ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

September 15, 2022

ADVISORY COMMITTEE ON BANKRUPTCY RULES

September 15, 2022, Washington, D.C. Meeting

Discussion Agenda

1. Greetings, Introductions, Farewells (Judge Dow, Judge Connelly)

   Farewell to outgoing chair Judge Dennis Dow, and outgoing members Judge Thomas Ambro, and Professor David Skeel; Greetings to Rules Committee Chief Counsel H. Thomas Byron III.

   Tab 1 Committee Roster. 6
   Subcommittee Liaisons. 12
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2. Approval of minutes of March 31, 2022, virtual meeting (Judge Dow).

   Tab 2 Draft minutes. 29

3. Oral reports on meetings of other committees:

   A. Standing Committee – June 7, 2022 (Judge Dow, Professors Gibson and Bartell).

   Tab 3A1 Draft minutes of the Standing Committee meeting. 53

   Tab 3A2 September 2022 Report of the Standing Committee to the Judicial Conference (appendices omitted). 88

   B. Advisory Committee on Appellate Rules – October 13, 2022 (Judge Donald).
   This report will be made at the spring meeting.

   C. Advisory Committee on Civil Rules – October 12, 2022 (Judge McEwen).
   This report will be made at the spring meeting.

   D. Bankruptcy Committee – June 23-24, 2022 (Judge Isicoff).

4. Report of the Consumer Subcommittee (Judge Connelly).

   A. Consider changes to proposed amendments to Bankruptcy Rule 3002.1 in light of public comments (Professor Gibson).

   Tab 4A August 22, 2022, memo by Professor Gibson. 121
   Attachment 1 – Rule 3002.1 showing changes from publication. 128
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   Attachment 3 – Rule 3002.1 public comments summary. 166

   B. Consider amendment to Rule 5009(b) (Suggestion 22-BK-D) (Professor Gibson).

   Tab 4B August 18, 2022, memo by Professor Gibson. 191

Discussion Agenda

5. Report of the Forms Subcommittee (Judge Kahn).

   A. Consider Suggestion 22-BK-E to amend Forms 309A and 309B to include the deadline for the debtor to file the certificate of completion evidencing completion of the required financial management course. (Professor Gibson).

   B. Consider Suggestion 22-BK-C for amendment to OF 410 concerning the Uniform Claim Identifier field. (Professor Bartell).

6. Report of the Privacy, Public Access, and Appeals Subcommittee (Judge Ambro).

   A. Consider recommendation to publish an amendment Rule 8006(g) (Suggestion 21-BK-M) (Professor Bartell).

7. Report of the Restyling Subcommittee (Judge Krieger).

   A. Consider process of integrating into the restyled rules substantive changes made to rules with effective dates in 2021, 2022, and 2023 (Professor Bartell).

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

9. Future meetings: The next meeting will be on March 30 (and tentatively March 31), 2023, in West Palm Beach, FL.

10. Adjourn.

Proposed Consent Agenda

The Chair and Reporters have proposed the following items for study and consideration prior to the Advisory Committee's meeting. **Absent any objection, all recommendations will be approved by acclamation at the meeting.** Any of these matters may be moved to the Discussion Agenda if a member or liaison feels that discussion or debate is required prior to Committee action. Requests to move an item to the Discussion Agenda must be brought to attention of the Chair by noon, Eastern Time, on **Thursday, September 8, 2022.**

1. Forms Subcommittee.

   A. Recommendation of no action regarding suggestion 22-BK-B to amend certain versions of Form 309 to provide the deadline for filing an objection under Rule1020(b) (Professor Bartell).

      Consent Tab 1A August 13, 2022, memo by Professor Bartell. 407

2. Business Subcommittee.

   A. Recommendation of no action regarding suggestion 22-BK-F from Giuseppe Ippolito to amend Rule 7012(b) (Professor Gibson).

      Consent Tab 2A August 17, 2022, memo by Professor Gibson. 411

TAB 1

RULES COMMITTEES — CHAIRS AND REPORTERS

Committee on Rules of Practice and Procedure
(Standing Committee)

Chair

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

Reporter

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

Secretary to the Standing Committee

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

Advisory Committee on Appellate Rules

Chair

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

Reporter

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

Advisory Committee on Bankruptcy Rules

Chair

Honorable Dennis R. Dow
United States Bankruptcy Court
Kansas City, MO

Reporter

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

Associate Reporter

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

Advisory Committee on Civil Rules

Chair	Reporter
Honorable Robert M. Dow, Jr. United States District Court Chicago, IL	Professor Edward H. Cooper University of Michigan Law School Ann Arbor, MI
	Associate Reporter
	Professor Richard L. Marcus University of California Hastings College of Law San Francisco, CA

Advisory Committee on Criminal Rules

Chair	Reporter
Honorable Raymond M. Kethledge United States Court of Appeals Ann Arbor, MI	Professor Sara Sun Beale Duke University School of Law Durham, NC
	Associate Reporter
	Professor Nancy J. King Vanderbilt University Law School Nashville, TN

Advisory Committee on Evidence Rules

Chair	Reporter
Honorable Patrick J. Schiltz United States District Court Minneapolis, MN	Professor Daniel J. Capra Fordham University School of Law New York, NY

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair	Reporter
Honorable Dennis R. Dow United States Bankruptcy Court Kansas City, MO	Professor S. Elizabeth Gibson University of North Carolina at Chapel Hill Chapel Hill, NC
	Associate Reporter
	Professor Laura B. Bartell Wayne State University Law School Detroit, MI

Members

Honorable Thomas L. Ambro United States Court of Appeals Wilmington, DE	Honorable Rebecca B. Connelly United States Bankruptcy Court Harrisonburg, VA
Honorable Bernice B. Donald United States Court of Appeals Memphis, TN	Honorable David A. Hubbert Deputy Assistant Attorney General (ex officio) United States Department of Justice Washington, DC
Honorable Ben Kahn United States Bankruptcy Court Greensboro, NC	Honorable Marcia S. Krieger United States District Court Denver, CO
Honorable Catherine P. McEwen United States Bankruptcy Court Tampa, FL	Debra L. Miller, Esq. Chapter 13 Bankruptcy Trustee South Bend, IN
Honorable J. Paul Oetken United States District Court New York, NY	Jeremy L. Retherford, Esq. Balch & Bingham LLP Birmingham, AL
Damian S. Schaible, Esq. Davis Polk & Wardwell LLP New York, NY	Professor David A. Skeel University of Pennsylvania Law School Philadelphia, PA
Tara Twomey, Esq. National Consumer Bankruptcy Rights Center San Jose, CA	Honorable George H. Wu United States District Court Los Angeles, CA

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(*Committee on the Administration of the Bankruptcy System*)
United States Bankruptcy Court
Miami, FL

Honorable William J. Kayatta, Jr.
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Advisory Committee on Bankruptcy Rules

Subcommittee/Liaison Assignments, Effective July 1, 2021

Business Subcommittee Judge Catherine Peek McEwen, Chair Judge Thomas Ambro Judge Benjamin Kahn Judge Marcia S. Krieger Judge J. Paul Oetken Damian S. Schaible, Esq. Professor David Skeel Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio*	**CARES ACT Emergency Rules Taskforce** Judge George H. Wu, Chair Debra L. Miller, Esq. Damian S. Schaible, Esq. Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio*
Consumer Subcommittee Judge Rebecca Buehler Connelly, Chair Judge Bernice Bouie Donald Judge George H. Wu Debra L. Miller, Esq. Jeremy L. Retherford, Esq. Tara Twomey, Esq. Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio*	**Forms Subcommittee** Judge Benjamin Kahn, Chair Judge George H. Wu Jeremy L. Retherford, Esq. Tara Twomey, Esq. Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio* David Hubbert, Esq., *ex officio* Debra L. Miller, Esq.
Privacy, Public Access, and Appeals Subcommittee Judge Thomas Ambro, Chair Judge Bernice Bouie Donald Judge Catherine Peek McEwen Damian S. Schaible, Esq. Ramona D. Elliott, Esq., *EOUST liaison* David Hubbert, Esq., *ex officio*	**Restyling Subcommittee** Judge Marcia S. Krieger, Chair Judge A. Benjamin Goldgar Judge Benjamin Kahn Debra L. Miller, Esq. Tara Twomey, Esq. Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio*
Technology and Cross Border Insolvency Subcommittee Judge J. Paul Oetken, Chair Judge Rebecca Buehler Connelly Judge Benjamin Kahn Professor David Skeel Ramona D. Elliott, Esq., *EOUST liaison*	
Appellate Rules Liaison: Judge Bernice Bouie Donald	**Bankruptcy Committee Liaison:** Judge Rebecca Buehler Connelly
Civil Rules Liaison: Judge Catherine Peek McEwen	

Effective (no earlier than) December 1, 2022

Current Step in REA Process:

- Adopted by Supreme Court and transmitted to Congress (Apr 2022)

REA History:

- Transmitted to Supreme Court (Oct 2021)
- Approved by Judicial Conference (Sept 2021 unless otherwise noted)
- Approved by Standing Committee (June 2021 unless otherwise noted)
- Published for public comment (Aug 2020 – Feb 2021 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 25	The proposed amendment to Rule 25 extends the privacy protections afforded in Social Security benefit cases to Railroad Retirement Act benefit cases.	
AP 42	The proposed amendment to Rule 42 clarifies the distinction between situations where dismissal is mandated by stipulation of the parties and other situations. (These proposed amendments were published Aug 2019 – Feb 2020).	
BK 3002	The proposed amendment would allow an extension of time to file proofs of claim for both domestic and foreign creditors if "the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim."	
BK 5005	The proposed changes would allow papers to be transmitted to the U.S. trustee by electronic means rather than by mail, and would eliminate the requirement that the filed statement evidencing transmittal be verified.	
BK 7004	The proposed amendments add a new Rule 7004(*i*) clarifying that service can be made under Rule 7004(b)(3) or Rule 7004(h) by position or title rather than specific name and, if the recipient is named, that the name need not be correct if service is made to the proper address and position or title.	
BK 8023	The proposed amendments conform the rule to pending amendments to Appellate Rule 42(b) that would make dismissal of an appeal mandatory upon agreement by the parties.	AP 42(b)
BK Restyled Rules (Parts I & II)	The proposed rules, approximately 1/3 of current bankruptcy rules, are restyled to provide greater clarity, consistency, and conciseness without changing practice and procedure. The remaining bankruptcy rules will be similarly restyled and published for comment in 2021 and 2022, with the full set of restyled rules expected to go into effect no earlier than December 1, 2024.	
SBRA Rules (BK 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3014, 3016, 3017.1, 3017.2 (new), 3018, 3019)	The SBRA Rules would make necessary rule changes in response to the Small Business Reorganization Act of 2019. The SBRA Rules are based on Interim Bankruptcy Rules adopted by the courts as local rules in February 2020 in order to implement the SBRA which when into effect February 19, 2020.	

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- Approved by Standing Committee (June 2021 unless otherwise noted)
- Published for public comment (Aug 2020 – Feb 2021 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
Official Form 101	Updates are made to lines 2 and 4 of the form to clarify how the debtor should report the names of related separate legal entities that are not filing the petition. If approved by the Standing Committee, and the Judicial Conference, the proposed change to Form 101 (published in Aug. 2021) will go into effect December 1, 2022.	
Official Forms 309E1 and 309E2	Form 309E1, line 7 and Form 309E2, line 8, are amended to clarify which deadline applies for filing complaints to deny the debtor a discharge and which applies for filing complaints seeking to except a particular debt from discharge. If approved by the Standing Committee, and the Judicial Conference, the proposed change to Forms 309E1 and 309E2 (published in Aug. 2021) will go into effect December 1, 2022.	
CV 7.1	An amendment to subdivision (a) was published for public comment in Aug 2019 – Feb 2020. As a result of comments received during the public comment period, a technical conforming amendment was made to subdivision (b). The conforming amendment to subdivision (b) was not published for public comment. The proposed amendments to (a) and (b) were approved by the Standing Committee in Jan 2021, and approved by the Judicial Conference in Mar 2021. The proposed amendment to Rule 7.1(a)(1) would require the filing of a disclosure statement by a nongovernmental corporation that seeks to intervene. This change would conform the rule to the recent amendments to FRAP 26.1 (effective Dec 2019) and Bankruptcy Rule 8012 (effective Dec 2020). The proposed amendment to Rule 7.1(a)(2) would create a new disclosure aimed at facilitating the early determination of whether diversity jurisdiction exists under 28 U.S.C. § 1332(a), or whether complete diversity is defeated by the citizenship of a nonparty individual or entity because that citizenship is attributed to a party.	AP 26.1 and BK 8012
CV Supplemental Rules for Social Security Review Actions Under 42 U.S.C. § 405(g)	Proposed set of uniform procedural rules for cases under the Social Security Act in which an individual seeks district court review of a final administrative decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g).	
CR 16	Proposed amendment addresses the lack of timing and specificity in the current rule with regard to expert witness disclosures, while maintaining reciprocal structure of the current rule.	

Effective (no earlier than) December 1, 2023

Current Step in REA Process:

- Approved by Standing Committee (June 2022 unless otherwise noted)

REA History:

- Published for public comment (Aug 2021 – Feb 2022 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 2	Proposed amendment developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	BK 9038, CV 87, and CR 62
AP 4	The proposed amendment is designed to make Rule 4 operate with Emergency Civil Rule 6(b)(2) if that rule is ever in effect by adding a reference to Civil Rule 59 in subdivision (a)(4)(A)(vi) of FRAP 4.	CV 87 (Emergency CV 6(b)(2))
BK 3002.1 and five new related Official Forms	The proposed rule amendment and the five related forms (410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R) are designed to increase disclosure concerning the ongoing payment status of a debtor's mortgage and of claims secured by a debtor's home in chapter 13 case. At its March 2022 meeting, the Bankruptcy Rules Committee remanded the Rule and Forms to the Consumer and Forms Subcommittee for further consideration in light of comments received. This action will delay the effective date of the proposed changes to no earlier than December 1, 2024.	
BK 3011	Proposed new subdivision (b) would require courts to provide searchable access to unclaimed funds on local court websites.	
BK 8003 and Official Form 417A	Proposed rule and form amendments are designed to conform to amendments to FRAP 3(c) clarifying that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment, or appealable order or degree.	AP 3
BK 9038 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	AP 2, CV 87, and CR 62
BK 9006(a)(6)(A)	Technical amendment approved by Advisory Committee without publication would add Juneteenth National Independence Day to the list of legal holidays.	
BK Restyled Rules (Parts III-VI)	The second set, approximately 1/3 of current Bankruptcy Rules, restyled to provide greater clarity, consistency, and conciseness without changing practice and procedure. The first set of restyled rules (Parts I & II) were published in 2020, and the anticipated third set (Parts VII-IX) are expected to be published in 2022, with the full set of restyled rules expected to go into effect no earlier than December 1, 2024.	
CV 15	The proposed amendment to Rule 15(a)(1) is intended to remove the possibility for a literal reading of the existing rule to create an unintended gap. A literal reading of "A party may amend its pleading once as a matter of course within . . . 21 days after service of a responsive pleading or [pre-answer motion]" would suggest that the Rule 15(a)(1)(B) period does not commence until the service of the responsive pleading or pre-answer motion – with the unintended result that there could be a gap period (beginning on the 22nd day after service of the pleading and extending to service of the responsive pleading or pre-answer motion) within which amendment as of right is not permitted. The proposed amendment would preclude this interpretation by replacing the word "within" with "no later than."	

Effective (no earlier than) December 1, 2023

Current Step in REA Process:

- Approved by Standing Committee (June 2022 unless otherwise noted)

REA History:

- Published for public comment (Aug 2021 – Feb 2022 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
CV 72	The proposed amendment would replace the requirement that the magistrate judge's findings and recommendations be mailed to the parties with a requirement that a copy be served on the parties as provided in Rule 5(b).	
CV 87 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	AP 2, BK 9038, and CR 62
CR 62 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	AP 2, BK 9038, and CV 87
EV 106	The proposed amendment would allow a completing statement to be admissible over a hearsay objection and cover unrecorded oral statements.	
EV 615	The proposed amendment limits an exclusion order to the exclusion of witnesses from the courtroom. A new subdivision would provide that the court has discretion to issue further orders to "(1) prohibit disclosure of trial testimony to witnesses who are excluded from the courtroom; and (2) prohibit excluded witnesses from accessing trial testimony." Finally, the proposed amendment clarifies that the existing provision that allows an entity-party to designate "an officer or employee" to be exempt from exclusion is limited to one officer or employee.	
EV 702	The proposed amendment would amend Rule 702(d) to require the court to find that "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." In addition, the proposed amendment would explicitly add the preponderance of the evidence standard to Rule 702(b)–(d).	

Effective (no earlier than) December 1, 2024

Current Step in REA Process:

- To be published for public comment (Aug 2022 – Feb 2023)

REA History:

- Approved for publication by Standing Committee (Jan 2022) or by relevant Advisory Committee (April/May 2022) unless otherwise noted

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 32	Conforming proposed amendment to subdivision (g) to reflect the consolidation of Rules 35 and 40.	AP 35, 40
AP 35	The proposed amendment would transfer the contents of the rule to Rule 40 to consolidate the rules for panel rehearings and rehearings en banc together in a single rule.	AP 40
AP 40	The proposed amendments address panel rehearings and rehearings en banc together in a single rule, consolidating what had been separate provisions in Rule 35 (hearing and rehearing en banc) and Rule 40 (panel rehearing). The contents of Rule 35 would be transferred to Rule 40, which is expanded to address both panel rehearing and en banc determination.	AP 35
Appendix: Length Limits Stated in the Federal Rules of Appellate Procedure	Conforming proposed amendments would reflect the consolidation of Rules 35 and 40 and specify that the limits apply to a petition for initial hearing en banc and any response, if requested by the court.	AP 35, 40
BK 1007(b)(7) and related amendments	The proposed amendment to Rule 1007(b)(7) would require a debtor to submit the course certificate from the debtor education requirement in the Bankruptcy Code. Conforming amendments would be made to the following rules by replacing the word "statement" with "certificate": Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2).	
BK 7001	The proposed amendment would exempt from the list of adversary proceedings in Rule 7001, "a proceeding by an individual debtor to recover tangible personal property under § 542(a)."	
BK 8023.1 (new)	This would be a new rule on the substitution of parties modeled on FRAP 43. Neither FRAP 43 nor Fed. R. Civ. P. 25 is applicable to parties in bankruptcy appeals to the district court or bankruptcy appellate panel, and this new rule is intended to fill that gap.	
BK Restyled Rules (Parts VII-IX)	The third and final set, approximately 1/3 of current Bankruptcy Rules, restyled to provide greater clarity, consistency, and conciseness without changing practice and procedure. The full set of restyled rules is expected to go into effect no earlier than December 1, 2024.	
BK Form 410A	The proposed amendments are to Part 3 (Arrearage as of Date of the Petition) of Official Form 410A and would replace the first line (which currently asks for "Principal & Interest") with two lines, one for "Principal" and one for "Interest." The amendments would put the burden on the claim holder to identify the elements of its claim.	
CV 12	The proposed amendment would clarify that a federal statute setting a different time should govern as to the entire rule, not just to subdivision (a).	

Effective (no earlier than) December 1, 2024

Current Step in REA Process:

- To be published for public comment (Aug 2022 – Feb 2023)

REA History:

- Approved for publication by Standing Committee (Jan 2022) or by relevant Advisory Committee (April/May 2022) unless otherwise noted

Rule	Summary of Proposal	Related or Coordinated Amendments
EV 611(d)	The proposed new subdivision (d) would provide standards for the use of illustrative aids. To be considered for approval at the Standing Committee's June 2022 meeting.	EV 1006
EV 611(e)	The proposed new subdivision (e) would provide procedural safeguards for when a court decides to allow jurors to submit questions for trial witnesses. To be considered for approval at the Standing Committee's June 2022 meeting.	
EV 613	The proposed amendment would require that, prior to the introduction of extrinsic evidence of a witness's prior inconsistent statement, the witness receive an opportunity to explain or deny the statement. To be considered for approval at the Standing Committee's June 2022 meeting.	
EV 801	The proposed amendment to paragraph (d)(2) would provide that when a party stands in the shoes of a declarant or declarant's principal, hearsay statements made by the declarant or declarant's principal are admissible against the party. To be considered for approval at the Standing Committee's June 2022 meeting.	
EV 804	The proposed amendment to subparagraph (b)(3)(B) would provide that when assessing whether a statement is supported by corroborating circumstances that clearly indicate its trustworthiness, the court must consider the totality of the circumstances and evidence, if any, corroborating the statement. To be considered for approval at the Standing Committee's June 2022 meeting.	
EV 1006	The proposed changes would permit a properly supported summary to be admitted into evidence whether or not the underlying voluminous materials have been admitted. The proposed changes would also clarify that illustrative aids not admitted under Rule 1006 are governed by proposed new subdivision (d) of Rule 611. To be considered for approval at the Standing Committee's June 2022 meeting.	EV 611

Legislation that Directly or Effectively Amends the Federal Rules
117th Congress
(January 3, 2021 – January 3, 2023)

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
Protect the Gig Economy Act of 2021	**H.R. 41** *Sponsor:* Biggs (R-AZ)	CV 23	**Bill Text:** https://www.congress.gov/117/bills/hr41/BILLS-117hr41ih.pdf **Summary (authored by CRS):** This bill limits the certification of a class action lawsuit by prohibiting in such a lawsuit an allegation that employees were misclassified as independent contractors.	• 1/4/21: Introduced in House; referred to Judiciary Committee • 3/1/21: Referred to the Subcommittee on Courts, Intellectual Property, and the Internet
Injunctive Authority Clarification Act of 2021	**H.R. 43** *Sponsor:* Biggs (R-AZ)	CV	**Bill Text:** https://www.congress.gov/117/bills/hr43/BILLS-117hr43ih.pdf **Summary (authored by CRS):** This bill prohibits federal courts from issuing injunctive orders that bar enforcement of a federal law or policy against a nonparty, unless the nonparty is represented by a party in a class action lawsuit.	• 1/4/21: Introduced in House; referred to Judiciary Committee • 3/1/21: Referred to the Subcommittee on Courts, Intellectual Property, and the Internet
Mutual Fund Litigation Reform Act	**H.R. 699** *Sponsor:* Emmer (R-MN)	CV 8 & 9	**Bill Text:** https://www.congress.gov/117/bills/hr699/BILLS-117hr699ih.pdf **Summary:** This bill provides a heightened pleading standard for actions alleging breach of fiduciary duty under the Investment Company Act of 1940, requiring that "all facts establishing a breach of fiduciary duty" be "state[d] with particularity."	• 2/2/21: Introduced in House; referred to Judiciary Committee and Financial Services Committee • 3/22/21: Referred to the Subcommittee on Courts, Intellectual Property, and the Internet
Protect Asbestos Victims Act of 2021	**S. 574** *Sponsor:* Tillis (R-NC) *Co-sponsors:* Cornyn (R-TX) Grassley (R-IA)	BK	**Bill Text:** https://www.congress.gov/117/bills/s574/BILLS-117s574is.pdf **Summary:** Would amend 11 USC § 524(g) "to promote the investigation of fraudulent claims against [asbestosis trusts] …" and would allow outside parties to make information demands on the administrators of such trusts regarding payment	• 3/3/2021: Introduced in Senate; referred to Judiciary Committee

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
			to claimants. If enacted in its current form S. 574 may require an amendment to Rule 9035. The bill would give the United States Trustee a number of investigative powers with respect to asbestosis trusts set up under § 524 even in the districts in Alabama and North Caroline. Rule 9035 on the other hand, reflects the current law Bankruptcy Administrators take on US trustee functions in AL and NC and states that the UST has no authority in those districts.	
Eliminating a Quantifiably Unjust Application of the Law Act of 2021	**H.R. 1693** *Sponsor:* Jeffries (D-NY) *Co-Sponsors:* [56 bipartisan co-sponsors]	CR 43	**Bill Text:** https://www.congress.gov/117/bills/hr1693/BILLS-117hr1693rfs.pdf **Summary:** The bill decreases the penalties for certain cocaine-related controlled substance crimes, and allows those convicted under prior law to petition to lower the sentence. The bill then provides that "[n]otwithstanding Rule 43 of the Federal Rules of Criminal Procedure, the defendant is not required to be present" at a hearing to reduce a sentence pursuant to the bill.	• 3/9/21: Introduced in House; referred to Judiciary Committee and Committee on Energy and Commerce • 5/18/21: Referred to Judiciary Committee Subcommittee on Crime, Terrorism, and Homeland Security • 7/21/21: Judiciary Committee consideration and mark-up session held; reported from committee as amended • 9/28/21: Debated in House • 9/28/21: Passed house in roll call vote 361-66 • 9/29/21: Received in Senate; referred to Judiciary Committee

Legislation that Directly or Effectively Amends the Federal Rules
117th Congress
(January 3, 2021 – January 3, 2023)

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
Sunshine in the Courtroom Act of 2021	S.818 *Sponsor:* Grassley (R-IA) *Co-sponsors*: Blumenthal (D-CT) Cornyn (R-TX) Durbin (D-IL) Klobuchar (D-MN) Leahy (D-VT) Markey (D-MA)	CR 53	**Bill Text:** https://www.congress.gov/117/bills/s818/BILLS-117s818is.pdf **Summary:** This is described as a bill "[t]o provide for media coverage of Federal court proceedings." The bill would allow presiding judges in the district courts and courts of appeals to "permit the photographing, electronic recording, broadcasting, or televising to the public of any court proceeding over which that judge provides." The Judicial Conference would be tasked with promulgating guidelines. This would impact what is allowed under Federal Rule of Criminal Procedure 53 which says that "[e]xcept as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom."	• 3/18/21: Introduced in Senate; referred to Judiciary Committee • 6/24/21: Scheduled for mark-up; letter being prepared to express opposition by the Judicial Conference and the Rules Committees • 6/24/21: Ordered to be reported without amendment favorably by Judiciary Committee
Litigation Funding Transparency Act of 2021	S. 840 *Sponsor:* Grassley (R-IA) *Co-sponsors:* Cornyn (R-TX) Sasse (R-NE) Tillis (R-NC) H.R. 2025 *Sponsor:* Issa (R-CA)		**Bill Text:** https://www.congress.gov/117/bills/s840/BILLS-117s840is.pdf [Senate] https://www.congress.gov/117/bills/hr2025/BILLS-117hr2025ih.pdf [House] **Summary:** Requires disclosure and oversight of TPLF agreements in MDL's and in "any class action."	• 3/18/21: Introduced in Senate and House; referred to Judiciary Committees • 5/3/21: Letter received from Sen. Grassley and Rep. Issa • 5/10/21: Response letter sent to Sen. Grassley from Rep. Issa from Judge Bates • 10/19/21: Referred by House Judiciary Committee to Subcommittee on Courts, Intellectual Property, and the Internet

