privilege or of protection as trial-preparation materials, including the timing and method for complying with Rule 26(b)(5)(A) and – if the parties

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

agree on a procedure to assert these claims after production – whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502;

* * * * *

Committee Note

Rule 26(f)(3)(D) is amended to address concerns about application of the requirement in Rule 26(b)(5)(A), which requires that producing parties describe materials withheld on grounds of privilege or as trial-preparation materials in a manner that "will enable other parties to assess the claim." Compliance with Rule 26(b)(5)(A) can involve very large burdens for all parties.

Rule 26(b)(5)(A) was adopted in 1993, and from the outset was intended to recognize the need for flexibility. This amendment directs the parties to address the question of how they will comply with Rule 26(b)(5)(A) in their discovery plan, and report to the court about this topic. A companion amendment to Rule 16(b)(3)(B)(iv) seeks to prompt the court to include provisions about complying with Rule 26(b)(5)(A) in scheduling or case management orders.

This amendment also seeks to provide the parties maximum flexibility in designing an appropriate method for identifying the grounds for withholding materials. Depending on the nature of the litigation, the nature of the materials sought through discovery, and the nature of the

privilege or protection involved, what is needed in one case may not be necessary in another. No one-size-fits-all approach would actually be suitable in all cases.

Requiring that discussion of this topic begin at the outset of the litigation and that the court be advised of the parties' plans or disagreements in this regard is a key purpose of this amendment, and should minimize problems later on, particularly if objections to a party's compliance with Rule 26(b)(5)(A) might otherwise emerge only at the end of the discovery period. Production of a privilege log near the close of the discovery period can create serious problems. Often it will be valuable to provide for "rolling" production of materials and an appropriate description of the nature of the withheld material. In that way, areas of potential dispute may be identified and, if the parties cannot resolve them, presented to the court for resolution.

Excerpt from the May 10, 2024 Report of the Advisory Committee on Civil Rules

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

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Robin L. Rosenberg, Chair
Advisory Committee on Civil Rules

RE: Report of the Advisory Committee on Civil Rules*

DATE: May 10, 2024

Introduction

The Civil Rules Advisory Committee met in Denver, Colorado, on April 9, 2024. Members of the public attended in person, and public on-line attendance was also provided. * * *

In August 2023 proposed amendments to Rule 16(b)(3)(B)(iv) and 26(f)(3)(D) dealing with privilege log issues, and a new proposed Rule 16.1 on MDL proceedings, were published for public comment. The first hearing on the proposed amendments and rule was held in Washington, D.C. on Oct. 16, 2023. 24 witnesses signed up to speak at that in-person hearing.

* A copy of the full committee report can be found in the June 2024 Standing Committee agenda book publicly available on www.uscourts.gov.

Additional public hearings were held by remote means on Jan. 16 and Feb. 6, 2024, and presented the views of more than 60 additional witnesses. The public comment period ended on Feb. 14, 2024. At its April 9 meeting, the Advisory Committee unanimously voted to forward the "privilege log" amendments to Rules 16(b)(3)(B)(iv) and 26(f)(3)(D) to the Standing Committee for adoption. It also unanimously voted to forward Rule 16.1, as revised after the public comment period, to the Standing Committee for adoption.

Part I of this report presents these two action items. * * * The "privilege log" rule amendments remained exactly the same, but the Committee Note was shortened. The proposal of a new Rule 16.1 for MDL proceedings was revised by removal of the coordinating counsel provision and reorganized to focus on sequencing of management activities. As detailed in the notes of the MDL Subcommittee's two online meetings considering the public comment, careful thought was given to these changes. After that subcommittee effort was completed, further style revisions were adopted on recommendation of the Standing Committee's Style Consultants. Accordingly, the revised rule proposal * * * reflects the style consultants' contributions as well as the Subcommittee's revisions.