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
Justice in Forensic Algorithms Act of 2021	**H.R. 2438** *Sponsor:* Takano (D-CA) *Co-sponsor:* Evans (D-PA)	EVIE 702	**Bill Text:** https://www.congress.gov/117/bills/hr2438/BILLS-117hr2438ih.pdf **Summary:** A bill "[t]o prohibit the use of trade secrets privileges to prevent defense access to evidence in criminal proceedings, provide for the establishment of Computational Forensic Algorithm Testing Standards and a Computational Forensic Algorithm Testing Program, and for other purposes." Section 2 of the bill contains the following two subdivisions that implicate Rules: "(b) PROTECTION OF TRADE SECRETS.— (1) There shall be no trade secret evidentiary privilege to withhold relevant evidence in criminal proceedings in the United States courts. (2) Nothing in this section may be construed to alter the standard operation of the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, as such rules would function in the absence of an evidentiary privilege." "(g) INADMISSIBILITY OF CERTAIN EVIDENCE.—In any criminal case, evidence that is the result of analysis by computational forensic software is admissible only if— (1) the computational forensic software used has been submitted to the Computational Forensic Algorithm Testing Program of the Director of the National Institute of Standards and Technology and there have been no material changes to that software since it was last tested; and (2) the developers and users of the computational forensic software agree to waive any and all legal claims against the defense or any member of its team for the purposes of the defense analyzing or testing the computational forensic software."	• 4/8/21: Introduced in House; referred to Judiciary Committee and to Committee on Science, Space, and Technology • 10/19/21: Referred by Judiciary Committee to Subcommittee on Crime, Terrorism, and Homeland Security
Juneteenth National Independence Day Act	**S. 475**	AP 26; BK 9006; CV 6; CR 45	Established Juneteenth National Independence Day (June 19) as a legal public holiday	• 6/17/21: Became Public Law No: 117-17

Legislation that Directly or Effectively Amends the Federal Rules
117th Congress
(January 3, 2021 – January 3, 2023)

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
Bankruptcy Venue Reform Act of 2021	**H.R. 4193** *Sponsor*: Lofgren (D-CA) *Co-Sponsors:* Buck (R-CO) Perlmutter (D-CO) Neguse (D-CO) Cooper (D-TN) Thompson (D-CA) Burgess (R-TX) Bishop (R-NC) **S. 2827** *Sponsor:* Cornyn (R-TX) *Co-sponsor:* Warren (D-MA)	BK	**Bill Text:** https://www.congress.gov/bill/117th-congress/house-bill/4193/text?r=453 [House] https://www.congress.gov/117/bills/s2827/BILLS-117s2827is.pdf [Senate] **Summary:** Modifies venue requirements relating to Bankruptcy proceedings. Senate version includes a limitation absent from the House version giving "no effect" for purposes of establishing venue to certain mergers, dissolutions, spinoffs, and divisive mergers of entities. Would require the Supreme Court to prescribe rules, under § 2075, to allow an attorney to appear on behalf of a governmental unit and intervene without charge or meeting local rule requirements in Bankruptcy Cases and arising under or related to proceeding before bankruptcy and district courts and BAPS.	• 6/28/21: H.R. 4193 introduced in House; referred to Judiciary Committee • 9/23/21: S. 2827 introduced in Senate; referred to Judiciary Committee
Nondebtor Release Prohibition Act of 2021	**S. 2497** *Sponsor*: Warren (D-MA)	BK	**Bill Text:** https://www.congress.gov/bill/117th-congress/senate-bill/2497/text?r=195 **Summary:** Would prevent individuals who have not filed for bankruptcy from obtaining releases from lawsuits brought by private parties, states, and others in bankruptcy by: • Prohibiting the court from discharging, releasing, terminating or modifying the liability of and claim or cause of action against any entity other than the debtor or estate. • Prohibiting the court from permanently enjoining the commencement or continuation of any action with respect to an entity other than the debtor or estate.	• 7/28/21: Introduced in Senate, Referred to Judiciary Committee
Protecting Our Democracy Act	**H.R. 5314** *Sponsor:* Schiff (D-CA) *Co-Sponsors:* [168 co-sponsors]	CR 6; CV	**Bill Text:** https://www.congress.gov/bill/117th-congress/house-bill/5314/text [House] https://www.congress.gov/117/bills/s2921/BILLS-117s2921is.pdf [Senate]	• 9/21/21: H.R. 5314 introduced in House; referred to numerous committees, including House

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
	S. 2921 *Sponsor:* Klobuchar (D-MN) *Co-Sponsors:* Blumenthal (D-CT) Coons (D-DE) Feinstein (D-CA) Hirono (D-HI) Merkley (D-OR) Sanders (I-VT) Warren (D-MA) Wyden (D-OR)		**Summary:** Various provisions of this bill amend existing rules, or direct the Judicial Conference to promulgate additional rules, including: • Prohibiting any interpretation of Criminal Rule 6(e) that would prohibit disclosure to Congress of certain grand jury materials related to individuals pardoned by the President • Requiring the Judicial Conference to promulgate rules "to ensure the expeditious treatment of" actions to enforce Congressional subpoenas. The bill requires that the rules be transmitted within 6 months of the effective date of the bill.	Judiciary Committee • 9/30/21: S. 2921 introduced in Senate; referred to Committee on Homeland Security and Governmental Affairs • 12/9/21: H.R. 5314 debated and amended in House under provisions of H. Res. 838 • 12/9/21: H.R. 5314 passed by House • 12/13/21: House bill received in Senate
Congressional Subpoena Compliance and Enforcement Act	H.R. 6079 *Sponsor:* Dean (D-PA) *Co-Sponsors:* Nadler (D-NY) Schiff (D-CA)	CV	**Bill Text:** https://www.congress.gov/117/bills/hr6079/BILLS-117hr6079ih.pdf **Summary:** The bill directs the Judicial Conference to promulgate rules "to ensure the expeditious treatment of" actions to enforce Congressional subpoenas. The bill requires that the rules be transmitted within 6 months of the effective date of the bill.	• 11/26/21: Introduced in House; referred to Judiciary Committee
Assessing Monetary Influence in the Courts of the United States Act (AMICUS Act)	S. 3385 *Sponsor:* Whitehouse (D-RI) *Co-Sponsors:* Sanders (I-VT) Blumenthal (D-CT) Hirono (D-HI) Warren (D-MA) Lujan (D-NM)	AP 29	**Bill Text:** https://www.congress.gov/117/bills/s3385/BILLS-117s3385is.pdf **Summary:** In part, the legislation would require amicus curiae to disclose whether counsel for a party authored the brief in whole or in part and whether a party or a party's counsel made a monetary contribution intended to fund the preparation or submission of the brief.	• 12/14/21: Introduced in Senate; referred to Judiciary Committee

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
Courtroom Videoconferencing Act of 2022	**H.R. 6472** *Sponsor:* Morelle (D-NY) *Co-Sponsor:* Fischbach (R-MN) Bacon (R-NE) Tiffany (R-WI)	CR	**Bill Text:** https://www.congress.gov/117/bills/hr6472/BILLS-117hr6472ih.pdf **Summary:** The bill would make permanent (i.e., even in absence of emergency situations) certain CARES Act provisions, including allowing the chief judge of a district court to authorize teleconferencing for initial appearances, arraignments, and misdemeanor pleas or sentencing. The bill would require a defendant's consent before proceeding via teleconferencing, and would ensure that defendants can utilize video or telephone conferencing to privately consult with counsel.	• 1/21/22: Introduced in House; referred to Judiciary Committee
Save Americans from the Fentanyl Emergency Act of 2022	**H.R. 6946** *Sponsor:* Pappas (D-NH) *Co-Sponsors:* Newhouse (R-WA) Budd (R-NC) Suozzi (D-NY) Van Drew (R-NJ) Cuellar (D-TX) Roybal-Allard (D-CA) Craig (D-MN) Spanberger (D-VA)	CR 43	**Bill Text:** https://www.congress.gov/117/bills/hr6946/BILLS-117hr6946ih.pdf **Summary:** The bill decreases the penalties for certain fentanyl-related controlled substance crimes, and allows those convicted under prior law to petition to lower the sentence. The bill then provides that "[n]otwithstanding rule 43 of the Federal Rules of Criminal Procedure, the defendant is not required to be present" at a hearing to vacate or reduce a sentence pursuant to the bill.	• 3/7/22: Introduced in House; referred to the Committee on Energy and Commerce and Judiciary Committee
Bankruptcy Threshold Adjustment and Technical Corrections Act	**S. 3823**	BK 1020; BK Forms 101 & 201	**Bill Text:** https://www.congress.gov/117/plaws/publ151/PLAW-117publ151.pdf **Summary:** This act retroactively reinstated for a further two years from the date of enactment the CARES Act definition of debtor in Section 1182(1) with its $7.5m subchapter V debt limit.	• 6/21/22: Became Public Law No: 117-151.
Government Surveillance Transparency Act of 2022	**S. 3888** *Sponsor:* Wyden (D-OR) *Co-Sponsors:* Daines (R-MT) Lee (R-UT)	CR 41	**Bill Text:** https://www.congress.gov/117/bills/s3888/BILLS-117s3888is.pdf [Senate] https://www.congress.gov/117/bills/hr7214/BILLS-117hr7214ih.pdf [House]	• 3/22/22: Introduced in Senate; referred to the Judiciary Committee • 3/24/22: Introduced in the

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
	Booker (D-NJ) **H.R. 7214** *Sponsor:* Lieu (D-CA) *Co-Sponsors:* Davidson (R-OH)		**Summary:** The bill explicitly adds a sentence and two subdivisions of text to Rule 41(f)(1)(B) regarding what the government must disclose in an inventory taken pursuant to the Rule. See page 25 of either PDF for full text.	House; referred to the Judiciary Committee
21st Century Courts Act of 2022	**S. 4010** *Sponsor:* Whitehouse (D-RI) *Co-Sponsors:* Blumenthal (D-CT) Hirono (D-HI) **H.R. 7426** *Sponsor:* Johnson (D-GA) *Co-Sponsors:* Nadler (D-NY) Jones (D-NY) Cicilline (D-RI) Quigley (D-IL)	AP 29; CV; CR	**Bill Text:** https://www.congress.gov/117/bills/s4010/BILLS-117s4010is.pdf [Senate] https://www.congress.gov/117/bills/hr7426/BILLS-117hr7426ih.pdf [House] **Summary:** In part, the legislation would require amicus curiae to disclose whether counsel for a party authored the brief in whole or in part and whether a party or a party's counsel made a monetary contribution intended to fund the preparation or submission of the brief. Additionally, the bill would require within one year the promulgation of rules regarding procedures for the public to contest a motion to seal a judicial record.	• 4/6/22: Introduced in the Senate; referred to Judiciary Committee • 4/6/22: Introduced in the House; referred to Judiciary Committee, Committee on Oversight and Reform, and Committee on House Administration
Supreme Court Ethics, Recusal, and Transparency Act of 2022	**H.R. 7647** *Sponsor:* Johnson (D-GA) *Co-Sponsors:* [15 co-sponsors] **S. 4188** *Sponsor:* Whitehouse (D-RI) *Co-Sponsors:* Blumenthal (D-CT) Booker (D-NJ) Feinstein (D-CA) Hirono (D-HI) Leahy (D-VT) Schatz (D-HI)	AP 29; CV; CR; BK	**Bill Text:** https://www.congress.gov/117/bills/hr7647/BILLS-117hr7647ih.pdf [House] https://www.congress.gov/117/bills/s4188/BILLS-117s4188is.pdf [Senate] **Summary:** The bill directs the use of the REA process to enact a rule regarding party and amici disclosures in the *Supreme Court*. Additionally, the legislation would require amicus curiae in *any* court to disclose whether counsel for a party authored the brief in whole or in part and whether a party or a party's counsel made a monetary contribution intended to fund the preparation or submission of the brief. Finally, the bill requires the use of the REA process to promulgate a rule prohibiting the filing of or striking an amicus brief that would result in the	• 5/3/22: Introduced in the House; referred to Judiciary Committee • 5/11/22: Mark-up Session held in House Judiciary Committee; reported favorably by 22-16 vote • 5/11/22: Introduced in the Senate; referred to Judiciary Committee

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
			disqualification of a justice, judge, or magistrate judge.	
Restoring Artistic Protection Act of 2022	**H.R. 8531** *Sponsor:* Johnson (D-GA) *Co-Sponsors:* Bowman (D-NY) Maloney (D-NY)	EV 416	**Bill Text:** https://www.congress.gov/117/bills/hr8531/BILLS-117hr8531ih.pdf **Summary:** The bill would enact new Evidence Rule 416, which would make inadmissible in criminal cases evidence of a defendant's creative or artistic expression unless the court finds by clear and convincing evidence that four factors are met.	• 7/27/22: Introduced in the House; referred to Judiciary Committee

TAB 2

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 31, 2022
Remotely by Conference Call and Microsoft Teams

The following members attended the meeting:

Circuit Judge Thomas L. Ambro
Bankruptcy Judge Rebecca Buehler Connelly
Circuit Judge Bernice Bouie Donald
Bankruptcy Judge Dennis R. Dow
David A. Hubbert, Esq.
Bankruptcy Judge Benjamin A. Kahn
District Judge Marcia S. Krieger
Bankruptcy Judge Catherine Peek McEwen
Debra L. Miller, Esq.
District Judge J. Paul Oetken
Damian S. Schaible, Esq.
Professor David A. Skeel
Tara Twomey, Esq.
District Judge George H. Wu

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Laura B. Bartell, associate reporter
Senior District Judge John D. Bates, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Professor Catherine T. Struve, reporter to the Standing Committee
Professor Daniel R. Coquillette, consultant to the Standing Committee
Ramona D. Elliott, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
Kenneth S. Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Circuit Judge William J. Kayatta, liaison from the Standing Committee
Bankruptcy Judge Nancy V. Alquist, Liaison to the Committee on the Administration of the Bankruptcy System
Brittany Bunting, Administrative Office
Bridget M. Healy, Esq., Administrative Office
S. Scott Myers, Esq., Administrative Office
Shelly Cox, Administrative Office
Dana Yankowitz Elliott, Administrative Office
Jason Broome, Administrative Office
Leanna Kipp, Administrative Office
Michael Croom, Administrative Office
Susan Jenson, Administrative Office
Cherry Simpson, Administrative Office

Carly E. Griffin, Federal Judicial Center
Burton DeWitt, Rules Law Clerk
Rebecca R. Garcia, Chapter 12 and 13 trustee
Nancy Whaley, National Association of Chapter 13 Trustees
John Hawkinson, freelance journalist
Lisa K. Mullen, Office of David Wm. Ruskin, Chapter 13 trustee
Marcy J. Ford, Trott Law, P.C.
Pam Bassel, Chapter 13 trustee
Teri E. Johnson, Law Office of Teri E. Johnson, PLLC

Discussion Agenda

1. **Greetings and Introductions**

Judge Dennis Dow, chair of the Advisory Committee, welcomed the group and thanked everyone for joining this meeting. He asked everyone to keep microphones muted unless that person is talking. Motions will be passed if there are no objections. Otherwise, members will use the raise hand function for voting and discussions. Lunch break will occur when and if appropriate.

Judge Dow began by asking Scott Myers to describe the current situation with the rules and forms as a result of the March 27, 2022, expiration of the amendments made by the CARES Act. Mr. Myers has posted the pre-CARES Act versions of Forms 101, 201, 122A-1, 122B, and 122C-1 on their respective current form landing pages. He is also updating the current rules page to note the lapse of the CARES Act and the related changes it made to Interim Rule 1020.

On March 14, 2022, Senator Grassley introduced a bill to make the higher debt limit permanent for Subchapter V, as well as modifying the eligibility requirements for chapter 13. The bill would not affect the means test forms. However, if the Grassley bill passes in the next few days or weeks, Interim Rule 1020 and Forms 101 and 201 will again be modified to incorporate the changes that expired on March 27. That would probably require an email vote of this Advisory Committee to recommend to the Standing Committee that those forms be reinstated and the Interim Rule go back into effect, and sending information to the courts.

Judge Dow asked whether the proposed changes in the eligibility requirements for chapter 13 have any form or rule implications. Mr. Myers said that he sees no implications. Ken Gardner asked whether the changes would be retroactive. Mr. Myers said he does not know but the bill will have to be rewritten because it contemplated that it would be passed before April 1, 2022. Judge Kahn and Judge McEwen pointed out that the current version is retroactive.

2. **Approval of Minutes of Remote Meeting Held on September 14, 2021**

The minutes were approved by motion and vote with one amendment to reflect that Judge Laurel Isicoff was in attendance.

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

(A) ***Jan. 4, 2022 Standing Committee Meeting***

Judge Dow gave the report.

(1) **Joint Committee Business**

(a) ***Electronic Filing by Self-Represented Litigants*.** Judge Bates noted that he had asked Professor Cathie Struve to convene a joint meeting of the reporters to coordinate the responses of the various committees to these suggestions. Professor Struve reported that the reporters suggested ideas on research questions that might be helpful in resolving these issues and agreed to ask for assistance from the Federal Judicial Center.

(b) ***Juneteenth National Independence Day***. Three of the four Advisory Committees have approved proposed amendments to add the new holiday to the list of legal holidays in their respective time-computation rules, and the fourth Advisory Committee is expected to do so at its spring meeting. All proposals will be presented to the Standing Committee at its June 2022 meeting for approval as technical amendments that can be forwarded for final approval without publication and comment.

(2) **Bankruptcy Rules Committee Business**

The Standing Committee recommended for publication an amendment to Rule 7001, which responds to Justice Sotomayor's suggestion in her concurring opinion in City of Chicago v. Fulton, 141 S. Ct. 585 (2021). The amendment provides that an action seeking turnover of tangible personal property of an individual debtor may be brought by motion rather than adversary proceeding.

Judge Dow also provided the Standing Committee information on the status of:

(a) ***Rule 9006(a)(6) (Legal Holidays)***. The Bankruptcy Advisory Committee approved a technical amendment adding Juneteenth National Independence Day to the list of legal holidays.

(b) ***Electronic Signatures***. Judge Dow described the ongoing work on electronic signatures by debtors and others who do not have a CM/ECF account. The Advisory Committee is considering potential amendments to Rule 5005(a) and is conferring with the DOJ and the FJC in considering the issues.

(c) ***Restyling***. Judge Dow reported that Parts III through VI are out for public comment and would be presented to the Standing committee for final approval at its next meeting. Parts VII through IX are in process and should be ready for the Standing Committee to approve publication at the same meeting.

(B) ***March 30, 2022, Meeting of the Advisory Committee on Appellate Rules***

Because Judge Donald was unable to attend the meeting, Professor Struve provided the report.

(1) **Appellate Rules 2 and 4**. The proposed amendments to FRAP 2 and 4 adopted in response to the CARES Act were given final approval.

(2) **Appellate Rule 26**. The proposed amendment to FRAP 26 to include the Juneteenth National Independence Day as a legal holiday was approved.

(3) **Appellate Rule 29**. There was lengthy discussion on proposals to amend FRAP 29 to require additional disclosures by amici curiae. No decisions were made.

(4) **Bankruptcy Rule 8006(g)**. There was a brief discussion on the impact of proposed amendments to Bankruptcy Rule 8006(g) that were shared later in the meeting.

(C) ***March 29, 2022 Meeting of the Advisory Committee on Civil Rules***

Judge Catherine Peek McEwen provided a report. The meeting was conducted on a hybrid basis because of the COVID-19 health emergency.

(1) **Civil Rule 12**. In January, the Standing Committee approved for public comment an amendment to Civil Rule 12(a) that will clarify that the time to serve responsive pleadings does not override a deadline set by statute. Although Civil Rule 12 is not applicable in bankruptcy proceedings, we should look at Bankruptcy Rule 7012(a) to determine if a parallel amendment is warranted.

(2) **Civil Rule 16**. Civil Rule 16 is set to be amended Dec. 1, 2022, regarding expert witness disclosures. Bankruptcy Rule 7016(a) applies Civil Rule 16.

(3) **CARES Act – Rules Emergency.** The Civil Advisory Committee gave final approval to Rule 87, the rules emergency proposal.

(4) **Rule 15(a)(1)**. The Civil Advisory Committee gave final approval to an amendment to Civil Rule 15(a)(1) to replace the word "within" with "no later than." This rule applies in bankruptcy adversary proceedings.

(5) **Rule 9(b).** The Civil Advisory Committee had been considering an amendment to Rule 9(b) to change the second sentence that allows state of mind to be pleaded "generally" by deleting that word and saying instead that state of mind may be pleaded "without setting forth the facts or circumstances from which the condition may be inferred." The proposal was made by Dean A. Benjamin Spencer and was intended to undo the portion of the Supreme Court's Iqbal decision holding that although mental state need not be alleged "with particularity," the allegation must still satisfy Rule 8(a) – meaning some facts must be pleaded.

Dean Spencer's view is set out at length in a Cardozo Law Review article. Based on reported case law holding that the heightened scrutiny in the first sentence is not appliable to the second sentence, there appears to be no need for the proposed amendment. Therefore, the Civil Advisory Committee accepted the recommendation of the Rule 9(b) Subcommittee to take no action on this proposal.

(6) **Juneteenth Amendment**. The Civil Advisory Committee at its meeting in October 2021 gave final approval to an amendment to Rule 6(a)(6)(A) to include Juneteenth National Independence Day in the list of statutory holidays. That proposed amendment will be forwarded to the Standing Committee for its June meeting, with the comparable amendments made by the other advisory committees for final approval without publication.

(7) **Privilege Logs– Rule 26(b)(5)(A).** The Discovery Subcommittee is considering proposals to amend Rule 26(b)(5)(A) and presented a preliminary draft to the Civil Advisory Committee for comments. The goal is for the subcommittee to study the draft over the next year with the hope that a proposal will be ready in March 2023. This rule applies in bankruptcy cases, so we will continue to monitor the Subcommittee's efforts.

(8) **Joint Civil-Appellate Subcommittee on Final Judgment Rule.** The Joint Civil-Appellate Subcommittee (aka "Hall v. Hall Subcommittee") appointed to study the effects of the final judgment rule for consolidated actions announced in Hall v. Hall, 138 S. Ct. 1118 (2018), received an extensive Federal Judicial Center study of appeals in consolidated actions filed in 2015, 2016, and 2017. It subsequently began informal efforts to ask judges in the Second, Third, Seventh, Ninth, and Eleventh Circuit Courts of Appeals about their experience with Hall v. Hall. Only the Second Circuit has dismissed appeals based on Hall v. Hall. The Subcommittee will meet again to consider further steps. The initial study was not useful. Consequently, the FJC's Emery Lee devised a different study methodology that he believed would yield better data. His initial findings were released recently and show few affected appeals. The Subcommittee has not met to discuss them.

(9) **Civil Rule 6(a)(4)(A)**. Civil Rule 6(a)(4)(A)'s "last day" clause is being studied by the FJC for whether the end of a day at midnight imposes undue burden on lawyers. Bankruptcy Rule 9006(a)(4) is our parallel rule.

(10) **Civil Rule 41**. A subcommittee will be formed to study Civil Rule 41 and the extent of dismissals under the rule, e.g., part of an action. Bankruptcy Rule 7041 makes Civil Rule 41 applicable in adversary proceedings, so we will monitor the developments.

(11) **Civil Rule 55**. Civil Rule 55(a)'s mandate for Clerks to enter defaults is being studied by Emery Lee and will be revisited in October. Bankruptcy Rule 7055 makes Civil Rule 55 applicable in adversary proceedings.

(12) **IFP Practices and Standards.** The Civil Advisory Committee has received various submissions over the past couple of years relating to the great variations in standards employed to qualify for in forma pauperis status as among different districts and as

among judges in the same district. The Civil Advisory Committee discussed creating a joint subcommittee or other joint study of in forma pauperis standards, which could craft a civil rule or provide uniform and good practice guidance on IFP standards. There is no proposal for present action, but the topic will remain on the agenda at least until next fall to see whether there is a sufficiently promising proposal to warrant further work.

(13) **Pro-Se and E filing**. Reporters for all the committee are deliberating on giving pro se filers authority to file electronically; recommendations may come next fall.

The next meeting of the Civil Advisory Committee will be on October 12, 2022, in D.C.

(D) ***Dec. 7-8, 2021, 2021 Meeting of the Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee")***

Judge Alquist provided the report.

The Bankruptcy Committee met in December in Miami in person. The next meeting is scheduled for June 23-24, 2022.

The Bankruptcy Committee reviewed the failure of Congress to act on its legislative proposal in response to the CARES Act, and was updated on the proposed rules amendments, including new Rule 9038.

As to proposed amendments to Rule 3011, which were based on the bankruptcy Committee's proposal, the Bankruptcy Committee is grateful for the Advisory Committee's consideration of these amendments.

The Bankruptcy Committee also supports the proposed amendment to Rule 7001(1) in response to the decision of the Supreme Court in City of Chicago v. Fulton, 141 S.Ct. 585 (2021).

Subcommittee Reports and Other Action Items

4. **Report of the Emergency Rule Subcommittee**

(A) ***Consider comments on proposed new Bankruptcy Rule 9038***

Judge Wu and Professor Gibson provided the report.

At its June 2021 meeting, the Standing Committee approved for publication proposed emergency rules for the Civil, Criminal, Appellate, and Bankruptcy Rules, including proposed Bankruptcy Rule 9038. Only one comment was submitted concerning Rule 9038. The Federal Bar Association submitted a comment stating that it "supports each of the revised and new rules developed by the Appellate, Bankruptcy, Civil, and Criminal Rules Committees in response to the rulemaking directive in Section 15002(b)(6) of the CARES Act."

The Subcommittee recommended that the Advisory Committee give final approval to Rule 9038, as published, and ask the Standing Committee to do the same. The Advisory Committee voted to approve Rule 9038 and ask the Standing Committee to give final approval to the Rule.

5. **Report by the Consumer Subcommittee**

(A) ***Recommendation Concerning Suggestion 21-BK-G for Amendments to Rule 1007(b)(7)***

Professor Bartell provided the report.

Current Bankruptcy Rule 1007(b)(7) requires that, "[u]nless an approved provider has notified the court that the debtor has completed a course in personal financial management after filing the petition, an individual debtor in a Chapter 7 or Chapter 13 case—or in a Chapter 11 case in which § 1141(d)(3) applies—must file a statement that such a course has been completed (Form 423)."

Bankruptcy Judge Arthur I. Harris of the N.D. Ohio submitted Suggestion 21-BK-G, in which he proposed that use of Official Form 423 not be required. Instead, he suggested that the Rule be amended to also allow submission to the court of the Certificate of Debtor Education that is provided to the debtor by the provider of that course.

At the last meeting of the Advisory Committee, the Subcommittee presented a proposed amendment to Rule 1007(b)(7) that would make that certificate the *only* acceptable evidence of completion of the course on personal financial management, and would explicitly exclude from the requirements of the Rule a debtor who is not required to complete such a course. If the debtor has been excused from completing the course by court order, the court order will provide adequate evidence of that fact, and submission of an Official Form seems unnecessary.

Just prior to the fall meeting of the Advisory Committee, Professor Struve pointed out that there are a number of other bankruptcy rules (in particular, Rules 1007(b)(7), 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2)) that refer to the "statement required by" Rule 1007(b)(7), all of which would have to be modified if the language of Rule 1007(b)(7) were changed to require a certificate rather than a statement. This could be avoided if the draft language replaced the words "certificate of course completion" with "statement of course completion" in both the text of the rule and the committee note.

The Advisory Committee expressed its support for the amendments proposed by the Subcommittee, but remanded the proposed amendments to the Subcommittee to consider whether the terminology in the proposed amendments should be changed to "statement" or whether the other rules that refer to the "statement" should be amended to refer to a "certificate." The Advisory Committee also asked the Forms Subcommittee to consider whether Form 423 should be eliminated if the amendments to Rule 1007(b)(7) go into effect.

The Subcommittee concluded that it was not appropriate to change the language in the proposed amendments to Rule 1007(b)(7) from "certificate" to "statement" because the document from the providers is clearly labeled a certificate. Therefore, the Subcommittee recommended that the amendment to Rule 1007(b)(7), and conforming amendments to Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2) and the related committee notes be approved for publication (with some minor changes in Rule 1007(b)(7) and committee note suggested by the style consultants).

The Advisory Committee approved those amendments and committee notes and recommended to the Advisory Committee that they be published for comment.

(B) ***Consider Comments on Proposed Amendments to Bankruptcy Rule 3002.1***

Professor Gibson provided the report. Proposed amendments to Rule 3002.1 were published for comment in August 2021. The amendments are designed to encourage a greater degree of compliance with the rule and to provide a new midcase assessment of the mortgage claim's status in order to give a chapter 13 debtor an opportunity to cure any postpetition defaults that may have occurred.

Twenty-seven comments were submitted on the proposed amendments, some of which were lengthy and detailed and others briefly stating support or opposition to the amendments.

The reactions to the published amendments were mixed. Broadly described, the comments fell into 3 categories:

(1) Comments opposing the amendments, or at least the midcase review, submitted by some chapter 13 trustees, including one signed by 68 trustees.

(2) Comments favoring the amendments, submitted by some consumer debtor attorneys.

(3) Comments favoring the amendments but giving suggestions for improvement, submitted by trustees, debtors' attorneys, judges, and an association of mortgage lenders.

The Subcommittee met three times to discuss the comments and to consider a course of action. Because the Subcommittee was unable to complete its consideration of the comments, it did not recommend any action on the proposed amendments to Rule 3002.1 at this meeting. Instead, it wished to provide the Advisory Committee an overview of the comments and the major points they raised, and report on the Subcommittee's discussions and tentative decisions in response to those comments.

The Subcommittee began its discussions with two threshold issues: are the amendments needed, and is there authority to promulgate them under the Rules Enabling Act, 28 U.S.C.

§ 2075? The Subcommittee concluded that, although there were some negative reactions to the proposed amendments, there is a need for some improvements to the Rule. The Subcommittee also concluded that Rule 3002.1 is a procedural rule that implements a debtor's right under § 1322 to cure and maintain payments on a home mortgage or, in some cases to pay it off over the duration of a chapter 13 plan. The proposed amendments were intended to provide consequences for noncompliance with that rule, provide procedures for reconciling records, and to authorize an enforceable order that documents the debtor's successful completion of the mortgage payments under the plan. The Subcommittee has tentatively approved a change to the HELOC provision to ensure that it does not exceed rulemaking authority, but is confident that the amendments are authorized by the Rules Enabling Act.

The Subcommittee has tentatively agreed to several changes to the published version of subdivision (b). The provision in paragraph (3)(A) for annual notices of payment change for HELOCs would be made optional. The provision was proposed for the convenience of HELOC claim holders, so if they would prefer to continue to file notices whenever the payment amount changes, the Subcommittee saw no reason to prohibit them from doing so. Making the provision optional would also satisfy the concern expressed by one commenter about altering substantive rights.

The Subcommittee's consideration of the comments has led it to sketch out a revised midcase assessment procedure. It would be optional and could be initiated at any time in the case by whoever is making the postpetition mortgage payment—the trustee in a conduit case, the debtor in a non-conduit case—by filing a motion for determination of the status of the mortgage. The procedure would be default-based. The claim holder would not be required to respond, but if it did not do so, the court could enter an order favorable to the moving party based on the facts set forth in the motion. If the claim holder did respond and opposed the motion, it would be treated as a contested matter to be resolved by the court. No objection to the response or motion to compel would be required.

While the Subcommittee would like the end-of-case procedure to be as similar as possible as the midcase one, it has not yet resolved issues about how the procedure should be structured. Among the uncertain issues are whether the procedure should be mandatory in all cases, who should initiate it, whether it should be by notice or motion, whether the claim holder should be required to respond, what action should be taken if there is no response, and how it would apply in a non-conduit case.

Judge Connelly noted that working through the comments was a heroic task undertaken by Professor Gibson. This rule will have a far-reaching impact and it is important that the Advisory Committee get it right. The Subcommittee plans to continue its consideration of those issues and all of the comments so that it can have a recommendation of proposed changes to the Rule 3002.1 amendments to present at the fall meeting. The Subcommittee hopes that those changes will not be so substantial as to require republication. If they are not and if the Advisory Committee gives final approval to the amendments by spring 2023, they would be on track to take effect in 2024.

At this meeting, the Subcommittee was seeking the Committee members' thoughts on the comments submitted on the proposed Rule 3002.1 amendments and what changes, if any, should be made to the Rule. In particular, it asked for feedback on whether members agree with the Subcommittee's resolution of the threshold issues—need for amendments and authority to promulgate them—and on the tentative decisions discussed above. It also solicited ideas about how best to structure the end-of-case procedure for obtaining a determination of the status of the mortgage.

Judge Kahn expressed his gratitude to the Subcommittee for its work, and said that one cannot overstate the importance of this issue in chapter 13. Some of those who commented and objected to the proposed amendments were in districts that already had local procedures for a midcase review. He supports the approach of the Subcommittee.

Judge McEwen pointed out that Keith Lundin had very specific comments, and asked whether the Subcommittee had examined those. Professor Gibson said that those specific comments would be addressed at the next Subcommittee meeting. Judge Dow pointed out that many of his comments were addressed to existing language that was not being modified. Judge McEwen said that her district rarely sees this issue, and supports making the midcase review optional.

Debra Miller also supports making the midcase review optional and allowing it to occur at any time. The end-of-case procedures need to be worked on, and in addition to rule changes some education needs to be conducted among the trustees. She believes that we can develop a good system that will resolve a lot of the issues that the commenters raised.

Judge Donald asked whether the amendments would meaningfully affect discharge rates in chapter 13. Ms. Miller said that she thought it would help a great deal.

Judge Kahn supports making both midcase and end-of-case reviews voluntary because of the cost issues. He thinks no one is going to go to the court when the debtor has fallen behind in making the mortgage payments. It is not clear that a court may provide additional time for curing at the end of a case. Ms. Miller stated that a midcase motion may be styled as a request for information. Ms. Elliott stated that if the burden is on the debtor, there needs to be education for debtor's attorneys. Judge Connelly asked Judge Kahn to clarify his view that end-of-case procedures should be voluntary. Judge Kahn stated that he likes the model of current Rule 3002.1 – the trustee should be required to file a report of payments in conduit jurisdictions but without mandatory motions. Professor Gibson said that the difficult issue is what happens when the claim holder does not respond to the request for information about postpetition payments. Judge Kahn suggested that nonresponse could lead to the debtor voluntarily filing a motion, and the claim holder would be barred from presenting any evidence of the postpetition payments they failed to disclose. Judge Dow suggested that we go back to the rule as it was and modify from that starting point. Ms. Miller said that the biggest issue with the current rule is that nothing is filed at all. That causes the problems. But we can make some changes to the amended rule. Professor Gibson suggests that a different trigger than making the final cure payment is necessary because the trustee may not be making any cure payments.

The Advisory Committee agreed with the Subcommittee's conclusions on the threshold issues, and its approach to the midcase review. The Subcommittee should continue its work and try to submit a revised draft at the fall meeting.

6. **Report by the Forms Subcommittee**

(A) **Consider Comments and Recommendation for Final Approval of Proposed Amendments to Official Form 101 and Committee Note**

Professor Bartell provided the report. The Standing Committee approved publication of amendments to Form 101 at its last meeting. The amendments (1) eliminate the portion of Question 4 that asks for any business names the debtor has used in the last 8 years (leaving only the request for employer identification numbers, if any), and (2) expand the margin instruction at Question 2 (which now asks for "All other names you have used in the last 8 years" and directs the debtor to "Include your married or maiden names") to modify the language in small font after "All other names you have used in the last 8 years" to read "Include your married or maiden names and any assumed, trade names and doing business as names." The amendments also add the additional instruction: "Do NOT list the name of any separate legal entity, like a corporation, partnership, or LLC, that is not filing this petition" and revise the lines for including the information to add lines for "business name (if applicable)". The amendments make Form 101 consistent with Forms 105, 201, and 205, the other forms of petitions.

We received one comment on the proposed amendment from Sam Calvert, who suggested the part 1, Question 2, be divided into 2a (which would be the Question as published) and 2b, which would provide a space for information about an entity for whom the debtor was serving as guarantor or surety.

The Subcommittee decided to make no change in response to this comment. The proposed changes to Official Form 101 make it consistent with Official Forms 105, 201 and 205, none of which includes the information Mr. Calvert is requesting. Moreover, that information is available on Schedule E/F.

The Subcommittee recommended the amended Form 101 and Committee Note to the Advisory Committee for final approval in the form in which it was published. The Advisory Committee approved the amended Form 101 as published.

(B) ***Consider comments and Recommendation for Final Approval of Proposed Amendments to Official Forms 309E1, 309E2, and Committee Note***

Professor Bartell provided the report. The Advisory Committee approved publication of proposed amendments to Official Forms 309E1 (line 7) and 309E2 (line 8) to clarify the language about deadlines for objecting to the debtor's discharge and for objecting to the dischargeability of a specific debt. We received no comments on the proposed amendments. At the Subcommittee meeting it was agreed to insert a comma in line 7 of Form 309E1 and line 8 of

Form 309E2 in two places, one after "§ 1141(d)(3) in the first bullet and one after "or (6)" in the second bullet.

With those changes, the Subcommittee recommended the amended Official Forms 309E1 and 309E2 and the Committee Note to the Advisory Committee for final approval. The Advisory Committee approved the amended Forms and Committee Note with those changes.

(C) ***Consider Recommendation to Retire Official Form 423 if Proposed Amendments to Rule 1007(b)(7) Become Effective***

Professor Bartell provided the report. The Consumer Subcommittee has recommended amendments to Rule 1007(b)(7) (and several other rules) to make the certificate of completion issued by the provider of a course in personal financial management the exclusive acceptable evidence of the debtor's completion of the course and to exclude from the provisions of the Rule a debtor who is not required to complete such a course.

The Advisory Committee asked the Subcommittee to consider whether, if the amendments to Rule 1007(b)(7) become effective, Form 423 should be withdrawn as having no further purpose.

Official Form 423 has two different certifications. In the first, the debtor certifies that the debtor completed an approved course in personal financial management, and provides the date the course was taken, the name of the approved provider, and the certificate number. Alternatively, the debtor may certify that the debtor is not required to complete a course in personal financial management because the court has granted a motion waiving the requirement, and to identify the ground for such a waiver (incapacity, disability, active duty, or residence in a district in which the approved instructional course cannot adequately meet the debtor's needs).

As to the first certification, because the proposed amendment to Rule 1007(b)(7) makes submission of the certificate of course completion the exclusive means of satisfying the condition to discharge for an individual debtor in a chapter 7 or chapter 13 case, or in a chapter 11 case in which § 1141(d)(3)((C) applies, there is no need for the Official Form 423 submission because the certificate of course completion contains all the required information.

As to the second certification, if the court has already approved a motion excusing the debtor from the personal financial management course requirement, the court order so stating provides adequate evidence of that waiver and, again, there is no need for the Official Form 423 submission saying the same thing.

The Subcommittee recommended to the Advisory Committee that, if the proposed amendments to Rule 1007(b)(7) become effective, Official Form 423 be withdrawn. The Advisory Committee agreed with the recommendation.

(D) ***Consider Suggestion 22-BK-A to Amend Proof of Claim Attachment – Form 410A***

Professor Bartell provided the report. We received a suggestion, 22-BK-A, from Bankruptcy Judge Robert J. Faris of Hawaii, who suggests that Form 410A Proof of Claim Attachment A, be modified in Part 3 (Arrearage as of Date of the Petition) to replace the first line (which currently asks for "Principal & Interest") with two lines, one for "Principal" and one for "Interest."

Although the Subcommittee was not uniformly convinced by the reasons Judge Faris proposed for the change, it agreed that the information would be useful by placing the burden on the creditor of giving the debtor and the chapter 13 trustee the information necessary to determine whether the plan is treating the creditor's claim correctly.

The Subcommittee recommended that the Advisory Committee approve for publication the amended Form 410A with the accompanying committee note. The Advisory Committee approved the Form and committee note for publication.

(E) ***Comments on Proposed Amendments to Official Form 417A***

Professor Gibson provided the report. Last August the Standing Committee published for comment amendments to Official Form 417A that were proposed to conform to amendments proposed for Rule 8003. No comments were submitted on the proposed amendments to the form or to the rule.

The Subcommittee recommended that the Advisory Committee give its final approval to the proposed amendments to Official Form 417A, as published, and that it ask the Standing Committee to do the same, with a Dec. 1, 2023 effective date when the amended rule goes into effect. The Advisory Committee approved the proposed amendments and requested the Standing Committee to give final approval to them, with a Dec. 1, 2023 effective date.

(F) ***Comments on New Forms Related to Rule 3002.1***

Professor Gibson provided the report. Last August the Standing Committee published for comment proposed Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R. They were proposed to implement proposed amendments to Rule 3002.1 that would create new procedures for a midcase and end-of-case determination of the status of a home mortgage claim in a chapter 13 case.

Nine comments were submitted on the proposed forms. The comments received on the underlying rule amendments, like those on the proposed forms, expressed a range of views and in some cases were quite detailed. As previously discussed, the Consumer Subcommittee is still in the process of considering the comments and deciding what revisions to the published rule amendments to recommend. Because the amendments to Rule 3002.1 that the forms in question implement remain in flux, the Subcommittee decided to defer its consideration of the comments

on the forms until decisions about the rule amendments have been made. It hopes to be able to make its recommendations about any needed revisions to the forms at the fall Advisory Committee meeting.

7. **Report by the Technology and Cross-Border Insolvency Subcommittee**

(A) ***Suggestion 20-BK-E from CACM for Rule Amendment Establishing Minimum Procedures for Electronic Signatures of Debtors and Others***

Judge Oetken and Professor Gibson presented the report. The Subcommittee has been considering its response to the suggestion (20-BK-E) by the Committee on Court Administration and Case Management ("CACM") regarding the use of electronic signatures in bankruptcy cases by individuals who do not have a CM/ECF account, along with suggestions by Sai (21-BK-H and 21-BK-I) regarding electronic filing and the use of electronic signatures by self-represented individuals.

At the fall meeting of the Advisory Committee the Subcommittee presented for discussion a preliminary draft of an amendment to Rule 505(a)(2)(C) regarding the use of electronic signatures in bankruptcy cases by individuals who do not have a CM/ECF account. Discussion of the proposal brought up several questions and concerns. Among the issues raised whether there is really a perception among attorneys that the retention of wet signatures presents a problem that needs solving.

The Reporter followed up on the question of whether there is a problem that requires an amendment to the rules by a discussion with Bankruptcy Judge Vincent Zurzolo whose inquiry to CACM led to CACM's suggestion to the Advisory Committee. Judge Zurzolo expressed the view that the courts were out of step with modern commerce by still requiring the retention of wet signatures rather than using some kind of electronic signature product, like DocuSign. He said that there was mild concern among the lawyers about having to retain wet signatures, but a stronger interest in facilitating the electronic filing of documents such as stipulations, where the filing attorney files a document with other attorneys' signatures.

The Subcommittee discussed what it considered to be a fundamental question that has yet to be resolved by the Advisory Committee: Does a problem exist under current practices that needs a national rule solution? Attorneys can file documents in the bankruptcy courts electronically, and the use of their CM/ECF account provides the basis for accepting their electronic signatures as valid. If they electronically file documents that their client or another individual has signed, they generally must retain the original document with the wet signature.

To date, the Advisory Committee has not received a suggestion from any bankruptcy attorney that the current procedures are causing problems. Judge Zurzolo's inquiry to CACM about the use of electronic signatures seems to have been based more on the desire to bring bankruptcy courts into the modern age of e-signing rather than on concerns he heard from attorneys about having to retain wet signatures. The suggestion from CACM does note that in 2013 it had suggested that "courts' local rules varied in their requirements to retain original

paper documents bearing 'wet' signatures, and that these varying practices posed problems for attorneys that file in multiple districts." Comments in response to the Advisory Committee's earlier electronic-signature proposal, however, did not produce comments bearing out that concern. CACM's current suggestion is based on concern that the absence of a provision in Rule 5005 regarding the electronic signatures of individuals without CM/ECF accounts may make courts "hesitant to make such a change without clarification in the rules that use of electronic signature products is sufficient for evidentiary purposes."

The Subcommittee concluded that current Rule 5005 does not address the issue of the use of electronic signatures by individuals who are not registered users of CM/ECF and that it therefore does not preclude local rulemaking on the subject. The Bankruptcy Court for the District of Nebraska already has such a rule (L.B.R. 9011-1), and other courts, such as Bankruptcy Court for the Central District of California, may adopt such rules in the future. The Subcommittee concluded that a period of experience under local rules allowing the use of e-signature products would help inform any later decision to promulgate a national rule. This discussion should put to rest any concerns about the authority of districts to adopt local rules. Electronic signature technology will also likely develop and improve in the interim.

For those reasons, the Subcommittee recommended that no further action be taken on the CACM suggestion.

The Subcommittee believes that the question of electronic signatures of pro se debtors presents different issues and should be considered separately. Professor Struve convened a working group of the reporters of the various Advisory Committees and AO staff to consider the issues presented by the pending suggestions regarding electronic filing by pro se litigants. The working group has met twice. The Federal Judicial Center has prepared a draft report with the information it has gathered about national practices on the issue. The FJC reported that districts that had provided pro se litigants access to CM/ECF had encountered very few problems. The researchers found that it is rare that bankruptcy filers are given CM/ECF access. Instead they generally use electronic self-representation software (ESR) that is available in NextGen, and petitions completed using this software are complete and legible. The difference between bankruptcy practice and non-bankruptcy practice is that the filing of the petition has an immediate effect on other parties. The working group asked whether uniformity is required between different practice areas.

One overriding question raised was whether this is an issue of rule-making or technology and administration. The one area in which the working group identified a rules-related issue is the requirement for physical service (the requirement for paper service if CM/ECF is not used).

The FJC study is not final and will be shared when it is.

Professor Struve added her thanks for the hard work of the FJC and the reporters on this issue.

Ken Gardner stated that CM/ECF is not the issue; the electronic signature is the issue. We need to deal with electronic signatures for pro se debtors. Judge McEwen has a litigant who has been filing with DocuSign because he is homeless and has no ability to print or scan. This is a serious issue.

8. **Report of the Privacy, Public Access, and Appeals Subcommittee**

(A) ***Consider Possible Amendments Addressing the Timing of Post-judgment Motions in Bankruptcy Proceedings Initially Heard in the District Court***

Professor Gibson provided the report. In response to a recent First Circuit decision, Professor Cathie Struve—reporter for the Standing Committee—raised with the reporters an issue that involves the overlap of the bankruptcy, civil, and appellate rules. The issue is whether, in a bankruptcy proceeding heard and decided by a district court, the time for filing postjudgment motions of the type that toll the period for filing a notice of appeal should be 14 days, as in the bankruptcy court, or should be 28 days because of the longer time for taking an appeal from the district court. Because the resolution of this issue likely requires either amending Bankruptcy Rules 7052 (Amended or Additional Findings), 9015(c) (Renewed Motion for Judgment as a Matter of Law), and 9023 (New Trials) or recommending that the Federal Rules of Appellate Procedure be amended, it was referred to this Subcommittee for consideration.

The district court in In re Lac-Mégantic Train Derailment Litigation exercised bankruptcy jurisdiction over all personal injury actions against the debtor and others. Twenty-eight days after a final judgment dismissing a defendant for lack of personal jurisdiction and denying the plaintiffs' motion to file an amended complaint, the plaintiffs moved for reconsideration of the order. The district court denied the motion for reconsideration and the plaintiffs filed an appeal, apparently within 30 days after the denial of reconsideration. The First Circuit dismissed the appeal for lack of appellate jurisdiction because the motion for reconsideration was not filed within 14 days after the entry of judgment as required by Bankruptcy Rule 9023, which is applicable to noncore proceedings heard by a district court. Because the motion was untimely, it did not toll the time for appealing under Fed. Rule of Appellate Procedure 4(a). The notice of appeal was filed more than 30 days after the original entry of judgment, so the court lacked appellate jurisdiction.

In calling the Lac-Mégantic case to the reporters' attention, Professor Struve pointed out a potential problem caused by the different time periods for filing postjudgment motions under Civil Rules 50, 52, and 59 (28 days) and their bankruptcy counterparts, Rules 7052, 9015(c), and 9023 (14 days). Under FRAP 4(a)(4)(A), the listed postjudgment motions toll the time for filing a notice of appeal if "a party files in the district court any of [those] motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules." According to FRAP 6(a), that rule applies when an appeal is taken from a district court's exercise of jurisdiction under 28 U.S.C. § 1334.

But Professor Struve questioned which time period applies in such cases. If applied literally—using the time allowed by the Civil Rules—Rule 4(a)(4)(A) would allow motions that

are untimely under Bankruptcy Rules 7052, 9015(c), and 9023 to toll the time for filing a notice of appeal from a bankruptcy proceeding in the district court. On the other hand, if the bankruptcy time periods must be complied with, an inconsistency appears to be created with Rule 4(a)(4)(A)'s provision for tolling when motions are timely under the Civil Rules.

One possibility the Subcommittee considered to make clear that the current bankruptcy deadlines for postjudgment motions apply under FRAP 4(a)(4)(A) in bankruptcy proceedings heard by a district court was to suggest that the Appellate Rules Advisory Committee consider an amendment to Rule 4(a)(4)(A) to refer specifically to motions under the Federal Rules of Bankruptcy Procedure. An alternative approach considered was to suggest an amendment to FRAP 6(a) to add language that might state as follows: "The reference in Rule 4(a)(4)(A) to the time allowed by the Federal Rules of Civil Procedure must be read as a reference to the time allowed by the Federal Rules of Civil Procedure as shortened, for some types of motions, by the Federal Rules of Bankruptcy Procedure."

The Subcommittee considered whether, instead of suggesting a FRAP amendment, the Bankruptcy Rules should be amended to draw a distinction between proceedings heard by the district court and those heard by the bankruptcy court. The Subcommittee rejected that approach, and also concluded that it was not appropriate to recommend no action be taken on this matter.

The Subcommittee recommended that the Advisory Committee ask the Advisory Committee on Appellate Rules to consider amending FRAP 6(a) along the lines suggested above, with the actual wording of any such amendment remaining in the hands of the Advisory Committee on Appellate Rules.

Judge Kahn asked why the 30-day period in FRAP was not changed to 28 days. Professors Gibson and Struve noted that only periods less than 30 days were changed. Judge Kahn asked whether the Subcommittee considered whether there should be consistency in the district court between bankruptcy and non-bankruptcy matters. Professor Gibson said that there are alternative quests for consistency – either consistency in the district court or consistency with respect to all bankruptcy proceedings wherever they are heard. We have no other examples of different rules when a bankruptcy matter is heard by a district court, and therefore the Subcommittee opted for consistence for all bankruptcy proceedings.

Judge Ambro explained that he wants to be as simple as possible in dealing with the problem. That is the approach the Subcommittee adopted. Judge Krieger noted that in cases in district court the applicable process is different than when the matter is in bankruptcy court. Judges and litigants are uncertain what procedures to use. Perhaps there should be some way to alert judges and litigants which process applies.

Judge Dow asked whether there are other decisions on the applicability of bankruptcy rules in the district court. Professor Gibson said that district courts have consistently held that bankruptcy rules apply when the district court hears a bankruptcy matter. Judge Kayatta and Judge McEwen agreed. Professor Struve endorsed the Subcommittee solution. Judge Ambro wants to make sure attorneys do not have malpractice claims for violating timing rules. Judge

Wu asked whether the procedures are really that different between district court and bankruptcy court. Professor Gibson said that most procedures are the same, but that means that there is concern when they differ. Judge Krieger suggested that district judges should start with the bankruptcy rules rather than the civil rules when dealing with bankruptcy matters. Judge Connelly suggested adding an appendix that showed differences. Professor Coquillette said that the FJC is a good vehicle for educating district judges on this issue.

The Advisory Committee agreed to make the suggestion to the Appellate Rules Committee that they consider amending FRAP 6(a).

(B) ***Consider Comments on Proposed Amendments to Rule 8003***

Professor Gibson provided the report. Last August the Standing Committee published for comment amendments to Rule 8003 (Appeal as of Right—How Taken; Docketing the Appeal) that were proposed to conform to amendments recently made to FRAP 3. No comments were submitted on the proposed amendments.

The Subcommittee recommended that the Advisory Committee give its final approval to the proposed amendments to Rule 8003, as published, and the committee note, and that it ask the Standing Committee to do the same. The Advisory Committee gave final approval to the proposed amendments and committee note, and will request the Standing Committee to do so.