* * * * *

I. ACTION ITEMS

A. Privilege log amendments proposed for adoption

In August 2023, amendments to Rules 26(f)(3)(D) and 16(b)(3)(B)(iv) were published for public comment. There was much comment, from both "producer" and "requester" viewpoints. * * *

After the public comment period, the Discovery Subcommittee met to discuss the comments. * * * There was no consideration of changing the rule amendments themselves, but considerable attention was given to the Committee Note to the Rule 26(f) amendment. The Standing Committee recommended during its January 2023 meeting that this Note be shortened, and the Subcommittee decided after the public comment period to shorten it further.

Though various proposals were made during the public comment period for Note language or rule language to prescribe what should be in a log, the Subcommittee's view was that "no one size fits all." Largely for this reason, it seemed that observations in the Note about burdens and methods of ameliorating those burdens are not likely to be particularly useful in individual cases. Nevertheless, there was extensive commentary about the Note. Some urged that it overly favored producing parties. Others urged that it be strengthened to support positions often adopted by producing parties.

The Subcommittee's consensus was to avoid Note language that seems to favor one "side" or the other. Thus, although the burdens on the producing party of preparing a detailed log can be large, the burdens on the requesting party to make use (perhaps even make sense) of a privilege log are often very heavy as well. Much depends on the circumstances of a given case.

Another challenging aspect going forward is the potential role of technology. Whether or not the term "metadata log" has meaning, it seems clear that many say the term means different

things to different people. And though some witnesses contended that pretty soon technological advances will supplant existing methods of dealing with logging and simplify (and speed up) the process, it is not possible to be confident about what technology will bring, or when.

Altogether, these thoughts pointed toward pruning controversial statements from the Note. Accordingly, the revised Note below sets the scene for early consideration of privilege log issues while avoiding taking positions on many of the issues raised by participants in the public comment process.

Rule 26(b)(5)(A) cross-reference amendment: There have been proposals that a cross-reference be added to Rule 26(b)(5)(A) itself. But the Subcommittee did not favor taking this additional step. Because it was proposed by several who testified at hearings or submitted written comments, some explanation may be helpful.

In the first place, though adding this change to the existing amendment package should not require republication, it really seems not to add anything. The published amendment directs the parties to address compliance with this rule in their 26(f) meeting. That being the case, it seems odd to add something to this rule to remind people that Rule 26(f) applies. Anyone interested in what must be done at a 26(f) meeting presumably should begin by consulting 26(f); checking 26(b)(5)(A) as well seems an odd effort.

It somewhat seems that proponents of an amendment to 26(b)(5)(A) (from the "producer" perspective) were hoping that the revision there would either disapprove judicial decisions calling for a document-by-document log and/or promote categorical logs. The Subcommittee does not favor taking these steps; the "chaste" draft discussed on Feb. 7 avoided taking such positions.

And there is a more general rulemaking point here: Making cross-references might well be avoided unless necessary. To take a tendentious example, one might think that a cross-reference to Rule 11 might be included in Rule 8(a)(2). Surely Rule 11(b) bears on what attorneys should do as they devise their allegations to satisfy Rule 8(a)(2). The cross-reference idea might lead to a slippery slope toward multiple additions to rules that do not do more than call attention to other rules.

In sum, the Subcommittee recommended adoption of the published rule amendments with a shortened Note, but no change to Rule 26(b)(5)(A) itself.

Rule 45 amendment possibility: During the public comment period, some urged that Rule 45 also be amended to address compliance with Rule 26(b)(5)(A) by nonparties subject to subpoenas. The Subcommittee discussed this possibility during its Feb. 7 meeting and decided it did not warrant action.