(C) ***Consider Comments on Proposed Amendments to Rule 3011***

Professor Bartell provided the report. The Standing Committee approved publication of amendments to Rule 3011 with respect to unclaimed funds in response to a proposal from the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee), 20-BK-G.

There was one comment on the proposed amendments from Daniel J. Isaacs-Smith of the Administrative Office of the United States Courts. He suggested that language referring to "information in the data base" be changed to "data about such funds" because there is no reference elsewhere to a data base. The Subcommittee agreed to delete the words "data base" and instead of using the word "data" to use the word "information." Professor Bartell noted that Rule 3011 is among the restyled rules that are being presented to the Advisory Committee for final approval at this meeting, and the existing clause (a) will be restyled in connection with that project.

Ken Gardner supported the modifications. The Advisory Committee approved the amendments to Rule 3011 with the changes from publication presented to the Advisory Committee.

(D) ***Consider Recommendation to Publish an Amendment to Rule 8006(g)***

Professor Bartell provided the report. Under 28 U.S.C. § 158(d)(2)(A), a judgment, order or decree of a bankruptcy court may be appealed directly to the court of appeals if the

bankruptcy court, district court or bankruptcy appellate panel, acting on its own or on the request of a party to the judgment, order or decree, or all the appellants and appellees (if any) acting jointly, certify that the judgment, order or decree meets the requirements of that section and the court of appeals agrees to accept the direct appeal.

Fed. R. Bankr. P. 8006(g) currently states that "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 with the circuit clerk in accordance with Fed. R. App. P. 6(c)." Bankruptcy Judge A. Benjamin Goldgar has suggested a change in Rule 8006(g) to specify who must file the request for permission to take a direct appeal. The current rule is written in the passive voice and leaves the question open. He described one of his cases in which he certified his judgment for direct appeal but the appellants declined to file the request for permission to take the direct appeal. It was not clear that the appellees could file the request, and they did not do so. Without a request for permission to appeal, the court of appeals cannot entertain the appeal. He suggested that the Rule be amended to add a sentence stating that "any appellant or appellee" or "any party to the appeal" may file the request for permission to take a direct appeal to the court of appeals.

The Subcommittee recommends amended language that makes two substantive changes. First, it changes the word "must" to "may" to avoid suggesting that any party must file a request for leave to take a direct appeal. Second, the Subcommittee recommends adding a new sentence at the end of the Rule stating that "A request may be filed by any party to the prospective appeal."

Tara Twomey asked whether only the appellant should have the right to take a direct appeal. Judge Ambro said that the change expands the options to get a resolution of an issue the court believes is significant. Ms. Twomey also asked whether the trustee should be able to file the request. Judge Ambro said yes if it is a party to the appeal.

Judge Kahn does not think this is a substantive change. If the judge certifies, someone should be filing the request. The problem is that the current rule is written in passive voice. Judge Dow agreed.

Professor Struve said that this change may be good as a policy matter. But she believes the existing rule assumed that the request would be by the appellant because it dovetails with FRAP 5. The implementation may require some changes to FRAP 6. Under FRAP 5 the words "petitioner" and "appellant" are used interchangeably. Perhaps publication should be delayed until the Appellate Rules Committee considers its implications for FRAP 5 and 6.

Judge Ambro suggested remanding the suggestion to the Subcommittee to consider Professor Struve's concerns. Judge McEwen said that it is important to get certified matters to the court of appeals as soon as possible. Judge Bates agreed that this should not be published without considering the implications for the appellate rules. The Advisory Committee remanded the suggestion to the Subcommittee for further consideration.

(E) ***Consider Suggestion 21-BK-O for a New Rule (Rule 8023.1) to Address Substitution of Parties in Bankruptcy Appeals***

Professor Bartell provided the report. Bankruptcy Judge A. Benjamin Goldgar suggests the creation of a new bankruptcy rule to deal with substitution of parties in a bankruptcy appeal to the district court or bankruptcy appellate panel. He notes that neither Fed. R. Civ. P. 25 (which deals with substitution of parties) or Federal Rule of Appellate Procedure 43 (which also deals with substitution of parties) is applicable in this situation.

FRAP 43 applies only "in the United States courts of appeals." The Federal Rules of Civil Procedure "apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure." Fed. R. Civ. P. 81(a)(2). The only Federal Rule of Bankruptcy Procedure that makes Fed. R. Civ. P. applicable to bankruptcy proceedings is Fed. R. Bank. P. 7025, which states that "Subject to the provisions of Rule 2012 [dealing with substitution of a trustee], Rule 25 F.R.Civ.P. applies in adversary proceedings. Fed. R. Civ. P. 25 is not mentioned in Part IX of the Federal Rules of Bankruptcy Procedure as being applicable in cases under the Bankruptcy Code. Nor is Rule 25 mentioned in Part VIII of the Federal Rules of Bankruptcy Procedure as applicable to bankruptcy appeals.

The Subcommittee was convinced by the suggestion, and recommended that the Advisory Committee approve for publication a new Rule 8023.1 (modeled on FRAP 43) and the related committee note. The Advisory Committee approved the new Rule 8023.1 and committee note for publication (with some minor changes suggested by the style consultants).

9. **Report of the Restyling Subcommittee**

Judge Krieger began by noting that we are nearing the end of the process, and wanted to praise the efforts of the Subcommittee members, the reporters and the Administrative Office personnel who worked on this project.

(A) ***Consider Comments on Restyled Rules Parts III, IV, V, and VI***

Professor Bartell provided the report. Parts III-VI of the Restyled Federal Rules of Bankruptcy Procedure (the "Restyled Rules") were published for comments in August 2021. We received four sets of comments.

The first set of comments came from the National Bankruptcy Conference (NBC), reflecting a review of the restyled rules by its Court System and Bankruptcy Administration Committee. The second came from the National Conference of Bankruptcy Judges. The third came from a San Jose, California law firm, Gold and Hammes. The last set came from the National Association of Consumer Bankruptcy Attorneys (NACBA). In addition, one comment from James Davis that was included in the comments on the proposed substantive revision of Rule 3002.1 was deemed by the reporters to be stylistic in nature and related to the published current version of the rule. All these comments were carefully considered by the Associate Reporter and the style consultants, and recommendations on changes to the published rules were

presented to the Restyling Subcommittee. The reactions of the Subcommittee were then reviewed again with the style consultants, and the drafts being presented to the Advisory Committee reflect these discussions.

The Subcommittee recommended the restyled rules in Parts III – VI for final approval and submission to the Standing Committee, with the suggestion that none of the restyled rules be submitted to the Judicial Conference until all restyled rules have been given final approval.

The Advisory Committee gave final approval to the restyled rules in Parts III – VI for submission to the Standing Committee with that suggestion.

(B) ***Consider Recommendation for Publication of Restyled Rules in Parts VII – IX***

Professor Bartell provided the report. The Subcommittee presents to the Advisory Committee the last group of restyled rules for approval for publication. The work between the style consultants and the Subcommittee and the reporters has been very productive and collegial, and the Subcommittee again wants to thank the style consultants for their superb work

The Subcommittee recommends that the Advisory Committee approve the restyled rules in Parts VII-IX for publication. The Advisory Committee approved the restyled rules for publication.

10. **Future meetings**

The fall 2022 meeting has been scheduled for Sept. 15, 2022 in Washington, D.C.

11. **New Business**

There was no new business.

Judge Donald expressed her appreciation for the leadership of Judge Dow on the Advisory Committee.

12. **Adjournment**

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

Proposed Consent Agenda

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

1. Privacy, Public Access, and Appeals Subcommittee

   (A) Recommendation of no action regarding Suggestions 21-BK-N and 21-BK-L for rule and form amendments concerning unclaimed funds

TAB 3

TAB 3A1

MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
June 7, 2022

The Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee) met in a hybrid in-person/virtual meeting in Washington, DC on June 7, 2022, with the public and certain members attending by videoconference. The following members were in attendance:

Judge John D. Bates, Chair
Elizabeth J. Cabraser, Esq.
Judge Jesse M. Furman
Robert J. Giuffra, Jr., Esq.
Judge Frank Mays Hull
Judge William J. Kayatta, Jr.
Peter D. Keisler, Esq.
Judge Carolyn B. Kuhl
Professor Troy A. McKenzie
Judge Patricia A. Millett
Hon. Lisa O. Monaco, Esq.*
Judge Gene E.K. Pratter
Kosta Stojilkovic, Esq.
Judge Jennifer G. Zipps

Professor Catherine T. Struve attended as reporter to the Standing Committee.

The following attended on behalf of the Advisory Committees:

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

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

Advisory Committee on Civil Rules –
Judge Robert M. Dow, Jr., Chair
Professor Edward H. Cooper, Reporter
Professor Richard L. Marcus,
Associate Reporter

Advisory Committee on Criminal Rules –
Judge Raymond M. Kethledge, Chair
Professor Sara Sun Beale, Reporter
Professor Nancy J. King,
Associate Reporter

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

Others providing support to the Standing Committee included: Professors Daniel R. Coquillette, Bryan A. Garner, and Joseph Kimble, consultants to the Standing Committee; H. Thomas Byron III, Rules Committee Chief Counsel-Designate; Bridget Healy, Rules Committee Staff Acting Chief Counsel; Scott Myers and Allison Bruff, Rules Committee Staff Counsel; Brittany Bunting and Shelly Cox, Rules Committee Staff; Burton S. DeWitt, Law Clerk to the

* Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, represented the Department of Justice (DOJ) on behalf of Deputy Attorney General Lisa O. Monaco. Andrew Goldsmith was also present on behalf of the DOJ for a portion of the meeting.

Standing Committee; Dr. Emery G. Lee, Senior Research Associate at the FJC; and Dr. Tim Reagan, Senior Research Associate at the FJC.

OPENING BUSINESS

Judge Bates called the meeting to order and welcomed everyone. He noted that Deputy Attorney General Lisa O. Monaco would not be able to attend, but he welcomed Elizabeth Shapiro and thanked her for attending on behalf of the Department of Justice (DOJ). He thanked several members whose terms were expiring following this meeting, including Standing Committee members Judge Frank Hull, Peter Keisler, and Judge Jesse Furman. Judge Bates also thanked Judge Raymond Kethledge and Judge Dennis Dow for their service as chairs of the Criminal Rules and Bankruptcy Rules Advisory Committees respectively. He welcomed Tom Byron, who would be joining the Rules Office as Chief Counsel in July, and Allison Bruff, who had joined as counsel. Judge Bates congratulated Professor Troy McKenzie on his appointment as Dean of New York University Law School. In addition, Judge Bates thanked the members of the public who were in attendance by videoconference for their interest in the rulemaking process.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the minutes of the January 4, 2022 meeting.**

JOINT COMMITTEE BUSINESS

Emergency Rules

Judge Bates introduced this agenda item, which concerned final approval of proposed new and amended rules addressing future emergencies. Specifically, the Appellate, Bankruptcy, Civil, and Criminal Advisory Committees were requesting approval of amendments to Appellate Rules 2 and 4, as well as promulgation of new Bankruptcy Rule 9038, new Civil Rule 87, and new Criminal Rule 62.

Professor Struve thanked all the chairs and reporters of the Advisory Committees for their extraordinary work on this project, and especially Professor Capra for leading the project. This project was in response to Congress's mandate to consider rules for emergency situations. In regard to the uniform aspects of these rules (*i.e.*, who declares an emergency, the basic definition of a rules emergency, the duration of an emergency, provisions for additional declarations, and when to terminate an emergency), most of the public comments focused on the role of the Judicial Conference in declaring a rules emergency. One commentator supported the decision to centralize emergency-declaration authority in the Judicial Conference; others criticized the decision in various ways. The Advisory Committees carefully considered this both before and after public comment. The uniform aspects remain unchanged post-public comment.

Professor Capra noted two minor disuniformities that remained within the emergency rules. Proposed Appellate Rule 2(b)(4), concerning additional declarations, was styled differently than the similar provisions in the proposed Bankruptcy, Civil, and Criminal emergency rules. And proposed Civil Rule 87(b)(1), concerning the scope of the emergency declaration, was worded differently than the similar provisions in the proposed Bankruptcy and Criminal emergency rules.

Proposed Civil Rule 87(b)(1), as published, stated that the declaration of emergency must "adopt all of the emergency rules in Rule 87(c) unless it excepts one or more of them." The proposed Bankruptcy and Criminal rules provide that a declaration of emergency must "state any restrictions on the authority granted in" the relevant subpart(s) of the emergency rule in question.

Appellate Rules 2 and 4. Turning to the point raised by Professor Capra, Professor Hartnett noted that proposed amended Rule 2(b)(4), as set out on lines 27 to 29 of page 89 of the agenda book, used the passive voice ("[a]dditional declarations may be made") instead of the active voice used by the other emergency rules ("[t]he Judicial Conference … may issue additional declarations"). He stated that the Appellate Rules Advisory Committee agreed to change the language to bring it into conformity with the other emergency rules.

A judge member focused the group's attention on proposed Appellate Rule 2(b)(5)(A) (page 90, line 36). In the event of a declared emergency, this provision would authorize the court of appeals to suspend Appellate Rules provisions "other than time limits imposed by statute and described in Rule 26(b)(1)-(2)." The member asked whether the "and" should be an "or." The rule, as drafted, could be read as foreclosing suspension of only those time limits that are both imposed by statute and described in Rule 26(b)(1) or (2). Professor Hartnett stated that the use of "and" was intentional. Current Appellate Rule 2 permits suspension (in a particular case) of Appellate Rules provisions "except as otherwise provided in Rule 26(b)," and Appellate Rules 26(b)(1) and (2) currently bar extensions of the time for filing notices of appeal, petitions for permission to appeal, and requests for review of administrative orders. The proposed Appellate emergency rule, by contrast, is intended to permit extensions of those deadlines, so long as they are set only by rule and not also by statute. Changing "and" to "or" would eliminate that feature of the proposed rule. Professor Struve noted that she is unaware of any deadline set by both statute and an Appellate Rule other than those referenced in Rule 26(b).

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendments to Appellate Rules 2 and 4, with the revision to proposed Appellate Rule 2(b)(4) (lines 27-29) as discussed above.**

New Bankruptcy Rule 9038. Judge Dennis Dow introduced proposed new Bankruptcy Rule 9038. The proposed new rule would authorize extensions of time in emergency situations where extensions would not otherwise be authorized. The Bankruptcy Rules Advisory Committee received only one relevant public comment, which was positive and not specific to the Bankruptcy rule. He requested the Standing Committee give its final approval to proposed new Rule 9038 as published.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved proposed new Bankruptcy Rule 9038.**

New Civil Rule 87. Judge Robert Dow introduced proposed new Civil Rule 87. The Civil Rules Advisory Committee received a handful of comments. The CARES Act Subcommittee considered these comments and determined that no changes were necessary, and the Advisory Committee agreed. The Advisory Committee made some small changes concerning bracketed

language in the committee note, but otherwise the rule looks similar to the language that came before the Standing Committee prior to publication for public comment.

Professor Cooper noted a pair of changes to the portion of the committee note shown on page 124 of the agenda book. Emergency Rule 6(b)(2)(A) authorizes a court under a declared rules emergency to "apply Rule 6(b)(1)(A) to extend" the deadlines for post-judgment motions. (Ordinarily, Civil Rule 6(b)(2) forbids a court from extending those deadlines.) Rule 6(b)(1)(A) authorizes a court, "for good cause, [to] extend the time … with or without motion or notice if the court acts, or if a request is made, before the original time *or its extension* expires." (emphasis added.) Prior to the Standing Committee meeting, a judge member had pointed out that, as published, the text of the rule, by referring to Rule 6(b)(1)(A), authorizes sequential extensions (that is, a court could grant an extension under Rule 6(b)(1)(A) and, before time expired under that extension, grant a second extension). But, the member observed, the committee note did not reflect this possibility. Professor Cooper agreed with this assessment of the committee note. The Advisory Committee therefore agreed to add language (in the first and fifth sentences of the relevant committee note paragraph) clarifying that such further extensions were possible. Separately, the Advisory Committee had decided to delete the first sentence of the next paragraph of the committee note, and to combine the remainder of that paragraph with the following paragraph to form one paragraph.

Discussion then turned to the wording of proposed Civil Rule 87(b)(1). A practitioner member noted that as he read the proposed Criminal and Bankruptcy emergency rules, if the Judicial Conference failed to specify which emergency provisions it was invoking or exempting, the default was that all the emergency provisions would go into effect. However, proposed new Civil Rule 87(b)(1)(B) by its terms worked differently: "The declaration must … adopt all the emergency rules … unless it excepts one or more of them." Under this wording, the member suggested, if the declaration did not specify which provisions it was adopting, it would be an invalid declaration. Professor Cooper stated that, originally, the relevant portion of Rule 87(b)(1) had said simply that "[t]he declaration *adopts* all the emergency rules unless it excepts one or more of them," thus setting the same default principle as the proposed Bankruptcy and Criminal rules. But in the quest for uniformity in wording across the three proposed emergency rules, the word "must" had been moved up into the initial language in Rule 87(b), which had the effect of inserting "must" into proposed Rule 87(b)(1)(B). Professor Cooper explained that (for the reasons set forth on page 111 of the agenda book) it was not possible for Civil Rule 87(b)(1)(B) to use identical wording to that in the proposed Bankruptcy and Criminal emergency rules. The Bankruptcy and Criminal provisions directed that the emergency declaration "must … state any restrictions on" the emergency authority otherwise granted by the relevant emergency rule—a formulation that would not be appropriate in the Civil rule given the indivisible nature of each particular Civil emergency rule. Professor Cooper expressed the hope that the Judicial Conference would remember to specify which courts were affected and which rules it was adopting by its emergency order. Judge Bates added that if the rule would require the Judicial Conference to make a specific declaration for Civil that need not be made for the other emergency rules, members should consider whether it would cause any problems.

Professor Struve suggested that there were actually two uniformity questions at issue—stylistic uniformity, and a deeper uniformity as to the substance. Uniformity on the substance, she

offered, could be achieved through revisions to Civil Rule 87(b)(1) (on pages 116-17)—namely, deleting the word "must" from line 10 and instead inserting it at the beginning of lines 11 and 15, and changing "adopt" at the beginning of line 12 to "adopts." Under that revised wording, if the declaration failed to specify any exceptions, it would adopt all the emergency rules in Rule 87(c)—thus achieving the same default rule as the Bankruptcy and Criminal provisions.

Professor Capra, however, stated that this proposed revision would deepen rather than alleviate the uniformity problem. He predicted that the good sense of the Judicial Conference would surmount any problem with the language of the rule as published. Professor Coquillette agreed that the Judicial Conference would know what it needed to do to declare a Civil Rules emergency. Judge Bates added that he believed the Rules Office would inform the Judicial Conference of the procedures it needed to follow to declare a Civil Rules emergency. Professor Struve expressed her confidence in the meticulousness of the Rules Office, but she questioned why the rulemakers would want to impose an additional task on the Rules Office in the event of an emergency. Making it as simple as possible for all actors to act in an emergency situation seemed desirable.

Judge Bates highlighted two goals: First, the desire for uniformity. Second, the desire to not have to ask the Judicial Conference to do something unique with respect to the Civil Rules. Judge Bates thought that Professor Struve's suggestion would accomplish the second goal, although it would offend uniformity. And, he suggested, the proposed rule as published already offended uniformity. Therefore, the question under debate was not about *creating* disuniformity but rather fixing one issue while continuing the lack of uniformity.

A practitioner member stated that she agreed with the proposed change. The change would make the rule read more clearly while also safeguarding against something being overlooked in an emergency. Professor Marcus said that the goal of the Advisory Committee was to make it as easy as possible for the Judicial Conference to declare a rules emergency, with all the emergency rules going into effect unless the Judicial Conference explicitly excluded a rule. To the extent the rule as written did not do so, it would be good to make changes to get there. A judge member agreed that the rule should not create more work for people to do in order to declare a rules emergency.

Judge Robert Dow stated that he believed Professor Struve's proposed change was friendly and therefore acceptable to the Advisory Committee. While it would add a disuniformity to the proposed new Rule 87, that disuniformity occurred in a place where the rule already was not uniform in relation to the other emergency rules. He asked the Standing Committee to grant final approval to proposed new Civil Rule 87, with the noted changes both to the committee note and to lines 10 through 15 of the rule text.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved proposed new Civil Rule 87.**

New Criminal Rule 62. Judge Kethledge introduced proposed new Criminal Rule 62. The Criminal Rules Advisory Committee received ten or so public comments, some of which were overlapping. He highlighted one change to the committee note plus two of the public comments.

First, the change to the committee note concerned a passage addressing proposed Rule 62(d)(1)'s requirement that courts provide "reasonable alternative access" to the public when conducting remote proceedings. The note as published stated that "[t]he rule creates a duty to provide the public, including victims, with 'reasonable alternative access.'" DOJ requested that the note be revised to mention the Crime Victims' Rights Act (CVRA). A pair of comments opposed this suggestion, and one of those comments requested deletion of the phrase "including victims." The latter phrase had been included to ensure that district courts did not overlook the requirements of the CVRA when holding remote proceedings, not to suggest an order of priority among observers of remote proceedings. Accordingly, the Advisory Committee revised the note as shown on page 161 of the agenda book by deleting the phrase "including victims" and by adding a sentence directing courts to "be mindful of the constitutional guarantees of public access and any applicable statutory provision, including the Crime Victims' Rights Act." This language reminds courts to consider both the First and Sixth Amendments' guarantees of public access, in addition to any statutory rights, such as the CVRA. Later in the meeting, an attorney member suggested changing "be mindful of" to "comply with," and Judge Kethledge (on behalf of the Advisory Committee) acquiesced in that change.

Second, one of the public comments concerned proposed new Rule 62(d)(2), which provides that, if "emergency conditions limit a defendant's ability to sign[,] defense counsel may sign for the defendant if the defendant consents on the record." A district judge suggested that this language be revised to allow the court to sign for the defendant as well. The Advisory Committee did not support this suggestion. There was no demonstrated need to have the court sign for the defendant when counsel would be perfectly able to do so. The Advisory Committee was particularly concerned that this would infringe upon the attorney-client relationship. And the Advisory Committee was concerned that this would allow the court to sign a request to hold felony plea or sentencing hearings remotely under proposed new Rule 62(e)(3)(B).

Third, the Advisory Committee received public comments regarding proposed new Rule 62(e)(3)(B), which addresses holding felony plea or sentencing hearings remotely. This is by far the most sensitive subject that Rule 62 addresses. A defendant's decision to plead guilty and the court's decision to send a person to prison are the most important proceedings that happen in a federal court. The Advisory Committee has an institutional perspective that remote proceedings for pleas and sentencing truly should be a last resort; holding such a proceeding remotely is always regrettable, even if it is sometimes necessary. A court does not have as much information when proceeding remotely as it would have in a face-to-face proceeding. The Advisory Committee has a strong concern that there are judges who would want to hold remote sentencing proceedings even when not necessary. These concerns underpinned Rule 62(e)(3)(B), which set as a requirement for a remote felony plea or sentencing that "the defendant, after consulting with counsel, requests in a writing signed by the defendant that the proceeding be conducted by videoconferencing." The goal of this language was to make sure the decision was unpressured and therefore truly the decision of the defendant. Comments from some judges argued, on logistical grounds, that this provision should be revised to allow the court to sign for the defendant. However, the Advisory Committee rejected those suggestions, noting that counsel for the defendant could sign the request on the defendant's behalf.

At the Advisory Committee meeting, the liaison from the Standing Committee had suggested that the committee note be revised to make clear that the requisite writing could be provided at the outset of the plea or sentencing proceeding itself. Judge Kethledge invited this member of the Standing Committee to discuss his suggestion. The member observed that Rule 62(e)(3)(B) required a "request" from the defendant, but he did not think that the rule required the request be made at any specific time. However, he suggested, it was possible to read the rule as requiring that the request be made *before* the hearing, and the note should be revised to resolve this ambiguity. He suggested (based on the challenges of arranging opportunities for counsel to confer with their clients during the pandemic) that the note say that, while it was preferable to provide the request in advance of the hearing, it could be provided at the hearing if the defendant had an opportunity to confer with counsel.

Judge Bates questioned the use of "requests" in Rule 62(e)(3)(B). If that language required that the idea of proceeding remotely must originate with the defendant, he suggested that could cause practical problems in cases where the remote option is first mentioned by the judge or the prosecutor.

A judge member stated that requiring the request in advance of the hearing could create logistical problems: a need to monitor the docket to check for the required request, and potential last-minute cancellations for lack of the required request. Also, this member suggested, the focus should be on whether the defendant freely consented to the remote proceeding, not on whether it was the defendant who had requested the remote proceeding. Later, Professor Beale stated that the Advisory Committee members recognized that requiring the request in advance of the hearing might not be efficient and could slow things down, but members felt strongly that it was important to protect the ability of the defendant to consult freely with counsel before making the decision to proceed remotely. As to the challenges presented by districts that cover large areas, Professor Beale recalled that the Advisory Committee was persuaded by a member's argument that the rules should not relax standards to accommodate infrastructure failures.

Judge Kethledge noted that the Advisory Committee was not unanimous regarding whether the request in writing must precede the proceeding, although most members of the Advisory Committee (including Judge Kethledge) thought that the request to hold the proceeding remotely must precede the plea or sentencing proceeding. The rule requires that the request be effectuated by a writing—which can only be true if the court has received the writing. Furthermore, another prerequisite for remote proceedings (including felony pleas and sentencings) is Rule 62(e)(2)(B)'s requirement that the defendant have an "opportunity to consult confidentially with counsel both before and during the proceeding." If Rule 62(e)(3)(B) permitted a request to be made midstream in a proceeding (rather than only beforehand), in such midstream instances there would have been no opportunity for consulting prior to the proceeding. Additionally, the contrast between Rules 62(e)(1) and 62(e)(2)(B) (which both require an opportunity for the defendant to consult with counsel "confidentially") and Rule 62(e)(3)(B) (which makes no mention of confidentiality) suggests that the consultation and request under Rule 62(e)(3)(B) must come before the proceeding.

The practical concern, Judge Kethledge explained, was that allowing mid-proceeding requests would open the door to exactly the type of judicial pressure that the request-in-writing

requirement was meant to prevent. During a remote proceeding, the judge could solicit from the defendant a request for the plea or sentencing to proceed remotely. A resulting request from the defendant would not be the unpressured, deliberate decision that the Advisory Committee insisted upon before the defendant gives up the very important right to an in-person proceeding. Permitting the request to occur during rather than before the hearing could greatly undermine the purpose of the writing requirement—namely, to ensure that the emergency rule permits only a narrow exception to the normal in-person requirement. The Advisory Committee was therefore opposed to such a change, which had not been requested by the DOJ and which was opposed by the defense bar.