Putting aside the possibility that this change could call for republication, a major concern was that the current amendment package is keyed to the Rule 26(f) meeting, which does not involve nonparties who receive subpoenas. Moreover, though there have been many reports about the burdens on parties caused by privilege log requirements, there has not been a comparable level of comment about such problems resulting from subpoenas. In addition, Rule 45(d) already specifically commands those serving subpoenas to "take reasonable steps to avoid

imposing undue burden or expense" on the person served with the subpoena, and also says that the court "must enforce this duty and impose an appropriate sanction * * * on a party or attorney who fails to comply."

* * * * *

B. New Rule 16.1 for adoption

The Rule 16.1 proposal received a great deal of commentary during the public comment period. * * * The MDL Subcommittee met twice after the public comment period to consider changes to the rule proposal and to the Committee Note. The first meeting was on Feb. 23, 2024, and the second on March 5, 2024. * * *

* * * * *

Here is a quick roadmap of the revised rule proposal * * *:

(1) Eliminating the "coordinating counsel" position: Proposed Rule 16.1(b) invited the court to consider appointing an attorney to act as "coordinating counsel." After the public comment period was completed, on Feb. 23 the Subcommittee considered whether this position might be retained as "liaison counsel," with invocation of the Manual for Complex Litigation (4th) use of the term in § 10.221 (referring to "liaison counsel" who would deal with "essentially administrative matters"). But discussion led the Subcommittee to conclude that the strong reaction against creation of this new position provided a reason for removing it from the rule entirely. It no longer appears in the rule.

(2) Providing that unless the court orders otherwise, the parties must address all the topics listed in the rule: The published draft made the parties' obligation to address certain matters depend on the court taking the initiative to order them to address those specific matters. But requiring affirmative action by the court to get a report on the listed matters seems unnecessary, particularly since the parties can tell the court that it's premature to address certain items. That is implicit in the breakout of certain matters listed in Rule 16.1(b)(3), on which the parties are directed only to provide their "initial views." And the rule continues to say the parties may raise whatever matters they wish to raise whether or not the court ordered them to do so. This shift in no way limits the court's discretion, but it may sometimes reduce the burden on the court and also perhaps suggest to the parties that they might suggest that the court excuse a report on certain topics. The goal is to prepare the court to make the most effective use of the initial management conference.

(3) Subdividing the topics listed in published Rule 16.1(c) into two categories, one directing the parties to provide their views on certain topics and the other calling for the parties' "initial views": These two categories of reporting responsibilities would be divided between Rule 16.1(b)(2) and Rule 16.1(b)(3). These groupings are:

> Group 1, in Rule 16.1(b)(2) provides that the parties must provide their views on the following:

(A) Whether leadership counsel should be appointed, and if so address a number of matters bearing on the appointment of leadership counsel.

(B) Previously entered scheduling or other orders that should be vacated or modified;

(C) A schedule for additional management conferences;

(D) How to manage the filing of new actions in the MDL proceedings;

(E) Whether related actions have been filed or are expected to be filed, and whether to consider possible methods of coordinating with those actions.

Group 2 in Rule 16.1(b)(3) provides that the parties must provide the court with their "initial views" on the following unless the court orders otherwise:

(A) Whether consolidated pleadings should be prepared to account for the multiple actions in the MDL proceedings.

(B) Principal legal and factual issues likely to be presented;

(C) How and when the parties will exchange information about the facial bases for their claims and defenses. The revised Note makes clear that this is not discovery, and mentions that the court may employ expedited procedures to resolve some claims or defenses based on this information exchange. It also provides that the court should take care to ensure that the parties have adequate access to needed information.

(D) Anticipated discovery;

(E) Likely pretrial motions;

(F) Whether the court should consider measures to facilitate resolution; and

(G) Whether matters should be referred to a magistrate judge or a master.

(4) Initial management order: The court should enter an initial management order regarding how leadership counsel would be appointed if that is to occur and adopting an initial management plan that controls the MDL proceedings until the court modifies it.

* * * * *

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

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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.

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.

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).

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.

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.

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.

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).

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, the FJC concluded that 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.

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[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.

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.

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

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Contents

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]

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[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