Professor King reported that defense counsel members of the Advisory Committee had recounted pressure during the pandemic to get their clients to consent to proceed remotely. One noted that two judges in her district had expressed frustration regarding defendants who refused to proceed remotely. Another member reported that CJA members in her district themselves felt pressure to proceed remotely, and having a barrier between the court and the client was important. Another stressed the need for distance between the request in writing and the plea hearing, to give the attorney time to explain the choice to the defendant. It would not be fair to the defendant to be sent to a breakout room with everyone waiting in the main room for the defendant to come back with a "yes," after being asked to proceed remotely by the person with sentencing authority. Not a single member of the Advisory Committee was interested in advancing the proposal to revise the committee note (*i.e.*, to state that the requisite writing could be provided at the outset of the plea or sentencing).

Professor Beale added that to hold a felony plea or sentencing proceeding remotely under Rule 62(e)(3)(C), the court would need to find that "further delay … would cause serious harm to the interests of justice." This would happen only rarely, such as where the defendant faced only a very short sentence.

Judge Bates reiterated his concern that the meaning of "requests" was not entirely clear. Did it require the court to make a finding that the idea of proceeding remotely originated from the defendant and not, for example, some comment the court may have made at a prior proceeding?

Noting that the Standing Committee's membership did not include any criminal defense lawyers, a practitioner member stated that he found compelling the real-world concerns of the defense bar that were credited by the Advisory Committee and expressed by Judge Kethledge, Professor King, and Professor Beale. So he favored requiring that the request come from the defendant before the proceeding begins. But he did not think the rule as drafted was clear on this point, and he stressed the need for clarity so as to avoid future litigation.

Another attorney member agreed as to the timing question, and advocated adding the words "in advance" to reflect that. But, he argued, in the real world the idea will usually not come from the defendant, so he advocated saying "consents" instead of "requests." A judge member predicted that the term "requests" would generate litigation due to the dearth of caselaw on point; by contrast, he said, much caselaw addressed the meaning of "consent." He also suggested that promulgating a form would help to forestall litigation over what was required.

The judge member who had suggested that the committee note be revised to state that the writing could be provided at the outset of the proceeding acknowledged that judges had in the past advocated the use of remote proceedings for what the Advisory Committee had found to be insufficient reasons. He noted, however, that Rule 62 would be in effect only during an emergency—which diminished his concern over the possible misuse of remote proceedings under it. As a data point, this judge member stated he was more often rejecting requests from defendants to proceed remotely than approving them. The member clarified that his concern was not with scenarios in which the idea of holding the plea proceeding comes up midstream during another remote proceeding. Rather, the member's concern was with another possible scenario that was based on his own experiences early in the pandemic: A plea allocution is scheduled to take place remotely, but just prior to the hearing, counsel asks to go into a breakout room to speak with the defendant in order to get the not-yet-provided signature on the request to proceed remotely. The judge does not join the main hearing room until after defendant and counsel return from the breakout room. The member argued that the rule appears to permit the proceeding to go forward in this circumstance, and that this avoids the significant delay that could be entailed in scheduling a new proceeding.

Another judge member noted that defense counsel, not solely judges, may sometimes pressure a defendant to consent to a remote plea or sentencing hearing. Judges, this member suggested, should be alert to this risk. The member noted the difficulty of drafting rules to address emergencies, which may present strange circumstances.

A practitioner member said that the Standing Committee should not make changes that would not have made it through the Advisory Committee. If the Standing Committee wished to make such a change, it should consider remanding the proposal to the Advisory Committee—but that would prevent Rule 62 from proceeding in tandem with the other proposed emergency rules. Both for that procedural reason and on the substance, this member supported the position taken by the Advisory Committee. As to adding language to require that the request in writing occur "in advance," the practitioner member suggested that no such language could foreclose a judge from attempting to streamline the process. For example, a requirement of a request "in advance" could be met by making the request during a status conference in the morning, and reconvening later that day for the plea or sentencing.

A judge member emphasized that judges vary in their ability; in her circuit, there were sometimes even defects in plea colloquies. Given the critical nature of plea and sentencing proceedings, this member thought that the request needs to be in advance of the proceeding. If the request need not be made in advance, it will become routine. The rule should say "in advance," and possibly even state *how far* in advance, such as seven days. She acknowledged, however, that answering the how far question would likely require sending the rule back to the Advisory Committee, so she was not making that suggestion.

A practitioner member agreed with the proposal to insert "in advance." It is inherently important to the integrity of the criminal justice system that plea changes and sentencing hearings be done in-person. As a civil practitioner, this member periodically witnesses criminal sentencing proceedings that occur before the civil matters. The very best judges are those who take the most

care with sentencing proceedings. It gives dignity to the individuals involved in the process, including their families. This does not translate well to videoconferencing.

A judge member who had earlier stated that requiring the request in advance of the hearing could create logistical problems suggested that the rule should be clear about what it requires and that, in her view, it should permit bringing the document to the hearing itself. This member pointed out that efficiency is also important for defendants; a more cumbersome process (requiring a request in advance) may delay closure (and release) for defendants who will receive time-served sentences.

Judge Bates stated that he counted four proposed changes. First, to change "requests" to "consents." Second, to specify that the requisite writing must be signed by the defendant "in advance." Third, and contrary to the second suggestion, to revise the committee note to say that the writing could, if necessary, be provided at the outset of the proceeding. Fourth was the suggestion that the rule be clarified—a suggestion that might be addressed by the decision on the other proposed changes. Judge Bates suggested that it would be helpful to learn the sense of the committee on these proposals. He was not inclined to suggest remanding the proposal to the Advisory Committee unless the latter thought a remand was a good idea—and even then, he surmised, the Advisory Committee would want to know what the Standing Committee thought on each of these issues. Judge Kethledge said he believed the Advisory Committee would be fine with the second suggestion (inserting "in advance"). As to the first suggestion, the Advisory Committee's choice of "requests" would not foreclose situations where the idea itself came from someone other than the defendant, it simply required that the defendant come forward to trigger the remote proceeding—that is, the rule was meant to protect against situations where the decision to proceed remotely came after a discussion with the *judge*.

Professor Capra suggested that a compromise might be to insert "in advance" but also change "requests" to "consents." He urged the Standing Committee not to remand the entire proposal over this issue, and he suggested that his proposed compromise would not require republication. Professor Coquillette agreed with Professor Capra concerning the lack of need for republication.

A judge member noted that during the colloquy at the start of the hearing, the judge will make sure the defendant consents to proceeding remotely. Therefore, she recommended keeping the word "requests." The request would come in advance, and the consent would be confirmed via the colloquy at the hearing. Citing a recent example of a case in which the defendant challenged the voluntariness of his consent to proceed remotely, Judge Kethledge reiterated the importance of foreclosing the option of deciding midstream in a remote proceeding to convert the proceeding into a remote plea or sentencing proceeding.

Upon motion by a member, seconded by another: **The Standing Committee voted 10-3 to insert "before the proceeding and" in proposed new Criminal Rule 62(e)(3)(B)** on line 109 (page 154 in the agenda book). ("Before" and "proceeding" were substituted for "in advance of" and "hearing" for reasons of style and internal consistency.)

Upon motion by a member, seconded by another: **The Standing Committee voted 7-6 to change "requests" to "consents" in proposed new Criminal Rule 62(e)(3)(B) (p. 154, line 110), with conforming changes to be made to the committee note (p. 168).**

Judge Bates then invited the Standing Committee to vote on whether to give final approval to proposed new Criminal Rule 62, with the changes to Rule 62(e)(3)(B) that the Committee had just voted to make, conforming changes to the committee note (p.168), and the substitution of "comply with" for "be mindful of" in the Advisory Committee's revised note language concerning Rule 62(d)(1) (p.161).

Upon motion by a member, seconded by another: **The Standing Committee unanimously approved proposed new Criminal Rule 62.**

Judge Bates thanked the Standing Committee and the Advisory Committees, including the chairs and reporters, and specifically thanked Professor Capra and Professor Struve, for their work on all the emergency rules. He noted that the rules have now reached the Judicial Conference, and have done so particularly quickly.

Due to scheduling constraints, the Criminal Rules Advisory Committee provided its report (described infra p. 13) prior to the lunch break. After the lunch break, the Standing Committee resumed its discussion of joint committee business.

Juneteenth National Independence Day

Judge Bates introduced this agenda item, which concerned the proposal to add Juneteenth National Independence Day to the lists of specified legal holidays in Appellate Rules 26(a)(6)(A) and 45(a)(2), Bankruptcy Rule 9006(a)(6)(A), Civil Rule 6(a)(6)(A), and Criminal Rules 45(a)(6)(A) and 56(c).

A practitioner member suggested that the semi-colon in the proposed amendment to Bankruptcy Rule 9006 was a typo, and the Bankruptcy Rules Advisory Committee agreed to substitute a comma.

Professor Capra noted that the committee notes were not uniform between the rule sets. He suggested that the reporters confer after the meeting to achieve uniformity.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously gave final approval (as technical amendments) to the proposed amendments to Appellate Rules 26 and 45, Bankruptcy Rule 9006, Civil Rule 6, and Criminal Rules 45 and 56, subject to the committee notes being made uniform.**

Pro Se Electronic Filing Project

Professor Struve introduced this item. She thanked the Federal Judicial Center (FJC) for its superb research work and its report ("Federal Courts' Electronic Filing By Pro Se Litigants") which was available online. Judge Bates had asked Professor Struve to convene the reporters for

the Appellate, Bankruptcy, Civil, and Criminal Rules Advisory Committees, along with members from the FJC, to discuss suggestions relating to electronic filing by self-represented litigants, and this working group had met in December 2021 and March 2022. One issue is whether self-represented litigants have access to the court's case management / electronic case filing ("CM/ECF") system. Among the findings by the FJC is that such access varies by type of court, with the courts of appeals most willing to grant such access to self-represented litigants, the district courts less so, and the bankruptcy courts least of all. On the other hand, a number of bankruptcy courts are using an "electronic self-representation" system. This raises the question of whether the four Advisory Committees may select different approaches for differing levels of courts.

Another question is that of service on persons who receive notice through CM/ECF. When a non-CM/ECF user files a document, the clerk's office will subsequently enter it into CM/ECF; the system then sends a notice of electronic filing to parties that are CM/ECF users. Yet many courts continue to require the non-CM/ECF filer to nonetheless serve the filing on other parties, whether or not those parties are CM/ECF users.

Professor Struve noted that the working group was planning a further discussion sometime in the summer with the hope of teeing up topics for discussion by the four Advisory Committees at their fall meetings.

Dr. Reagan noted that in the civil context there are two different groups of self-represented people who file—prisoners and non-prisoners—and these groups represent significantly different concerns and challenges. Additionally, the concept of electronic filing does not necessarily mean using CM/ECF; other methods include email or electronic upload, but these methods can pose cybersecurity issues. CM/ECF is difficult even for attorneys to use, and at least one district requires attorneys to initiate cases via paper filings rather than via CM/ECF.

Electronic Filing Deadline Study

Judge Bates provided a brief introduction to this information item concerning electronic filing times in federal courts. He noted that an excerpt from the FJC's recently-completed report on this topic appeared in the agenda book starting at page 185. The report had not yet been reviewed by the subcommittee that had been formed to consider whether the time-computation rules' presumptive electronic-filing deadline of midnight should be altered.

Dr. Reagan noted that the FJC studied the frequency of filings at different times of day. While results varied from court to court, the FJC found that most filing occurred during business hours, but that a significant amount did occur outside of business hours. He noted that in the bankruptcy courts, there were a significant number of notices filed robotically overnight.

The FJC began a pilot survey of judges and attorneys, but it gathered limited data because it closed the survey due to the pandemic. Continuing the survey under current conditions would be unproductive because opinions and experiences during the pandemic would not be representative of future non-emergency practice. But the limited pilot-study data did show a distinction between the views of sole practitioners and those of big-firm lawyers. The latter were more likely to favor moving the presumptive deadline to a point earlier than midnight.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Kethledge provided the report of the Advisory Committee on Criminal Rules, which met in Washington, DC on April 28, 2022. For the sake of brevity, Judge Kethledge highlighted only the Juneteenth-related amendments to Criminal Rules 45 and 56 (pp. 11–12, supra) and one other technical amendment. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 810.

Action Item

Final Approval

Rule 16(b)(1)(C)(v). Judge Kethledge introduced the only action item, which was a proposed technical amendment (p. 814) to fix a typographical error in a cross-reference in Rule 16(b)(1)(C)(v), addressing defense disclosures. The version of the rule with the typo is set to take effect on December 1, 2022, absent contrary action by Congress.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously gave final approval to the proposed amendment to Rule 16(b)(1)(C)(v) as a technical amendment.**

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Schiltz and Professor Capra provided the report of the Advisory Committee on Evidence Rules, which met in Washington, DC on May 6, 2022. The Advisory Committee presented nine action items: three rule amendments for which it was requesting final approval and six rule amendments for which it was requesting publication for public comment. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 866.

Action Items

Final Approval

Rule 106. Judge Schiltz introduced the proposed amendment to Rule 106 shown on page 879 of the agenda book. Rule 106 is the rule of completeness. When a party introduces part of a statement at trial, and that partial statement may be misleading, another party can introduce other parts of the statement that in fairness ought to be considered. The proposed amendment would fix two problems with the existing rule.

First, suppose a prosecutor introduces part of a hearsay statement and the completing portion does not fall within a hearsay exception. There is a circuit split as to whether the completing portion can be excluded under the hearsay rules. This amendment would resolve the split by making explicit that the party that introduced the misleading statement could not object to

completion on grounds of hearsay. But the completing statement could still be excluded on other grounds.

Second, current Rule 106 only applies to "writings" and "recorded statements," not oral statements. This means that for an oral statement, the court needs to turn to the common law. Unlike other evidentiary questions, here the common law has only been partially superseded by the Federal Rules of Evidence. This is particularly problematic because completeness issues will generally arise during trial when there is no opportunity for research and briefing.

The Advisory Committee received a handful of comments, all but one of which were positive. One public comment spurred a change to the rule text. The proposal as published would have provided for the completion of "written or oral" statements, a phrase that the Advisory Committee had thought would cover the field. But as a public comment pointed out, that phrase failed to encompass statements made through conduct or through sign language. As a result, the Advisory Committee decided to delete the current rule's phrase "writing or recorded" so that the rule will refer simply to a "statement."

A judge member asked whether there would be Confrontation Clause issues if a criminal defendant introduced part of a statement and the government was allowed to introduce the completing portion over a hearsay objection. Professor Capra stated that for a Confrontation Clause issue to arise the completing portion would have to be *testimonial* hearsay, which would be quite rare. If the issue did arise, the Supreme Court in *Hemphill v. New York*, 142 S. Ct. 681, 693 (2022), left open the possibility a forfeiture might apply. The idea would be that the rule of completeness might be applicable as a common law rule incorporated into the Confrontation Clause's forfeiture doctrine. Judge Schiltz added that the proposed amendment did not purport to close off a potential Confrontation Clause objection.

Another judge member stated that the proposed amendment was helpful because a judge at trial should not have to look to the common law to resolve issues of completion.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Rule 106.**

Rule 615. Judge Schiltz introduced the proposed amendment to Rule 615. Rule 615 requires that upon motion, the judge must exclude from the courtroom witnesses who have yet to testify, unless they are excepted from exclusion by current subdivisions (a) through (d). Rule 615 is designed to prevent witnesses who have not yet been called from listening to others' testimony and tailoring their own testimony accordingly. The current rule does not speak to instances where a witness learns of others' testimony from counsel, a party, or the witness's own inquiries. Thus, in some circuits, if the court enters a Rule 615 order without spelling out any additional limits, the sole effect is to physically exclude the witness from the courtroom. But other circuits have held that a Rule 615 order automatically forbids recounting others' testimony to the witness, even when the order is silent on this point. In those circuits, a person could be held in contempt for behavior not explicitly prohibited by either rule or court order. The proposed amendment would add a new subdivision (b) stating that the court's order can cover disclosure of or access to testimony, but it must do so explicitly (thus providing fair notice).

The proposed amendment also makes explicit that when a non-natural person is a party, that entity can have only one representative at a time excepted from Rule 615 exclusion under the provision that is now Rule 615(b) and would become Rule 615(a)(2). This would put natural and non-natural persons on an even footing. Under the current rule, some courts have allowed entity parties to have two or more witnesses excepted from exclusion under Rule 615(b). The amended rule would not prevent the court from finding these additional witnesses to be essential (see current Rule 615(c)), or statutorily authorized to be present (see current Rule 615(d)).

The Advisory Committee received only a handful of public comments on the proposal, all of which were positive.

Focusing on proposed Rule 615(b)(1)'s statement that "the court may … by order … prohibit disclosure of trial testimony to witnesses who are excluded from the courtroom," a judge member asked whether there was any consideration of specifying whom the prohibition runs against? Judge Schiltz answered that trial testimony might be disclosed by a range of people, such as an attorney, a paralegal, or even the witness's spouse. It would be tricky to delineate in the rule. Professor Capra added that it would be a case-by-case issue, and the judge would specify in the Rule 615 order who was subject to any Rule 615(b)(1) prohibition.

A practitioner member noted that in longer trials, there may be situations where a corporate party needs to change who its designated representative is. Professor Capra responded that the committee note recognizes the court's discretion to allow an entity party to swap one representative for another during the trial.

The same practitioner member echoed the judge member's previous suggestion that Rule 615(b)(1) should explicitly state who is prohibited from disclosing information to the witness. Professor Capra stated that the rule does not need to say that; rather, that is an issue that the court should address in its order. Judge Schiltz added that the judge in a particular case is in the best position to determine in that case who must not disclose trial testimony to a witness.

The practitioner member turned to a different concern, focusing on the portion of the committee note (the last paragraph on page 888) that dealt with orders "prohibiting counsel from disclosing trial testimony to a sequestered witness." The committee note acknowledged that "an order governing counsel's disclosure of trial testimony to prepare a witness raises difficult questions" of professional responsibility, assistance of counsel, and the right to confrontation in criminal cases. The member expressed concern that the proposed rule would permit such orders without setting standards or limits to govern them. The member acknowledged that this vagueness was a conscious choice, but argued that it gave the judge too much discretion. Judge Schiltz responded that such discretion already exists today under the current rule. And specifying standards for such orders in the rule would be nightmarishly complicated. Judge Bates added that all the proposed rule would do is tell judges that if they want to do anything more than exclude a witness from the courtroom, the order needs to explicitly spell that out.

Another practitioner member stated he supports the proposed rule change. The proposal gives clarity, while leaving discretion to the judge to tailor an order on a case-by-case basis.

However, he questioned whether the language in the committee note was too strong in stating that an order governing disclosure of trial testimony "raises" the listed issues. Based on suggestions from this member and the other practitioner member who had raised concerns about the passage, Professor Capra agreed to redraft the paragraph's second sentence to read: "To the extent that an order governing counsel's disclosure of trial testimony to prepare a witness raises questions of professional responsibility and effective assistance of counsel, as well as the right to confrontation in criminal cases, the court should address those questions on a case-by-case basis."

Ms. Shapiro turned the Committee's attention to the committee note's discussion (page 889) of proposed Rule 615(a)(3). She suggested that the words "to try" be removed from the note's statement that an entity party seeking to have more than one witness excepted from exclusion at one time is "free to try to show" that a witness is essential under Rule 615(a)(3). "Free to try" suggests that the showing is a difficult one, when really it is routine for courts to allow the United States to except from exclusion additional necessary witnesses such as case agents. A judge member questioned whether "is free to show" is the correct phrase. Should the note say "must show" or "may show" instead? Discussion ensued concerning the relative merits of "must," "may," "should," and "needs to." Professor Capra and Judge Schiltz agreed to revise the note to say "needs to show."

Professor Bartell suggested that a committee note reference to "parties subject to the order" (page 888) be revised to say "those" instead of "parties" (since a Rule 615(b) order can also govern nonparties). Professor Capra agreed and thanked Professor Bartell.

The Advisory Committee renewed its request for final approval of Rule 615, with the three amendments to the committee note documented above.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Rule 615.**

Rule 702. Judge Schiltz introduced this action item. Rule 702 deals with expert testimony and the proposed amendment would address two problems. The first relates to the standard the judge should apply when deciding whether to admit expert testimony. Current Rule 702 sets requirements that must be met before a witness may give expert testimony. It is clear under the caselaw and the current Rule 702 that the judge should not admit expert testimony until the judge—not the jury—finds by a preponderance of the evidence that the requirements of Rule 702 are met. However, there are a lot of decisions from numerous circuits that fail to follow that requirement, and the most common mistake is that the judge instead asks whether *a jury* could find by a preponderance of the evidence that the requirements of Rule 702 are met. As a result, very often jurors are hearing expert testimony that they should not be permitted to hear. Under a correct interpretation of current Rule 702, the proposed amendment does not change the law; it merely makes clear what the rule already says.

Second, the proposed amendment addresses the issue of overstatement, *i.e.*, where a qualified expert expresses conclusions that go beyond what a reliable application of the methods to the facts would allow. Overstatement issues typically arise with respect to forensic testimony in criminal cases. For example, the expert may say the fingerprint on the gun *was* the defendant's, or

the bullet *came from* the defendant's gun, when that level of certainty is not supported by the underlying science. For some time, the Advisory Committee has been debating and considering whether to address this issue via a rule amendment. Some members thought current Rule 702 gives attorneys all the tools they need to attack issues of overstatement, but that they were not using them. Other members thought that amending the rule would serve an educational goal and draw attention to this problem. After considerable debate, the Advisory Committee decided to amend Rule 702(d). Currently, the subdivision requires that "the expert has reliably applied the principles and methods to the facts of the case." The proposed amendment would require that "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." The hope is that this change in rule language, alongside the guidance in the committee note, will shift the emphasis and encourage judges and parties to focus on the issue of overstatement, particularly concerning forensic evidence in criminal cases.

The Advisory Committee received over 500 public comments regarding the proposed amendments to Rule 702. Additionally, about two dozen witnesses spoke on the proposal at the Advisory Committee's hearing.

Professor Capra summarized the public comments. Viewed quantitatively, they were mostly negative. There was a perceptible difference of opinion between plaintiffs' and defendants' lawyers. Many comments used identical idiosyncratic language. If commenters were copying and pasting language from others' comments, that could explain some of the volume. A number of comments evinced a misunderstanding of current law. For example, many comments said the proposed amendment would shift the burden from the opponent to the proponent—an assertion premised on the incorrect idea that the burden is now on the opponent to show that proposed expert testimony is unreliable. Such misunderstandings support the need for the proposed amendment.

Additionally, many comments criticized the published proposal's use of the "preponderance of the evidence" standard. Particularly, parties were concerned that the standard meant that judges could only rely on *admissible* evidence. However, Rule 104(a) explicitly states that the court can consider inadmissible evidence. The Advisory Committee therefore did not think that these critiques had merit. Nonetheless, because the published language had proven to be a lightning rod, the Advisory Committee chose to change the language, but not the meaning, of the proposed rule text, which (as presented to the Standing Committee) requires that the "proponent demonstrates to the court that it is more likely than not" that the Rule's requirements are met.

The phrase "to the court" in that new language responded to another set of concerns voiced in the comments—namely, *who* needed to find that the preponderance of the evidence standard was met. The proposed Rule 702 as published for public comment did not specify who—whether the judge or the jury—was tasked with making this finding. Implicitly, the judge must make the finding, as all decisions of admissibility under the Federal Rules of Evidence are made by the judge. However, because of all the uncertainty in practice as to who has to make this finding, there was significant sentiment on the Advisory Committee to specify in the rule text that it is the court that must so find. The Advisory Committee explored various ways to phrase this before landing on "if the proponent demonstrates to the court that it is more likely than not" that the checklist in Rule 702 is met.

Judge Schiltz noted a change the Advisory Committee would like to make to the committee note (page 893). At the Advisory Committee meeting, a member expressed concern that the rule could be read as requiring that the judge make detailed findings on the record that each of the requirements of Rule 702 is met, even if no party objects to the expert's testimony. To alleviate that concern, the Advisory Committee added a statement in the note that "the rule [does not] require that the court make a finding of reliability in the absence of objection." Prior to the Standing Committee meeting, a judge member had expressed concern that this statement in the note was problematic. Judge Schiltz shared this concern. On the one hand, judges typically do not rule on admissibility questions unless a party objects. But on the other hand, judges are responsible for making sure that plain error does not occur. So it was not exactly right to say that "the rule" did not require a finding. Judge Schiltz accordingly proposed to change "rule" to "amendment" so that the note would say, "Nor does the amendment require that the court make a finding." Thus revised, the note would observe that the amendment was not intended to change current practice on this issue but would avoid taking a position on what Rule 702 already does or does not require. Professor Capra agreed that it was better to skirt the topic; if one were to state in Rule 702 that "there must be an objection, but even if not, there's always plain error review," then one might also need to add that caveat to all the other rules.

A judge member stated her appreciation for the changes: although they are somewhat minor, they help clarify perennial issues.

Judge Bates noted that the language regarding the preponderance of the evidence standard ("more likely than not") comes from the Supreme Court in *Bourjaily v. United States*, 483 U.S. 171 (1987). It therefore is already the law.

A practitioner member asked why the statement "if the proponent demonstrates to the court that it is more likely than not" was written in the passive tense, as opposed to active tense language, such as "if the court finds that it is more likely than not." Judge Schiltz stated that some members of the Advisory Committee were concerned that if the rule used the word "finding," that could be read as requiring the judge to make findings on the record even in the absence of an objection. The language may be awkward, but the Advisory Committee arrived at it as consensus language after years of debate.

A judge member raised a question from a case-management perspective: whether there is any difficulty combining a Rule 702 analysis with a Daubert hearing, and in what sequence these issues would arise. Professor Capra responded that the overall hearing should be thought of as a Rule 702 hearing. Rule 702 is broader than *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), which only concerned methodology. Methodology falls under current Rule 702(c). The judge member thanked Professor Capra for his answer and emphasized the importance of educating the bar and bench about that fact. Citing *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305 (3d Cir. 2008), *as amended* (Jan. 16, 2009), Professor Marcus observed that Rule 702 issues can come up at junctures prior to trial, such as in connection with class certification.

A judge member applauded the Advisory Committee for drafting a very helpful amendment that does exactly what the Advisory Committee said it was trying to do: not change anything, but rather make clear what the law is.

Professor Capra thanked Judge Kuhl for formulating the language in proposed amended Rule 702(d). The Advisory Committee then renewed its request for final approval of Rule 702, with the one change to the committee note documented above.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Rule 702.**

Judge Bates thanked—and members of the Standing Committee applauded – Professor Capra, Judge Schiltz, and the Advisory Committee for all their work on the proposed amendments to Rules 106, 615, and 702.

Publication for Public Comment

Judge Schiltz stated that the Advisory Committee had six proposed amendments that it was requesting approval to publish for public comment. Every few years, usually coinciding with the appointment of a new Advisory Committee chair, the Advisory Committee reviews circuit splits regarding the Federal Rules of Evidence. The Advisory Committee lets most of those splits lie, but it found that these six proposed amendments—which came as a result of that study—were worth pursuing.

Rule 611(d)—Illustrative Aids. Judge Schiltz introduced this action item. Illustrative aids are used in almost every jury trial. Nonetheless, there is a lot of confusion regarding their use, especially as to the difference between demonstrative evidence and illustrative aids; the latter are not evidence but are used to assist the jury in understanding the evidence. There also are significant procedural differences in how judges allow illustrative aids to be used, including (i) whether a party must give notice, (ii) whether the illustrative aid may go to the jury, and (iii) whether illustrative aids are part of the record. This proposed new rule, which would be Rule 611(d), was designed to clarify the distinction between illustrative aids and demonstrative evidence. The Advisory Committee is hoping that the public comments will assist it in refining the proposal. It is likely impossible to get a perfect dictionary definition of the distinction, but the Advisory Committee hoped to end up at a framework that would assist judges and lawyers in making the distinction.

The proposed new rule sets various procedural requirements for the use of illustrative aids. It would require a party to give notice prior to using an illustrative aid, which would allow the court to resolve any objections prior to the jury seeing the illustrative aid. It would prohibit jurors from using illustrative aids in their deliberations, unless the court explicitly permits it and properly instructs the jury regarding the jury's use of the illustrative aid. Finally, it would require that to the extent practicable, illustrative aids must be made part of the record. This would assist the resolution of any issues raised on appeal regarding use of an illustrative aid.

Professor Capra noted a few changes to the rule and committee note. First, Professor Kimble had pointed out that by definition notice is in advance. Therefore, the word "advance" was deleted from line 13 of the rule text (p. 1010). Second, Rule 611(d)(1)(A) sets out the balancing test the court is to use in determining whether to permit use of an illustrative aid. The provision is

intended to track Rule 403 but is tailored to the particularities of illustrative aids. In advance of the Standing Committee meeting, a judge member asked why the proposed rule in line 9 said "substantially outweighed," as opposed to just "outweighed." "Substantially outweighed" is the language in Rule 403, but the member questioned why there should be such a heavy presumption in favor of permitting use of illustrative aids. The Advisory Committee welcomes public comment on this question, and thus proposes to include the word "substantially" in brackets. Third, the same judge member had pointed out prior to the Standing Committee meeting that the committee note was incorrect in saying that illustrative aids "ordinarily are not to go to the jury room unless all parties agree" (p. 1014). Rather, he suggested "unless all parties agree" be changed to "over a party's objection." The Advisory Committee agreed to this change. Finally, Professor Capra stated that the "[s]ee" signal at the end of the carryover paragraph on page 1013 of the agenda book should be a "[c]f." signal. Rule 105 deals with evidence admitted for a limited purpose, and therefore is not directly applicable since illustrative aids are not evidence. A further change was made to the sentence immediately preceding the citation to Rule 105. Because Rule 105 does not apply, the statement that an "adverse party has a right to have the jury instructed about the limited purpose for which the illustrative aid may be used" is not correct. Rather, the adverse party "may ask to have the jury" so instructed. Professor Capra expressed agreement with this change. Later in the discussion, an academic member asked why a judge would refuse a request for such an instruction. Judge Schiltz suggested, for example, that if the judge has already given the jury many instructions on illustrative aids, she may feel that a further instruction is unnecessary. But he agreed that almost always the judge will give a limiting instruction.

Judge Bates asked about a comment in the Advisory Committee's report that it was "important to note" that the proposed rule "was not intended to regulate" PowerPoint slide presentations or other aids that counsel may use to help guide the jury in opening or closing arguments. This topic, Judge Bates noted, was a particular focus in the Advisory Committee's discussions, and he asked why it was not mentioned in the committee note. Judge Schiltz stated that the Advisory Committee was aware that likely more language would need to be added to the note, but that it wanted to receive public comments first. The debate at the Advisory Committee meeting centered around whether opening or closing slides even are illustrative aids. Participants asserted that such PowerPoints are just a summary of argument. But the rejoinder was, what if a party builds an illustrative aid into its slide presentation? Professor Capra added that the problem with adding a sentence that says that the rule does not regulate materials used during closing argument is that where an illustrative aid is built into the slide presentation, this would not be an accurate statement.

A judge member suggested that Rule 611(d)(2) should set a default rule as to whether the illustrative aid should go to the jury. As currently worded, that provision only addressed what would happen in the event of an objection. Judge Schiltz suggested setting as the default rule that it does not go to the jury. Based on this suggestion, Rule 611(d)(2) was revised to provide that "[a]n illustrative aid must not be provided to the jury during deliberations unless: (A) all parties consent; or (B) the court, for good cause, orders otherwise." Professor Capra undertook to make conforming changes to the relevant portion of the committee note.

A practitioner member stated that this proposal could turn out to be one of the most important rule changes during his time on the Standing Committee. Trials nowadays are as much

a PowerPoint show as anything else. If you are going to address the jury in opening or closing, you should be forced to share the PowerPoints in advance. Most judges require this because, otherwise, an inappropriate statement in a slide presentation could cause a serious problem. But also, slide presentations are being used in direct and cross-examination of witnesses, and with expert witnesses sometimes the entirety of the examination is guided by the slide presentation. In listing categories covered by the proposed rule, the note refers to blackboard drawings. Blackboard drawings are often created on the fly based on the answers the witness gives. There is no way to give the other party the opportunity to review such a drawing in advance. Taken literally, the member suggested, the proposed rule would basically require the judge to preview the trial testimony in advance of trial because the whole trial is being done with PowerPoints. Summing up, the member stressed the real-world importance of the proposed rule. He advised giving attention to the distinction between experts and fact witnesses. A requirement for notice would play out differently as applied to openings and closings, versus direct examination, versus cross-examination. If a lawyer must give opposing counsel the direct-examination PowerPoints in advance, opposing counsel can use those slides in preparing the cross-examination. The rulemakers should think about how that would change trials. The member advocated seeking comment from thoughtful practitioners such as members of the American College of Trial Lawyers.

Professor Capra agreed that these are important questions, and he hoped that practitioner input at the upcoming Advisory Committee meeting and hearings will provide guidance. He stated that the goal of the rule is not to touch on every issue that may come up but rather to create a framework for handling illustrative aids. How far to go into the details is still an open question. Judge Schiltz acknowledged that the proposal presents challenging issues, and observed that the Advisory Committee's upcoming fall symposium would provide helpful input. He noted that the notice requirement can be met by disclosing the illustrative aid minutes prior to presenting it to the jury. This allows the court to resolve any objections before the jury sees the aid. The same practitioner member reiterated that although opening and closing slides should be disclosed before use, he does not think that will work with illustrative aids used with witnesses. Judge Schiltz said the views of practitioner members of the Advisory Committee were the exact opposite: opening and closing slides are sacrosanct, but items to be shown to a witness can be disclosed prior to use.

Another practitioner member agreed with the description of current trial practice provided by the first practitioner member. He stated that the broader the scope of the rule, the more the word "substantially" needs to be retained. Additionally, when you use a slide presentation with a witness, you are trying to synthesize what you think the witness will say. When you use a slide presentation for opening or closing, it is in essence your argument. Disclosing that feels strategically harmful. Once the Advisory Committee receives the public comments, it will be critical to explain when the rule applies and when it does not. For example, the rule refers to using illustrative aids to help the factfinder "understand admitted evidence." Judges who think that PowerPoints are illustrative aids might bar their use in opening arguments because no evidence has yet been admitted.

The Advisory Committee requested approval to publish for public comment proposed new Rule 611(d), with the changes as noted above to both the rule and committee note.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Rule 611.**

Rule 1006. Judge Schiltz introduced this action item as a companion item to the Rule 611(d) proposal. Rule 1006 provides that a summary of voluminous records can itself be admitted as evidence if the underlying records are admissible and too voluminous to be examined in court. Many courts fail to distinguish between summaries of evidence that are themselves evidence, which are covered by Rule 1006, and summaries of evidence that are merely illustrative aids. Judges often mis-instruct juries that Rule 1006 summaries are not evidence when they are in fact evidence. And some courts have refused to allow Rule 1006 summaries when any of the underlying records have been admitted as evidence, while other courts have refused to allow Rule 1006 summaries *unless* the underlying records are also admitted into evidence, neither of which is a correct application of the rule. Rather, Rule 1006 allows parties to use these summaries in lieu of the underlying records regardless of whether any of the underlying records have been admitted in their own right.

A practitioner member stated he thought this was a good rule. He queried whether the rule should mention "electronic" summaries, but he concluded that it was probably unnecessary because that would be covered by the general term "summary." Professor Capra noted that under Rule 101(b)(6), the Rule's reference to "writings" includes electronically stored information.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Rule 1006.**

Rule 611(e)—Juror Questions. Judge Schiltz introduced this action item. This proposed new rule subdivision does not take a position on whether judges should permit jurors to ask questions. Instead, the rule sets a floor of protection that a judge must follow if the judge determines that juror questions are permissible in a given case. These protections were pulled together from a review of the caselaw regarding juror questions.

A practitioner member stated that he cannot recall ever having a jury trial where a judge permitted juror questioning. He asked whether there is a sense as to how prevalent the practice is. He noted that once this is in the rulebook, it has the potential to come in in every case, and that could transform the practice in the country. Judges who do not allow the practice may feel compelled to permit it. Judge Schiltz stated that he does not permit juror questions but another judge in his district does so in civil cases. Another district judge reported that some judges in the Northern District of Illinois permit the practice, though he does not, and it is controversial. Judge Bates reported similar variation in the District of Columbia, although he does not permit juror questions. Judge Schiltz acknowledged that having a rule in the rulebook would appear to give an imprimatur to the practice. But the practice is fairly widespread and is not going away.

A judge member stated that the practice is prevalent in her district, in part because many of the judges previously were state-court judges and Arizona allows juror questions. She did not take a position on whether to adopt the rule, but she offered some suggestions on its drafting. She

thought proposed Rule 611(e)(1) did an excellent job of covering instructions to the jurors. However, Rule 611(e)(1)(F)'s requirement of an instruction that "jurors are neutral factfinders, not advocates," gave her pause. Jurors may be confused as to how to incorporate that instruction into what they may or may not ask. She suggested that this might be explained in the committee note. Additionally, she suggested considering whether the rule should address soliciting the parties' consent to jurors asking questions. Finally, she noted that Rule 611(e)(3) uses two different verbs: the judge must *read* the question, or allow a party to *ask* the question. Professor Capra responded that "ask" is meant to reflect that one of the counsel may want to ask the question, that is, make it their own question. A judge would do nothing more than read it. Another judge member stated that though he did not permit juror questions himself, the practice was sufficiently prevalent that it made sense to have a rule on point. He pointed out a discrepancy between the rule text and note (the note said that the judge should not disclose which juror asked the question, but the rule itself did not so provide). He also questioned the read / ask distinction in Rule 611(e)(3). Responding to a suggestion by Judge Schiltz, this member agreed that this concern could be addressed by revising the provision to state, "the court must ask the question or permit one of the parties to do so." A bit later, discussion returned to the read / ask distinction, and it was suggested that "read" was a better choice than "ask" because the judge might wish to emphasize to jurors that questions should not be asked extemporaneously. Another judge member then used the term "pose," and Professor Capra agreed that "pose" was a better choice than "read" or "ask."

Professor Bartell noted that subsection (3) only mentions questions that are "asked," while other subsections distinguish "asked, rephrased, or not asked." While it seems subsection (3) is meant to apply both to questions that are asked and those that are first rephrased, it is ambiguous, and subsection (3) could be read as not applying to questions that are rephrased.

A practitioner member asked whether this rule was modeled after a particular judge's standing order, and whether such resources could be cited in the committee note to illustrate that the practice already exists. Professor Capra stated that he reviewed the caselaw and included all the requirements found in the caselaw that were appropriate to include in a rule. But he agreed that it would be useful to cite other resources, such as the Third Circuit's model civil jury instruction, in the committee note.

Another practitioner member reiterated his concern that by putting this out for public comment, the Standing Committee is in essence putting its imprimatur on this practice. This is a controversial practice, and there are a number of judges who do not allow it. This member suggested revising Rule 611(e)(1) to state that the court has discretion to refuse to allow jurors to ask questions. Professor Capra stated that this suggestion gave him pause. There may be requirements in some jurisdictions that courts must permit the practice, or there may be such requirements in the future. The Advisory Committee did not want to take a stand either way.

Judge Bates asked whether Judge Schiltz and Professor Capra would consider taking the Rule 611(e) proposal back to the Advisory Committee to consider the comments of the Standing Committee. Professor Capra stressed the value of sending proposals out for comment in one large package rather than seriatim. Judge Bates noted, however, that the Rule 611(d) and 611(e) amendments are both new subdivisions that deal with entirely different matters.

A judge member stated that although she herself is "allergic" to the practice of jurors asking questions, the practice exists and the rules should account for it. But this member expressed agreement with Judge Bates's suggestion that the Advisory Committee consider these issues further before putting the rule out for public comment.

An academic member stated that his instinct was not to delay publication. By contrast to the Bankruptcy Rules, which are frequently amended, the tradition with the Evidence Rules has always been to try to avoid constant changes and—instead—to make amendments only periodically, in a package. The comments from the Standing Committee were important, and it was possible the Advisory Committee would decide not to go forward with the proposal after public comment; but this member favored sending the proposal forward for public comment.

Another judge member stated she agreed with Judge Bates. She could not recall there ever being an appellate issue regarding juror questions, and she favored waiting for the issue to percolate before adopting a rule on the issue. Additionally, judges who do allow juror questioning are very careful already. The judge member also questioned whether the rule should distinguish between the practice in civil and criminal cases. Had the Advisory Committee received any feedback from the criminal defense bar? What about from the government? This member agreed with the prediction that if the rule were to go forward without a caveat up front, it would be a signal to judges that they should be permitting the practice. Professor Capra stated that there has been a case in every circuit so far. He added that the public defender on the Advisory Committee voted in favor of the rule.

A judge member stated that if and when the rule did go out for public comment, the Advisory Committee should ask for comment on whether the practice should be allowed, not allowed, or left to the judge's discretion. Judge Bates added that even if the Advisory Committee did not specifically ask for it, the public comments would likely state whether that commentator thought the practice should be permitted.

Another judge member suggested that the rulemakers should be open to regional variations. The practice arose in Arizona state court and was adopted in the California state courts, and then as the state judges have moved on to the federal bench, they have taken the practice with them. The practice, this member suggested, is not as rare as it might seem to those on the East coast. Another judge member pointed out that the Ninth Circuit's model jury instruction addressing juror questions is presented in a way that makes clear that the judge has the option to allow or not allow juror questions. This has the benefit of clarifying that it is discretionary while still providing guidance.

As a result of the comments and suggestions received from the Standing Committee, the Advisory Committee withdrew the request for publication for public comment.

Rule 613(b). Judge Schiltz introduced this action item as an item that would conform Rule 613(b) to the prevailing practice. At common law, prior to introduction of extrinsic evidence of a prior inconsistent statement for impeachment purposes, the witness must be given an opportunity to explain or deny the statement. By contrast, current Rule 613(b) allows this opportunity to be given at any time, whether prior or subsequent to introduction of extrinsic evidence of the

statement. However, judges tend to follow the old common law practice, and the Advisory Committee agrees with that practice as a policy matter. Most of the time, the witness will admit to making the statement, obviating the need to introduce the extrinsic evidence in the first place. The proposed amendment would still give the judge discretion in appropriate cases to allow the witness an opportunity to explain or deny the statement after introduction of extrinsic evidence, such as when the inconsistent statement is only discovered after the witness finishes testifying and has been excused.

Professor Capra noted one style change to the rule, which moves the phrase "unless the court orders otherwise" to the beginning of the rule.

A practitioner member stated that he thought this was an excellent proposal.

Professor Kimble suggested changing "may not" to "must not." The style consultants tend to prefer "must not" in most situations. Professor Capra thought this suggestion would substantively change the rule. A party may not introduce the evidence unless the court orders otherwise, but the judge could allow it. It is not a command to the judge to not admit the evidence. Judge Schiltz stated he did not feel strongly one way or another, but based on Professor Capra's objection would keep the language as "may not."

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Rule 613(b).**

Rule 801(d)(2). Judge Schiltz introduced this action item, which concerns an amendment to the hearsay exemption for statements by a party-opponent. There is a split of authority on how the rule applies to a successor in interest of a declarant. Suppose, for example, that the declarant dies after making the statement; is the statement admissible against the declarant's estate? The Advisory Committee was unanimous in thinking the answer should be yes.

A judge member highlighted the statement in the committee note that the exemption only applies to a successor in interest if the statement was made prior to the transfer of interest in the claim. The member observed that this was obvious as a matter of principle, but it was not obvious from the text of the rule itself. He suggested that this is a sufficiently important limitation that it ought to be in the rule itself. Professor Capra undertook to consider this suggestion further during the public comment period; he suggested that writing the limit explicitly into the rule text might be challenging and also that the idea might already be implicit in the rule text.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Rule 801(d)(2).**

Rule 804(b)(3). Judge Schiltz introduced the proposed amendment to Rule 804(b)(3)(B) set out on page 1029 of the agenda book. Rule 804(b)(3) provides a hearsay exception for declarations against interest. Rule 804(b)(3)(B) deals with the situation in a criminal case when a statement exposes the declarant to criminal liability. This tends to come up when a criminal

defendant wants to introduce someone else's out-of-court statement admitting to committing the crime. Rule 804(b)(3)(B) requires that defendant to provide "corroborating circumstances that clearly indicate [the] trustworthiness" of the statement. The circuits are split concerning the meaning of "corroborating circumstances." Some circuits have said the court may only consider the guarantees of trustworthiness inherent in the statement itself. Other circuits allow the judge to additionally consider other evidence of trustworthiness, even if extrinsic to the statement. The proposed amendment would direct judges to consider all the evidence, both that inherent in the statement itself and any evidence independent of the statement.

A judge member noted that the rule only talks about corroborating evidence, not conflicting evidence, while the note speaks both to corroborating and conflicting evidence. Judge Schiltz stated that he made this point at the Advisory Committee meeting, but the response was that mentioning conflicting evidence in the text of Rule 804(b)(3) would necessitate a similar amendment to the corresponding language in Rule 807(a)(1). Professor Capra stated that courts applying Rule 807 do consider conflicting evidence, even though the rule text only says "corroborating." It is better to keep the two rules consistent than to have people wondering why Rule 804(b)(3) mentions conflicting evidence while Rule 807 does not. The judge member observed that one way to resolve the problem would be to make a similar amendment to Rule 807. Judge Bates noted that this could be considered during the public comment period.

A practitioner member asked why, in line 25, it says "the totality of the circumstances," but in the next line it does not say *the* "evidence." Should the word "the" be added on line 26? Professor Capra undertook to review this with the style consultants during the public comment period.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Rule 804(b)(3).**

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Bybee and Professor Hartnett provided the report of the Advisory Committee on Appellate Rules, which met in San Diego on March 30, 2022. The Advisory Committee presented an action item and briefly discussed one information item. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 199.

Action Item

Publication for Public Comment

Amendments to Appendix of Length Limits. Judge Bybee introduced this action item. The Standing Committee had already approved for publication for public comment proposed amendments to Rules 35 and 40 regarding petitions for panel rehearing and hearing and rehearing en banc, as well as conforming amendments to Rule 32 and the Appendix of Length Limits (Appendix). Subsequent to that approval, the Advisory Committee noticed an additional change that needed to be made in the Appendix. Namely, the third bullet point in the introductory portion

of the Appendix refers to Rule 35, but the proposed amendments to Rules 35 and 40 would transfer the contents of Rule 35 to Rule 40. As the amendment to the Appendix has not yet been published for public comment, the Advisory Committee would like to delete this reference to Rule 35 in the Appendix and to include that change along with the other changes approved in January for publication for public comment.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to the Appendix of Length Limits.**

Information Items

Amicus Curiae Disclosures. Professor Hartnett introduced the information item concerning potential amendments to Rule 29's amicus curiae disclosure requirements. The Advisory Committee was seeking feedback from the Standing Committee regarding four questions. Due to time constraints, Professor Hartnett chose to ask just two of the questions at the meeting. The first question asked concerned the relationship between a party and an amicus. The Advisory Committee was trying to get a sense of whether disclosure of non-earmarked contributions by a party to an amicus should be disclosed, and, if so, at what percentage. The competing views ranged from those who say these should not be disclosed at all because a contributor does not control what an amicus says, to those who say significant contributors (*i.e.*, at least 25 or 30 percent of the amicus's revenue) have such a significant influence over an amicus that the court and the public should know about it. Second, regarding the relationship between an amicus and a non-party, the Advisory Committee sought feedback on whether an amended rule should retain the exception to disclosure for contributions by members of the amicus that are earmarked for a particular amicus brief. A point in support of retaining the exception was that an amicus speaks for its members, and therefore these contributions need not be disclosed. Points against retaining the exception were that there is a big difference between being a general contributor to an amicus and giving money for the purpose of preparing a specific brief, and it is easy to evade disclosure requirements by first becoming a member of the amicus and then giving money to fund a particular brief.

Judge Bates stated these are important questions and ones that the Standing Committee should focus on. He encouraged members to share any comments with Professor Hartnett and Judge Bybee after the meeting.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Dennis Dow, Professor Gibson, and Professor Bartell provided the report of the Advisory Committee on Bankruptcy Rules, which last met via videoconference on March 31, 2022. The Advisory Committee presented eleven action items: seven for final approval, and four for publication for public comment. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 250.

Action Items

Final Approval

Restyled Rules for the 3000-6000 Series. Judge Dow introduced this action item, which presented for final approval the restyled Rules in the 3000 to 6000 series. The Standing Committee already gave final approval for the 1000 and 2000 series. The Advisory Committee received extensive public comments from the National Bankruptcy Conference on these rules, in addition to a few other public comments. Some of these comments led to changes. Professor Bartell noted that the Advisory Committee was not asking to send these rules to the Judicial Conference quite yet; rather, like the 1000 and 2000 series, they should be held until the remainder of the restyling project is completed.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed restyled Rules for the 3000-6000 series.**

Rule 3011. Judge Dow introduced this action item, which would add a subsection to Rule 3011 to require clerks to provide searchable access on each bankruptcy court's website to information about funds deposited under Section 347 of the Bankruptcy Code. This is part of a nationwide effort to reduce the amount of unclaimed funds. He noted that the Advisory Committee received one public comment, which led it to substitute the phrase "information about funds in a specific case" for the phrase "information in the data base for a specific case."

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Rule 3011.**

Rule 8003. Judge Dow introduced this action item to conform the rule to recent amendments to Appellate Rule 3. No public comments were received on this proposed rule amendment.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Rule 8003.**

Official Form 101. Judge Dow introduced this action item. Questions 2 and 4 of the individual debtor petition form, which concern other names used by the debtor over the past 8 years, would be amended to clarify that the only business names that should be reported are those the debtor actually used in conducting business, not the names of separate legal entities in which the debtor merely had an interest. This change would avoid confusion and make this form consistent with other petition forms. The Advisory Committee received one public comment; it made no changes based on this comment.

Judge Bates clarified for the Standing Committee that in contrast to some other forms, Official Bankruptcy forms must be approved by the Judicial Conference through the Rules Enabling Act process.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Form 101.**

Official Forms 309E1 and 309E2. Judge Dow introduced this action item regarding forms that are used to give notice to creditors after a bankruptcy filing. The Advisory Committee improved the formatting and edited the language of these forms in order to clarify the applicability of relevant deadlines. The Advisory Committee did not receive any comments, and its only post-publication change was to insert a couple of commas.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendments to Forms 309E1 and 309E2.**

Official Form 417A. Judge Dow introduced this action item. This form amendment is to conform the form to the amendments to Rule 8003. There were no public comments on this proposed form amendment.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Form 417A.**

Publication for Public Comment

Restyled Rules for the 7000-9000 Series. Judge Dow introduced this action item, which sought approval to publish for public comment the next portion of the proposed restyled rules. The Advisory Committee applied the same approach to these rules as it did when restyling the first six series.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed restyled Rules for the 7000 to 9000 series.**

Rule 1007(b)(7). Judge Dow introduced this action item. Under the current rule, debtors are required to complete an approved debtor education course and file a "statement" on an official form evidencing completion of that course before they can get a discharge in bankruptcy. As revised, the rule would instead require filing the certificate of completion from the course provider, as that is the best evidence of compliance. The amendment would also remove the requirement that those who are exempt must file a form noting their exemption. This requirement is redundant, as in order to get an exemption, the debtor would have to file a motion, and the docket will therefore already contain an order approving the exemption.

The Advisory Committee also sought approval to publish conforming amendments changing "statement" to "certificate" in another subsection of Rule 1007 and in Rules 4004, 5009, and 9006.

A judge member noted, and the Advisory Committee agreed to remedy, a typo on page 666, line 14 of the agenda book ("if" should be "is").

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Rule 1007(b)(7) and conforming amendments to Rules 1007(c)(4), 4004, 5009, and 9006.**

New Rule 8023.1. Judge Dow introduced this action item, which concerned a proposed new rule dealing with substitution of parties. While Civil Rule 25 (Substitution of Parties) applies to adversary proceedings, the Part VIII rules (which govern appeals in bankruptcy cases) do not currently mention substitution. Proposed new Rule 8023.1 is based on, and is virtually identical in language to, Appellate Rule 43.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed new Rule 8023.1.**

Official Form 410A. Judge Dow introduced this action item to amend the attachment to the proof-of-claim form that a creditor with a mortgage claim must file. The amendment revises Part 3 of the attachment (regarding the calculation of the amount of arrearage at the time the bankruptcy proceeding is filed) to break out principal and interest separately.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Official Form 410A.**

Information Items

Judge Dow briefly noted that the Bankruptcy Threshold Adjustment and Technical Correction Act had not yet been enacted by Congress, but if and when it were to be enacted, the Advisory Committee would seek final approval of technical amendments to a couple of forms and would ask the Administrative Office to repost an interim version of Rule 1020 for adoption by bankruptcy courts as a local rule. He also mentioned, but did not discuss at length, three other information items in the agenda book.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Robert Dow, Professor Cooper, and Professor Marcus provided the report of the Advisory Committee on Civil Rules, which last met in San Diego on March 29, 2022. The Advisory Committee presented two action items and five information items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 722.

Action Items

Final Approval

Rule 15(a)(1). Judge Dow introduced this action item, a proposed amendment to Rule 15(a)(1) for which the Advisory Committee was requesting final approval. The proposed amendment would replace the word "within" with the phrase "no later than." This change clarifies that where a pleading is one to which a responsive pleading is required, the time to amend the pleading as of right continues to run until 21 days after the earlier of the events delineated in Rule 15(a)(1)(B). The Advisory Committee received a few comments, but it made no changes based on these comments. In the committee note, it deleted one sentence that had been published in brackets and that appeared unnecessary.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Rule 15(a)(1).**

Rule 72(b)(1). Judge Dow introduced this action item, which presented for final approval a proposed amendment to Rule 72(b)(1) (concerning a recommended disposition by a magistrate judge). The proposed amendment would bring the rule into conformity with the prevailing practice of district clerks with respect to service of the recommended disposition. Most parties have CM/ECF access, so the current rule's requirement of mailing the magistrate judge's recommendations is unnecessary. The amendment permits service of the recommended disposition by any means provided in Rule 5(b). The Advisory Committee received very few public comments. In the committee note, it deleted as unnecessary one sentence that had been published in brackets.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Rule 72(b)(1).**

Information Items

Rule 12(a)(4). Judge Dow introduced this information item, which concerned a proposed amendment to Rule 12(a)(4) that was initially suggested by the DOJ and had been published for comment in August 2020. The Advisory Committee received only a handful of public comments, but two major comments were negative. Rule 12(a)(4) sets a presumptive 14-day time limit for filing a responsive pleading after denial of a motion to dismiss. This means that the DOJ only has 14 days after denial of a motion to dismiss on immunity grounds in which to decide whether to appeal the immunity issue; but courts frequently grant it an extension. The proposed amendment would have flipped the presumption, giving the DOJ 60 days as opposed to 14 unless the court shortened the time. The Advisory Committee considered a number of options, including a compromise time between 14 and 60 days, as well as providing the longer 60-day period only for cases involving an immunity defense.

The DOJ was unable to collect quantitative data as to how often it sought and received extensions. As a result, and based on the comments received and the views of both the Standing

and Advisory Committees members, the Advisory Committee voted not to proceed further with the proposed amendment to Rule 12(a)(4).

Judge Bates clarified that because the proposed amendment had not emerged from the Advisory Committee, this was not an action item, and therefore no vote of the Standing Committee was required.

Rule 9(b). Judge Dow introduced this information item, which concerned a proposal to amend the second sentence of Rule 9(b) in light of the Supreme Court's interpretation of that provision in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The Advisory Committee had appointed a subcommittee to study the proposal. However, the subcommittee found that there were not many cases coming up that indicated a problem. Moreover, a number of Advisory Committee members thought *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Iqbal* were working pretty well in their cases. Therefore, the Advisory Committee chose not to proceed further.

Rule 41. Judge Dow noted this project, which was prompted by a suggestion from Judge Furman to study Rule 41(a)(1)(A). The initial question is whether that provision authorizes voluntary dismissal only of an entire action, or whether it also authorizes voluntary dismissal as to fewer than all parties or claims. The Advisory Committee appointed a subcommittee, which will study this issue and probably also Rule 41 more generally.

Discovery Subcommittee. Judge Dow provided an update on the Discovery Subcommittee, which is focused primarily on privilege log issues. The subcommittee met with bar groups and attended a two-day conference. There seems to be some common ground between the plaintiff and defense bar for procedures for privilege logs. There may be some forthcoming proposals to amend Rules 16 and 26 to deal with these procedural issues, particularly to encourage parties to hash out privilege-log issues early on.

The Discovery Subcommittee has paused its research into sealing issues pending an Administrative Office study of filing under seal.

MDL Subcommittee. Judge Dow introduced this information item. About fifty percent of federal civil cases are part of an MDL. The subcommittee's thinking continues to evolve as it receives input from the bench, the bar, and academics. About a year ago, the subcommittee was looking at the possibility of proposing a new Rule 23.3 (addressing judicial appointment and oversight of leadership counsel). The subcommittee then shifted and thought about revising Rules 16 and 26 to set prompts concerning issues that MDL judges ought to think about. Now, the subcommittee has begun to consider a sketch of a proposed Rule 16.1, which would contain a list of topics on which parties in an MDL could be directed to confer. Flexibility is critical, and any rule will just offer the judge tools to use in appropriate instances.

At a March 2022 conference at Emory Law School, the subcommittee heard from experienced transferee judges that lawyers can do a great service to the transferee judge by explaining their views of the case early on. The judge could then decide which of the prompts in the proposed rule fits the case. The rule would list issues on which the judge could require the lawyers to give their input.

The subcommittee has been focusing closely on the importance of an initial census. The initial census is key because it can tell the judge and parties who has the cases and what kinds of cases there are, and can help the judge make decisions on leadership counsel.

The subcommittee will work over the summer on the sketch of Rule 16.1 so as to tee up the question of whether or not to advance it. Judge Dow expressed a hope that the subcommittee would complete its work in the coming year.

Jury Trials. Judge Bates highlighted the portion of the Advisory Committee's report (pages 751–72) concerning the procedures for demanding a jury trial. Though the Advisory Committee has deferred consideration of this issue for the moment, Judge Bates suggested that it may be important to deal with it at some point. Judge Dow and Professor Cooper explained that Congress enacted legislation directing the FJC to study what factors contribute to a higher incidence of jury trials in jurisdictions that have more of them. Dr. Lee has launched that study, and predicts that he will have a short report on the topic ready for the Advisory Committee's fall agenda book.

OTHER COMMITTEE BUSINESS

Adequacy of the Privacy Rules Prescribed Under the E-Government Act of 2002. Professor Struve presented this item, which concerned a report required under the E-Government Act of 2002. She thanked all the Advisory Committee chairs and reporters, Judge Bates, and the Rules Office staff for their work on this report. The privacy rules, which impose certain redaction requirements, took effect in 2007. The idea of the report is to evaluate the adequacy of these rules to protect privacy and security. The report does so in three ways: it discusses amendments (relevant to the privacy rules) that have been adopted since 2011 (the date of the last report); it notes privacy-adjacent items that are pending on the rules committees' dockets; and it discusses other privacy-related concerns discussed since 2011 that did not give rise to rule amendments because the rules committees determined that rule amendments were not the way to address those concerns. A new report to Congress will be prepared every two years going forward.

Professor Struve noted that the Standing Committee was asked to approve the proposed Report on the Adequacy of the Privacy Rules Prescribed Under the E-Government Act of 2002, and to recommend that the Judicial Conference forward the report to Congress.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously voted to approve the proposed Report on the Adequacy of the Privacy Rules Prescribed Under the E-Government Act of 2002 and to recommend that the Judicial Conference forward the report to Congress.**

Legislative Report. The Rules Law Clerk delivered a legislative report. The chart in the agenda book at page 1051 summarized legislation currently pending before Congress, as well as the Juneteenth National Independence Day Act, which passed and was signed into law by President Biden in 2021.

Judiciary Strategic Planning. Judge Bates addressed the Judiciary Strategic Planning item, which appeared in the agenda book at page 1061. The Judicial Conference requires the Standing Committee to submit a report on its strategic initiatives. He asked the Standing Committee for approval to submit the report.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the Judiciary Strategic Planning report for submission to the Judicial Conference.**

CONCLUDING REMARKS

Before adjourning the meeting, Judge Bates thanked the Standing Committee members and other attendees for their attention and insights. The Standing Committee will next meet on January 4, 2023. The location of the meeting had not yet been confirmed. Judge Bates expressed the hope that the meeting would take place somewhere warm.

TAB 3A2

SUMMARY OF THE

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

1. Approve the proposed amendments to Appellate Rules 2, 4, 26, and 45, 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. 4-6

2. a. Approve the proposed amendments to Bankruptcy Rules 3011, 8003, and 9006, and proposed new Bankruptcy Rule 9038, as set forth in Appendix B, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law; and

   b. Approve, effective December 1, 2022, the proposed amendments to Bankruptcy Official Forms 101, 309E1, and 309E2, and effective December 1, 2023, the proposed amendment to Bankruptcy Official Form 417A, 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. 7-10

3. Approve the proposed amendments to Civil Rules 6, 15, and 72, and proposed new Civil Rule 87, 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. 14-17

4. Approve the proposed amendments to Criminal Rules 16, 45, and 56, and proposed new Criminal Rule 62, as set forth in Appendix D, 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. 18-21

5. Approve the proposed amendments to Evidence Rules 106, 615, and 702, as set forth in Appendix E, 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. 22-24

6. Approve the proposed 2022 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 F, and ask the Administrative Office Director to transmit it to Congress in accordance with the law ..... pp. 28-29

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

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 7, 2022. All members participated.

Representing the advisory committees were Judge Jay S. Bybee, Chair, and Professor Edward Hartnett, Reporter, Advisory Committee on Appellate Rules; Judge Dennis Dow, Chair, Professor S. Elizabeth Gibson, Reporter, and Professor Laura B. Bartell, Associate Reporter, Advisory Committee on Bankruptcy Rules; Judge Robert M. Dow, Jr., Chair, Professor Edward H. Cooper, Reporter, and Professor Richard L. Marcus, Associate Reporter, Advisory Committee on Civil Rules; Judge Raymond M. Kethledge, Chair, Professor Sara Sun Beale, Reporter, and Professor Nancy J. King, Associate Reporter, Advisory Committee on Criminal Rules; and 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; Allison Bruff, Bridget Healy, and Scott Myers, Rules Committee Staff Counsel; Burton S. DeWitt, Law Clerk to the Standing Committee; Dr. Tim Reagan and Dr. Emery Lee, Senior Research Associates, Federal Judicial Center (FJC); and Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, and Andrew Goldsmith, National Coordinator of Criminal Discovery Initiatives,

representing the Department of Justice (DOJ) 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 process and pending legislation affecting the rules, the Standing Committee received and responded to reports from the five advisory committees. Among other things, the advisory committee reports discussed two items that affect multiple rule sets: (1) recommendations from the Appellate, Bankruptcy, Civil, and Criminal Rules Committees for final approval of rules addressing future emergencies; and (2) recommended technical amendments to those four rule sets addressing Juneteenth National Independence Day.

The Committee also received an update on two items of coordinated work among the Appellate, Bankruptcy, Civil, and Criminal Rules Committees: (1) consideration of suggestions to allow electronic filing by pro se litigants; and (2) consideration of suggestions to change the presumptive deadline for electronic filing. Finally, the Committee approved the proposed 2022 Report on the Adequacy of the Privacy Rules Prescribed Under the E-Government Act of 2002, was briefed on the judiciary's ongoing response to the COVID-19 pandemic, and approved a draft report regarding judiciary strategic planning.

PROPOSED EMERGENCY RULES

The proposals recommended for the Judicial Conference's approval include a package of rules for use in emergency situations that substantially impair the courts' ability to function in compliance with the existing rules of procedure. These rules were developed in response to Congress's directive in the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") that rules be considered, under the Rules Enabling Act, to address future emergencies. The set of proposed amendments and new rules developed in response to this charge includes an

amendment to Appellate Rule 2 (and a related amendment to Appellate Rule 4); new Bankruptcy Rule 9038; new Civil Rule 87; and new Criminal Rule 62. The proposed amendments and new rules were published for public comment in August 2021.

Although there are some differences in the four proposed emergency rules – the Appellate rule is much more flexible, and the Bankruptcy, Civil, and Criminal rules provide for different types of rule deviations in a declared emergency – they share some overarching, uniform features. Each rule places the authority to declare a rules emergency solely in the hands of the Judicial Conference. Each rule uses the same basic definition of a "rules emergency" – namely, when "extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with these rules." The Bankruptcy, Civil, and Criminal rules take a roughly similar approach to the content of the emergency declaration, setting ground rules to make clear the scope of the declaration. Each emergency rule limits the duration of the declaration; provides for additional declarations; and accords the Judicial Conference discretion to terminate an emergency declaration before the declaration's stated termination date. The Bankruptcy, Civil, and Criminal rules each address what will happen when a proceeding that has been conducted under an emergency rule continues after the emergency has terminated, though each rule does so with provision(s) tailored to take account of the different contexts and subject matters addressed by the respective emergency provisions.

To the extent that public comments touched on uniform aspects of the emergency rules, those comments focused on the role of the Judicial Conference. Some commentators criticized the decision to place in the hands of the Judicial Conference the authority to declare or terminate a rules emergency, though another commentator specifically supported the decision to centralize authority in the Judicial Conference. One commentator argued that there should be a backup

plan in case the emergency prevents the Judicial Conference from acting. The Advisory Committees reviewed these comments and uniformly concluded that the Judicial Conference was fully capable of responding to rules emergencies, and that the uniform approach of the Judicial Conference was preferable to other approaches involving more decisionmakers. Accordingly, the Advisory Committees voted to retain, as published, the substance of all of the uniform features of the set of proposed emergency rules. A few post-publication changes to the Appellate Rule's text, the Civil Rule's text and note, and the Criminal Rule's text and note are discussed below in connection with the recommendations of the respective Advisory Committees.

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 2, 4, 26, and 45.

Rule 2 (Suspension of Rules)

The proposed amendment to Appellate Rule 2 is part of the set of proposed rules, mentioned above, that resulted from the CARES Act directive that rules be considered to address future emergencies. The proposal adds a new subdivision (b) to Appellate Rule 2. Existing Rule 2, which would become Rule 2(a), empowers the courts of appeals to suspend the provisions in the Appellate Rules "in a particular case," except "as otherwise provided in Rule 26(b)." (Rule 26(b) provides that "the court may not extend the time to file: (1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or (2) a notice of appeal from or a [petition to review an order of a federal administrative body], unless specifically authorized by law.") New Rule 2(b) would come into operation when the Judicial Conference declares an Appellate Rules emergency and would empower the court of appeals to "suspend in

all or part of that circuit any provision of these rules, other than time limits imposed by statute and described in Rule 26(b)(1)-(2)."

In the event of a Judicial Conference declaration of an Appellate Rules emergency, a court of appeals' authority under Rule 2(b) would be broader in two ways than a court of appeals' everyday authority under Rule 2(a). First, the suspension power under Rule 2(b) reaches beyond a particular case. Second, the Rule 2(b) suspension power reaches time limits to appeal or petition for review, so long as those time limits are established only by rule. (Rule 2(b) does not purport to empower the court to suspend time limits to appeal or petition for review set by statute.)

Rule 4 (Appeal as of Right—When Taken)

The proposed amendment to Appellate Rule 4 is designed to make Appellate Rule 4 operate smoothly with Emergency Civil Rule 6(b)(2) (discussed below) if that Emergency Civil Rule is ever in effect, while not making any change to the operation of Appellate Rule 4 at any other time.

It does this by replacing the phrase "no later than 28 days after the judgment is entered" in Rule 4(a)(4)(A)(vi) with the phrase "within the time allowed for filing a motion under Rule 59." When Emergency Civil Rule 6(b)(2) is not in effect, this amendment makes no change at all. But if Emergency Civil Rule 6(b)(2) is ever in effect, a district court might extend the time to file a motion under Rule 59. If that happens, the amendment to Appellate Rule 4(a)(4)(A)(vi) would allow Appellate Rule 4 to properly take that extension into account.

Rule 26 (Computing and Extending Time) and Rule 45 (Clerk's Duties)

In response to the enactment of the Juneteenth National Independence Day Act (Juneteenth Act), Pub. L. No. 117-17 (2021), the Advisory Committee made technical amendments to Rules 26(a)(6)(A) and 45(a)(2) to insert "Juneteenth National Independence

Day" immediately following "Memorial Day" in the Rules' lists of legal holidays. Because of the technical and conforming nature of the amendments, the Advisory Committee recommended final approval without publication.

The Standing Committee unanimously approved the Advisory Committee's recommendations, after making a stylistic change to Appellate Rule 2(b)(4) to conform that Rule's language to the language used in the other Emergency Rules.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Appellate Rules 2, 4, 26, and 45, 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 Approved for Publication and Comment

The Advisory Committee on Appellate Rules submitted proposed amendments to the Appendix of Length Limits Stated in the Federal Rules of Appellate Procedure with a recommendation that they be published for public comment in August 2022. The proposed amendments to the Appendix would conform with proposed amendments to Rules 35 and 40, which were approved for publication for public comment. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Information Items

The Advisory Committee met on March 30, 2022. In addition to the matters noted above, the Advisory Committee discussed whether to propose an amendment to Rule 39 clarifying the process for challenging the allocation of costs on appeal and whether to propose amending Form 4 to simplify the disclosures required in connection with a request for in forma pauperis status. It referred to a subcommittee a new suggestion that Rule 29 be amended to require identification of any amicus or counsel whose involvement triggered the striking of an amicus brief. The Advisory Committee also continued its discussion of whether to propose amendments to Rule 29

with respect to disclosures concerning the relationship between an amicus and either parties or nonparties.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules and Forms Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules recommended for final approval the following proposals: Restyled Bankruptcy Rules for the 3000-6000 series; amendments to Bankruptcy Rules 3011, 8003, and 9006; new Bankruptcy Rule 9038; and amendments to Official Forms 101, 309E1, 309E2, and 417A. The Advisory Committee also recommended all of the foregoing for transmission to the Judicial Conference other than the restyled rules; the latter will be held for later transmission once all the bankruptcy rules have been restyled.

Restyled Rules Parts III, IV, V, and VI (the 3000-6000 series of Bankruptcy Rules)

The National Bankruptcy Conference submitted extensive comments on the restyled rules, and several others submitted comments as well. After discussion with the style consultants and consideration by the Restyling Subcommittee, the Advisory Committee incorporated some of those suggested changes into the revised rules and rejected others. (Some of the rejected suggestions were previously considered in connection with the 1000-2000 series of restyled rules, and the Advisory Committee adhered to its prior conclusions about those suggestions as noted at pages 10-11 in the Standing Committee's September 2021 report to the Judicial Conference.)

The Advisory Committee recommended final approval for this second set of restyled rules, but, as with the first set, suggested that the Standing Committee not submit the rules to the Judicial Conference until all remaining parts of the Bankruptcy Rules have been restyled, published, and given final approval, so that all restyled rules can go into effect at the same time.

Rule 3011 (Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases)

The proposed amendment, which was suggested by the Committee on the Administration of the Bankruptcy System, redesignates the existing text of Rule 3011 as subdivision (a) and adds a new subdivision (b) requiring the clerk of court to provide searchable access on the court's website to information about funds deposited pursuant to § 347 of the Bankruptcy Code (Unclaimed Property). There was one comment on the proposed amendment, and the language of subdivision (b) was restyled and modified to reflect the comment. The Advisory Committee recommended final approval as amended.

Rule 8003 (Appeal as of Right – How Taken; Docketing the Appeal)

The proposed amendments to Rule 8003 conform to amendments recently made to Federal Rule of Appellate Procedure 3, which stress the simplicity of the Rule's requirements for the contents of the notice of appeal and which disapprove some courts' "expressio unius est exclusio alterius" approach to interpreting a notice of appeal. No comments were submitted, and the Advisory Committee gave its final approval to the rule as published.

Rule 9006 (Computing and Extending Time; Time for Motion Papers)

In response to the enactment of the Juneteenth Act, the Advisory Committee proposed a technical amendment to Rule 9006(a)(6)(A) to include Juneteenth National Independence Day in the list of legal public holidays in the rule. The Advisory Committee recommended final approval without publication because this is a technical and conforming amendment.

Rule 9038 (Bankruptcy Rules Emergency)

New Rule 9038 is part of the package of proposed emergency rules drafted in response to the CARES Act directive. Subdivisions (a) and (b) of the rule are similar to the Appellate, Civil, and Criminal Emergency Rules in the way they define a rules emergency, provide authority to

the Judicial Conference to declare such an emergency, and prescribe the content and duration of a declaration.

Rule 9038(c) expands existing Bankruptcy Rule 9006(b), which authorizes an individual bankruptcy judge to enlarge time periods for cause. Although many courts relied on Rule 9006(b) to grant extensions of time during the COVID-19 pandemic, the rule does not fully meet the needs of an emergency situation. First, it has some exceptions—time limits that cannot be expanded. Also, it arguably does not authorize an extension order applicable to all cases in a district. Rule 9038 is intended to fill in these gaps for situations in which the Judicial Conference declares a rules emergency. The chief bankruptcy judge can grant a district-wide extension for any time periods specified in the rules, and individual judges can do the same in specific cases. There were no negative comments addressing Rule 9038, and the Advisory Committee recommended final approval as published.

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

The amendments to Questions 2 and 4 in Part 1 of Form 101 clarify how and where to report business names used by the debtor. These changes clarify that the only names to be listed are names that were used by the debtor personally in conducting business, not names used by other legal entities. The changes also bring Form 101 into conformity with the approach taken in Forms 105, 201, and 205 in involuntary bankruptcy cases and in non-individual cases. A suggestion unrelated to the proposed change was rejected, and the Advisory Committee recommended final approval as published.[1]

[1] The version of Official Form 101 in Appendix B includes an unrelated technical conforming change to line 13 which went into effect on June 21, 2022, after the Standing Committee's meeting. The change was approved by the Advisory Committee on Bankruptcy Rules pursuant to its authority to make such changes subject to subsequent approval by the Standing Committee and notice to the Judicial Conference. It conforms the form to the Bankruptcy Threshold Adjustment and Technical Corrections Act (the "BTATC" Act), Pub. L. No. 117-151, which went into effect on the same date. The Standing Committee will review the BTATC Act changes to Official Form 101 and another form at its January 2023 meeting, and will update the Judicial Conference on the changes in its report of that meeting.

Official Forms 309E1 (Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors)) and 309E2 (Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors under Subchapter V))

The amendments clarify the deadline for objecting to a debtor's discharge and distinguish it from the deadline to object to discharging a particular debt. There were no comments, and the Advisory Committee recommended final approval as published with minor changes to punctuation.

Official Form 417A (Notice of Appeal and Statement of Election)

The amendments conform the form to proposed changes to Rule 8003. No comments were submitted, and the Advisory Committee recommended final approval with a proposed effective date of December 1, 2023, to coincide with the Rule 8003 amendment.

The Standing Committee unanimously approved the Advisory Committee's recommendations.

Recommendation: That the Judicial Conference:

a. Approve the proposed amendments to Bankruptcy Rules 3011, 8003, and 9006, and proposed new Bankruptcy Rule 9038, as set forth in Appendix B, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law; and

b. Approve, effective December 1, 2022, the proposed amendments to Bankruptcy Official Forms 101, 309E1, and 309E2, and effective December 1, 2023, the proposed amendment to Bankruptcy Official Form 417A, 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 and Forms Approved for Publication and Comment

The Advisory Committee on Bankruptcy Rules submitted the proposed restyled Bankruptcy Rules for the 7000-9000 Series; proposed amendments to Rules 1007, 4004, 5009, and 9006; proposed new Rule 8023.1; and a proposed amendment to Official Form 410A with a

recommendation that they be published for public comment in August 2022. The Standing Committee unanimously approved the Advisory Committee's recommendations.

Restyled Rules Parts VII, VIII, and IX

The Advisory Committee sought approval for publication of Restyled Rules Parts VII, VIII, and IX (the 7000-9000 series Bankruptcy Rules). This is the third and final set of restyled rules recommended for publication.

Rule 1007(b)(7) (Lists, Schedules, Statements, and Other Documents; Time Limits) and conforming amendments to Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3), and 9006(c)(2)

The amendments to Rule 1007(b)(7) would eliminate the requirement that the debtor file a "statement" on Official Form 423 upon completion of an approved debtor education course, and instead require filing the certificate of completion provided by the approved course provider. The six other rules would be amended to replace references to a "statement" required by Rule 1007(b)(7) with references to a "certificate."

Rule 8023.1 (Substitution of Parties)

Proposed new Rule 8023.1, addressing the substitution of parties, is modeled on Appellate Rule 43, and would be applicable to parties in bankruptcy appeals to the district court or bankruptcy appellate panel.

Official Form 410A (Mortgage Proof of Claim Attachment)

Amendments are made to Part 3 (Arrearage as of Date of the Petition) of the form, replacing the first line (which currently asks for "Principal & Interest") with two lines, one for "Principal" and one for "Interest." Because under 11 U.S.C. § 1322(e) the amount necessary to cure a default is "determined in accordance with the underlying agreement and applicable nonbankruptcy law," it may be necessary for a debtor who is curing arrearages to know which portion of the total arrearages is principal and which is interest.

Information Items

The Advisory Committee met on March 31, 2022. In addition to the recommendations discussed above, the Advisory Committee considered (among other matters) a proposed amendment to Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence) and five related forms that were published for comment. It also considered a suggestion from the Court Administration and Case Management (CACM) Committee concerning electronic signatures.

Rule 3002.1

The proposed amendments to Rule 3002.1 were designed to encourage a greater degree of compliance with the rule and to provide a new midcase assessment of the mortgage claim's status in order to give a chapter 13 debtor an opportunity to cure any postpetition defaults that may have occurred.

Twenty-seven comments were submitted on the proposed amendments. Some of the comments were lengthy and detailed; others briefly stated an opinion in support of or opposition to the amendments. The comments generally fell into three categories: (1) comments opposing the amendments, or at least the midcase review, submitted by some chapter 13 trustees; (2) comments favoring the amendments, submitted by some consumer debtor attorneys; and (3) comments favoring the amendments but giving suggestions for improvement, submitted by trustees, debtors, judges, and an association of mortgage lenders.

The Consumer Subcommittee concluded that there is a need for amendments to Rule 3002.1, and that there is authority to promulgate them. The Advisory Committee agreed. The Consumer Subcommittee was sympathetic, however, with the desire expressed in several comments for simplification, and it has begun to sketch out revisions. It hopes to present a revised draft to the Advisory Committee at the fall meeting. The Forms Subcommittee will

await decisions about Rule 3002.1 before considering any changes to the proposed implementing forms.

Electronic Signatures

The Advisory Committee has been considering a suggestion by the CACM Committee regarding the use of electronic signatures in bankruptcy cases by individuals who do not have a CM/ECF account. At the fall 2021 meeting, the Technology Subcommittee presented for discussion a draft amendment to Rule 5005(a)(2)(C) that would have permitted a person other than the electronic filer of a document to authorize the person's signature on an electronically filed document. The discussion raised several questions and concerns. Among the issues raised were how the proposed rule would apply to documents, such as stipulations, that are filed by one attorney but bear the signature of other attorneys; how it would apply if a CM/ECF account includes several subaccounts; and whether there is really a perception among attorneys that the retention of wet signatures presents a problem that needs solving.

After the fall 2021 meeting, the Advisory Committee's Reporter followed up with the bankruptcy judge who had raised the issue of electronic signatures with the CACM Committee, and learned that this judge is working on a possible local rule for his district modeled on a state-court rule that allows for electronic signatures rather than requiring the retention of wet signatures. In its suggestion, the CACM Committee had questioned whether the lack of a provision in Rule 5005 addressing electronic signatures of individuals without CM/ECF accounts may make courts "hesitant to make such a change without clarification in the rules that use of electronic signature products is sufficient for evidentiary purposes." The Technology Subcommittee concluded that current Rule 5005 does not address the issue of the use of electronic signatures by individuals who are not registered users of CM/ECF and that it therefore does not preclude local rulemaking on the subject. The Bankruptcy Court for the District of

Nebraska already has such a rule (L.B.R. 9011-1). The Technology Subcommittee concluded that a period of experience under local rules allowing the use of e-signature products would help inform any later decision to promulgate a national rule. Electronic signature technology will also likely develop and improve in the interim. The Advisory Committee agreed with the Technology Subcommittee's recommendation and voted not to take further action on the suggestion.

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 6, 15, and 72, and new Civil Rule 87.

Rule 6 (Computing and Extending Time; Time for Motion Papers)

In response to the enactment of the Juneteenth Act, the Advisory Committee made a technical amendment to Rule 6(a)(6)(A) to include the Juneteenth National Independence Day in the list of legal public holidays in the rule. The Advisory Committee recommended final approval without publication because this is a technical and conforming amendment.

Rule 15 (Amended and Supplemental Pleadings)

The amendment to Rule 15(a)(1) would substitute "no later than" for "within" to measure the time allowed to amend a pleading once as a matter of course. Paragraph (a)(1) currently provides, in part, that "[a] party may amend its pleading once as a matter of course *within* (A) 21 days after serving it or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier" (emphasis added).

A literal reading of the existing rule could suggest that the Rule 15(a)(1)(B) period does not commence until the service of the responsive pleading or pre-answer motion, creating an

unintended gap period (prior to service of the responsive pleading or pre-answer motion) during which amendment as of right is not permitted. The proposed amendment is intended to remove that possibility by replacing "within" with "no later than."

After public comment, the Advisory Committee made no changes to the proposed amendment to Rule 15(a)(1) as published. The Advisory Committee made one change to the committee note after publication, deleting an unnecessary sentence that was published in brackets. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 72 (Magistrate Judges: Pretrial Order)

Rule 72(b)(1) directs that the clerk "mail" a copy of a magistrate judge's recommended disposition. This requirement is out of step with recent amendments to the rules that recognize service by electronic means. The proposed amendment to Rule 72(b)(1) would replace the requirement that the magistrate judge's findings and recommendations be mailed to the parties with a requirement that a copy be served on the parties as provided in Rule 5(b).

After public comment, the Advisory Committee made no changes to the proposed amendment to Rule 72(b)(1) as published. The Advisory Committee made one change to the committee note, deleting an unnecessary sentence that was published in brackets. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 87 (Civil Rules Emergency)

Proposed Civil Rule 87 is part of the package of proposed emergency rules drafted in response to the CARES Act directive. Subdivisions (a) and (b) of Rule 87 contain uniform provisions shared by the Appellate, Bankruptcy, and Criminal Emergency Rules. The uniform provisions address (1) who declares an emergency; (2) the definition of a rules emergency; (3) limitations in the declaration; and (4) early termination of declarations.

In form, Civil Rule 87(b)(1) diverges from the Bankruptcy and Criminal Rules with regard to the Judicial Conference declaration of a rules emergency; but in function, Rule 87(b)(1) takes a similar approach to those other rules. While the Bankruptcy and Criminal Rules provide that the declaration must "state any restrictions on the authority granted in" their emergency provisions, Rule 87(b)(1)(B) provides that the declaration "adopts all the emergency rules in Rule 87(c) unless it excepts one or more of them." The character of the different emergency rules provisions accounts for the difference. Rule 87 authorizes Emergency Rules 4(e), (h)(1), (i), (j)(2), and for serving a minor or incompetent person (referred to as "Emergency Rules 4"), each of which allows the court to order service of process by a means reasonably calculated to give notice. Rule 87 also authorizes Emergency Rule 6(b)(2), which displaces the prohibition on the extension of the deadlines for making post-judgment motions and instead permits extension of such deadlines. The Advisory Committee determined that, while it makes sense for the Judicial Conference to have the flexibility to decide not to adopt a particular Civil Emergency Rule when declaring a rules emergency, it would not make sense to invite other, undefined, "restrictions" on the Civil Emergency Rules. Accordingly, the Advisory Committee's proposed language in Civil Rule 87(b)(1)(B) stated that the Judicial Conference's emergency declaration "must … adopt all the emergency rules in Rule 87(c) unless it excepts one or more of them." (The inclusion of the word "must" was the result of a stylistic decision concerning the location of "must" within Rule 87(b)(1).)

At the Standing Committee's June 2022 meeting, a member suggested that it would be preferable to create a clear default rule that would provide for the adoption of all the Civil Emergency Rules in the event that a Judicial Conference declaration failed to specify whether it was adopting all or some of those rules. Accordingly, the Standing Committee voted to relocate the word "must" to Civil Rules 87(b)(1)(A) and (C), so that Civil Rule 87(b)(1)(B) provides

simply that the declaration "adopts all the emergency rules in Rule 87(c) unless it excepts one or more of them." The resulting Rule will operate roughly the same way as the Bankruptcy and Criminal Emergency Rules – that is, a Judicial Conference declaration of a rules emergency will put into effect all of the authorities granted in the relevant emergency provisions, unless the Judicial Conference specifies otherwise.

After public comment, the Advisory Committee deleted from the committee note two unnecessary sentences that had been published in brackets, and augmented the committee note's discussion of considerations that pertain to service by an alternative means under Emergency Rules 4(e), (h)(1), (i), and (j)(2). Based on suggestions by a member of the Standing Committee, the committee note was further revised at the Standing Committee meeting to reflect the possibility of multiple extensions under Emergency Rule 6(b)(2) and to delete one sentence that had suggested that the court ensure that the parties understand the effect of a Rule 6(b)(2) extension on the time to appeal.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Civil Rules 6, 15, and 72, and proposed new Civil Rule 87, 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 met on March 29, 2022. In addition to the matters discussed above, the Advisory Committee considered various information items, including a possible rule on multidistrict litigation (MDL). The Advisory Committee's MDL Subcommittee is considering amendments to Rules 16(b) or Rule 26(f), or a new Rule 16.1, to address the court's role in managing the MDL pretrial process. The drafts developed for initial discussion would simply focus the court and parties' attention on relevant issues without greater direction or detail.

The MDL Subcommittee has collected extensive comments from interested bar groups on some possible approaches.

FEDERAL RULES OF CRIMINAL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules recommended for final approval proposed amendments to Criminal Rules 16, 45, and 56, and new Criminal Rule 62.

Rule 16 (Discovery and Inspection)

The proposed amendment to Rule 16, the principal rule that governs discovery in criminal cases, would correct a typographical error in the Rule 16 amendments that are currently pending before Congress. Those amendments, expected to take effect on December 1, 2022, revise both the provisions governing expert witness disclosures by the government – contained in Rule 16(a)(1)(G) – and the provisions governing expert witness disclosures by the defense – contained in Rule 16(b)(1)(C). Subject to exceptions, both Rule 16(a)(1)(G)(v) and Rule 16(b)(1)(C)(v) require the disclosure to be signed by the expert witness. One exception applies if, under another subdivision of the rule (concerning reports of examinations and tests), the disclosing party has previously provided the required information in a report signed by the witness. This exception cross-references the subdivision concerning reports of examinations and tests.

In Rule 16(a)(1), the relevant subdivision is Rule 16(a)(1)(F), and Rule 16(a)(1)(G)(v) duly cross-references that subdivision (applying the exception if the government "has previously provided under (F) a report, signed by the witness, that contains" the required information). In Rule 16(b)(1), the relevant subdivision is Rule 16(b)(1)(B); however, Rule 16(b)(1)(C)(v) as reported to Congress cross-references not "(B)" (as it should) but "(F)" (applying the exception if the defendant "has previously provided under (F) a report, signed by the witness, that contains"

the required information). The proposed amendment would correct Rule 16(b)(1)(C)(v)'s cross-reference from (F) to (B). The Advisory Committee recommended this proposal for approval without publication because it is a technical amendment. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 45 (Computing and Extending Time) and Rule 56 (When Court is Open)

In response to the enactment of the Juneteenth Act, the Advisory Committee made technical amendments to Rules 45 and 56 to include Juneteenth National Independence Day in the list of legal public holidays in those rules. The Advisory Committee recommended final approval without publication because these are technical and conforming amendments. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 62 (Criminal Rules Emergency)

New Rule 62 is part of the package of proposed emergency rules drafted in response to Congress's directive in the CARES Act. Subdivisions (a) and (b) of Rule 62 contain uniform provisions shared by the Appellate, Bankruptcy, and Civil Emergency Rules. The uniform provisions address (1) who declares an emergency; (2) the definition of a rules emergency; (3) limitations in the declaration; and (4) early termination of declarations. Under the uniform provisions, the Judicial Conference has the sole authority to declare a rules emergency, which is defined as when "extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with" the relevant set of rules.

Rule 62 includes an additional requirement not present in the Appellate, Bankruptcy, or Civil Emergency Rules. That provision is (a)(2), which – for Criminal Rules emergencies – requires a determination that "no feasible alternative measures would sufficiently address the impairment within a reasonable time." This provision ensures that the emergency provisions in

subdivisions (d) and (e) of Rule 62 would be invoked only as a last resort, and reflects the importance of the rights protected by the Criminal Rules that would be affected in a rules emergency.

Subdivision (c) of Rule 62 addresses the effect of the termination of a rules emergency declaration. For proceedings that have been conducted under a declaration of emergency but that are not yet completed when the declaration terminates, the rule permits completion of the proceeding as if the declaration had not terminated if (1) resuming compliance with the ordinary rules would not be feasible or would work an injustice and (2) the defendant consents. This provision recognizes the need for some flexibility during the transition period at the end of an emergency declaration, while also recognizing the importance of returning promptly to compliance with the non-emergency rules.

Subdivisions (d) and (e) of Rule 62 address the court's authority to depart from the Criminal Rules once a Criminal Rules emergency is declared. These subdivisions would allow specified departures from the existing rules with respect to public access, a defendant's signature or consent, the number of alternate jurors, the time for acting under Rule 35, and the use of videoconferencing or teleconferencing in certain proceedings.

Paragraph (d)(1) specifically addresses the court's obligation to provide reasonable alternative access to public proceedings during a rules emergency if the emergency substantially impairs the public's in-person attendance. Following the public comment period, the Advisory Committee considered several submissions commenting on the reference to "victims" in the committee note discussing (d)(1). The Advisory Committee revised the committee note to direct courts' attention to the constitutional guarantees of public access and any applicable statutory provision, including the Crime Victims' Rights Act, 18 U.S.C. § 3771. The Standing Committee

made a minor wording change to this portion of the committee note (directing courts to "comply with" rather than merely "be mindful of" the applicable constitutional and statutory provisions).

As published, subparagraph (e)(3)(B) provided that a court may use videoconferencing for a felony plea or sentencing proceeding if, among other requirements, "the defendant, after consulting with counsel, requests in a writing signed by the defendant that the proceeding be conducted by videoconferencing." Public comments raised practical concerns about the requirement of an advance writing by the defendant requesting the use of videoconferencing. The Advisory Committee considered these comments as they pertained to the "request" language and the timing of the request, and ultimately elected to retain the language as published.

The Standing Committee made three changes relating to Rule 62(e)(3)(B). First, the Standing Committee voted (10 to 3) to insert "before the proceeding and" in subparagraph (e)(3)(B) to clarify the temporal requirement. Second, the Standing Committee voted (7 to 6) to substitute "consent" for "request" in subparagraph (e)(3)(B). The net result of these two changes is to require that the defendant, "before the proceeding and after consulting with counsel, consents in a writing signed by the defendant that the proceeding be conducted by videoconferencing." Third, the Standing Committee authorized the Advisory Committee Chair and Reporters to draft conforming changes to the committee note. After these deliberations, the Standing Committee voted unanimously to recommend final approval of new Criminal Rule 62.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Criminal Rules 16, 45, and 56, and proposed new Criminal Rule 62, as set forth in Appendix D, 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 Criminal Rules met on April 28, 2022. In addition to the matters discussed above, the Advisory Committee considered several information items,

including proposals to amend Rule 49.1 to address a concern about the committee note's language regarding public access to certain financial affidavits and to amend Rule 17 to address the scope of and procedure for subpoenas.

FEDERAL RULES OF EVIDENCE

Rules Recommended for Approval and Transmission

The Advisory Committee on Evidence Rules recommended for final approval proposed amendments to Evidence Rules 106, 615, and 702.

Rule 106 (Remainder of or Related Writings or Recorded Statements)

The proposed amendment to Rule 106 – the rule of completeness – would allow any completing statement to be admitted over a hearsay objection and would cover all statements, whether or not recorded. The overriding goal of the amendment is to treat all questions of completeness in a single rule. That is particularly important because completeness questions often arise at trial, and so it is important for the parties and the court to be able to refer to a single rule to govern admissibility. The amendment is intended to displace the common law, just as the common law has been displaced by all of the other Federal Rules of Evidence.

The Advisory Committee received only a few public comments on the proposed changes to Rule 106. As published, the amendment would have inserted the words "written or oral" before "statement" so as to address the rule's applicability to unrecorded oral statements. After public comment, the Advisory Committee deleted the phrase "written or oral" to make clear that Rule 106 applies to all statements, including statements – such as those made through conduct or through sign language – that are neither written nor oral.

Rule 615 (Excluding Witnesses)

The proposed amendments to Rule 615 would limit an exclusion order under the existing rule (which would be re-numbered Rule 615(a)) to exclusion of witnesses from the courtroom,

and would add a new subdivision (b) that would provide that the court has discretion to issue further orders to "(1) prohibit disclosure of trial testimony to witnesses who are excluded from the courtroom; and (2) prohibit excluded witnesses from accessing trial testimony." Under the proposed amendments, if a court wants to do more than exclude witnesses from the courtroom, the court must so order. In addition, the proposed amendments would clarify that the existing provision that allows an entity-party to designate "an officer or employee" to be exempt from exclusion is limited to one officer or employee. The rationale is that the exemption is intended to put entities on par with individual parties, who cannot be excluded under Rule 615. Allowing the entity more than one exemption is inconsistent with that rationale. In response to public comments, the Advisory Committee made two minor changes to the committee note (replacing the word "agent" with the word "representative" and deleting a case citation). The Standing Committee, in turn, revised three sentences in the committee note (including the sentence addressing orders governing counsel's disclosure of testimony for witness preparation).

Rule 702 (Testimony by Expert Witnesses)

The proposed amendments to Rule 702's first paragraph and to Rule 702(d) are the product of Advisory Committee work dating back to 2016. As amended, Rule 702(d) would require the proponent to demonstrate to the court that "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." This language would more clearly empower the court to pass judgment on the conclusion that the expert has drawn from the methodology. In addition, the proposed amendments as published would have required that "the proponent has demonstrated by a preponderance of the evidence" that the requirements in Rule 702(a) – (d) have been met. This language was designed to reject the view of some courts that the reliability requirements set forth in Rule 702(b) and (d) – that the expert has relied on sufficient facts or data and has reliably applied a reliable methodology to the facts – are

questions of weight and not admissibility, and more broadly that expert testimony is presumed to be admissible. With this language, the Advisory Committee sought to explicitly weave the Rule 104(a) standard into the text of Rule 702.

More than 500 comments were received on the proposed amendments to Rule 702. In addition, a number of comments were received at a public hearing. Many of the comments opposed the amendment, and the opposition was especially directed toward the phrase "preponderance of the evidence." Another suggestion in the public comment was that the rule should clarify that it is the court and not the jury that must decide whether it is more likely than not that the reliability requirements of the rule have been met. The Advisory Committee carefully considered the public comments and determined to replace "the proponent has demonstrated by a preponderance of the evidence" with "the proponent demonstrates to the court that it is more likely than not" that the reliability requirements are met. The Advisory Committee also made a number of changes to the committee note, and the Standing Committee, in its turn, made one minor edit to the committee note.

After making the changes, noted above, to the committee notes for Rules 615 and 702, the Standing Committee unanimously approved the proposed amendments to Rules 106, 615, and 702.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Evidence Rules 106, 615, and 702, as set forth in Appendix E, 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 Approved for Publication and Comment

The Advisory Committee on Evidence Rules submitted proposed amendments to Rules 611, 613, 801, 804, and 1006 with a recommendation that they be published for public comment in August 2022. The Standing Committee unanimously approved for publication for

public comment the proposed new Rule 611(d) and the proposed amendments to Rules 613, 801, 804, and 1006, but did not approve for publication proposed new Rule 611(e). The Advisory Committee will further consider the proposed new Rule 611(e) in the light of the Standing Committee's discussion.

Rule 611(d) (Illustrative Aids)

The proposed amendment would amend Rule 611 ("Mode and Order of Examining Witnesses and Presenting Evidence") by adding a new Rule 611(d) to regulate the use of illustrative aids at trial. The distinction between "demonstrative evidence" (admitted into evidence and used substantively to prove disputed issues at trial) and "illustrative aids" (not admitted into evidence but used solely to assist the jury in understanding the evidence) is sometimes a difficult one to draw and is a point of confusion in the courts. The proposed amendment would set forth uniform standards to regulate the use of illustrative aids, and in doing so, would clarify the distinction between illustrative aids and demonstrative evidence. In addition, because illustrative aids are not evidence and adverse parties do not receive pretrial discovery of such aids, the proposed amendment would require notice and an opportunity to object before an illustrative aid is used, unless the court for good cause orders otherwise.

Rule 611(e) (Juror Questions for Witnesses)

Proposed new Rule 611(e) was not approved for publication. That proposed rule would set forth a single set of safeguards that should be applied if the trial court decides to allow jurors to submit questions for witnesses. The proposed new Rule 611(e) requires the court to instruct jurors, among other things, that if they wish to ask a question, they must submit it in writing; that they are not to draw inferences if their question is rephrased or does not get asked; and that they must maintain their neutrality. The proposed rule also provides that the court must consult with counsel when jurors submit questions, and that counsel must be allowed to object to such

questions outside the jury's hearing. The committee note to proposed Rule 611(e) emphasizes that the rule is agnostic about whether a court decides to permit jurors to submit questions. During the Standing Committee meeting, members expressed differing views concerning this proposal, and the Advisory Committee has been asked to develop the proposal further in the light of that discussion.

Rule 613 (Witness's Prior Statement)

Current Rule 613(b) rejects the "prior presentation" requirement from the common law that before a witness could be impeached with extrinsic evidence of a prior inconsistent statement, the adverse party was required to give the witness an opportunity to explain or deny the statement. The current rule provides that extrinsic evidence of the inconsistent statement is admissible so long as the witness is given an opportunity to explain or deny the statement at some point in the trial. The proposed amendment to Rule 613(b) would require a prior opportunity to explain or deny the statement, with the court having discretion to allow a later opportunity. This would bring the rule into alignment with what the Advisory Committee believes to be the practice of most trial judges.

Rule 801(d)(2) (An Opposing Party's Statement)

Current Rule 801(d)(2) provides a hearsay exemption for statements of a party opponent. Courts are split about the applicability of this exemption in the following situation: a declarant makes a statement that would have been admissible against him as a party-opponent, but he is not the party-opponent because his claim or potential liability has been transferred to another (either by agreement or by operation of law), and it is the transferee that is the party-opponent.

The proposed amendment to Rule 801(d)(2) would provide that such a statement is admissible against the successor-in-interest. The Advisory Committee reasoned that

admissibility is fair when the successor-in-interest is standing in the shoes of the declarant because the declarant is in substance the party-opponent.

Rule 804 (Hearsay Exceptions; Declarant Unavailable)

Current Rule 804(b)(3) provides a hearsay exception for declarations against interest. In a criminal case in which a declaration against penal interest is offered, the rule requires that the proponent provide "corroborating circumstances that clearly indicate [the] trustworthiness" of the statement. There is a dispute in the courts about the meaning of the "corroborating circumstances" requirement. The proposed amendment to Rule 804(b)(3) would parallel the language in Rule 807 and require the court to consider the presence or absence of corroborating evidence in determining whether "corroborating circumstances" exist.

Rule 1006 (Summaries to Prove Content)

The proposed amendment to Rule 1006 would provide greater guidance to the courts on the admissibility and proper use of summary evidence under Rule 1006. The proposed amendment to Rule 1006 fits together with proposed new Rule 611(d) on illustrative aids. Rule 1006 provides that a summary can be admitted as evidence if the underlying records are admissible and too voluminous to be conveniently examined in court. Courts are in dispute about a number of issues regarding admissibility of summaries of evidence under Rule 1006, and some courts do not properly distinguish between summaries of evidence under Rule 1006 (which are themselves admitted into evidence) and summaries that are illustrative aids (which are not evidence at all). The proposed amendment to Rule 1006 would clarify that a summary is admissible whether or not the underlying evidence has been admitted, and would provide a cross-reference to Rule 611(d) on illustrative aids.

Information Items

The Advisory Committee on Evidence Rules met on May 6, 2022. The Advisory Committee discussed the matters listed above.

PROPOSED 2022 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 that rules be promulgated, 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." Pursuant to that directive, the Judicial Conference submitted reports to Congress in 2009 and 2011. The Committee recommends that the Judicial Conference approve this third report (the "2022 Report"), which covers the period from 2011 to date. Future reports will be submitted beginning in 2024 and every two years thereafter.

The 2022 Report discusses rule and form amendments relevant to privacy issues that were adopted since the 2011 report. There have been changes to then-Bankruptcy Forms 9 and 21 in 2012; Appellate Form 4 in 2013 and 2018; Bankruptcy Rule 9037 in 2019; and Appellate Rule 25(a)(5) (this amendment is on track to take effect on December 1, 2022, absent contrary action by Congress). In addition, privacy concerns also shaped the content of Rule 2 in the new set of Supplemental Rules for Social Security Actions Under 42 U.S.C. § 405(g) (which is on track to take effect on December 1, 2022, absent contrary action by Congress).

The 2022 Report also discusses privacy-related topics currently pending on the Rules Committees' dockets, and deliberations in which the Rules Committees considered but rejected additional privacy-related rule amendments.

> **Recommendation:** That the Judicial Conference approve the proposed 2022 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 F, and ask the Administrative Office Director to transmit it to Congress in accordance with the law.

JUDICIARY STRATEGIC PLANNING

The Committee was asked to consider the Executive Committee's request for a report on the strategic initiatives that the Standing Committee is pursuing to implement the *Strategic Plan for the Federal Judiciary*. The Committee's views were communicated to Chief Judge Scott Coogler, judiciary planning coordinator.

Respectfully submitted,

John D. Bates, Chair

Elizabeth J. Cabraser	Troy A. McKenzie
Jesse M. Furman	Patricia Ann Millett
Robert J. Giuffra, Jr.	Lisa O. Monaco
Frank Mays Hull	Gene E.K. Pratter
William J. Kayatta, Jr.	Kosta Stojilkovic
Peter D. Keisler	Jennifer G. Zipps
Carolyn B. Kuhl	

* * * * *

TAB 4

TAB 4A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: PROPOSED REVISION OF RULE 3002.1 AMENDMENTS IN RESPONSE TO COMMENTS

DATE: AUGUST 22, 2022

In a series of meetings this summer, the Subcommittee completed its review of the comments submitted in response to the 2021 publication of proposed amendments to Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence). As discussed below, the Subcommittee now recommends that the Advisory Committee ask the Standing Committee to republish the amendments as revised in response to the comments. The rule as proposed for revision by the Subcommittee and summaries of the comments follow in the agenda book. Attachment 1 shows the changes to the published version of the rule. Attachment 2 shows the changes to the restyled version of the current rule.

This memo provides an overview of the comments, discusses the changes to the published amendments that the Subcommittee recommends, and then explains why it recommends that the amendments be republished.

The Comments

As the Subcommittee reported at the spring meeting, 27 comments were submitted on the proposed amendments. Some of them were lengthy and detailed; others briefly stated an opinion in support of or opposition to the amendments. All were well thought-out and worthy of careful consideration.

The comments included a letter from a group of 68 chapter 13 trustees who questioned whether there is a need for the amendments. They were particularly concerned about the midcase review because they said that it would impose an unnecessary burden on them and that the needed information about the home mortgages is already available. They and other trustees also contended that the new requirements for the end-of-case motion would not work well in a non-conduit case because the trustee lacks records about postpetition mortgage payments paid by the debtor.

The comments from some debtors' attorneys, on the other hand, welcomed the requirement of a midcase review. They pointed out that mortgage servicers' records are often inconsistent with trustees' and debtors' records and that an earlier opportunity to reconcile them would be beneficial. Some also stated support for the adoption of a motion practice, rather than just a notice requirement, that would result in an enforceable order.

The National Conference of Bankruptcy Judges ("NCBJ"), while stating that it did not oppose the amendments, raised questions about the authority to promulgate several provisions. In particular, it questioned the requirement of annual notices of payment change for home equity lines of credit (HELOCs) and the end-of-case procedures for obtaining an order determining the status of the mortgage. NCBJ also questioned whether the benefits of a midcase assessment and the revised end-of-case procedures were sufficient to outweigh the added burden on courts and parties imposed by the provisions.

Proposed Changes

At the spring meeting, the Advisory Committee indicated its agreement with the Subcommittee's conclusion that there is a need for some revisions to Rule 3002.1 and that there is authority to promulgate them. The Subcommittee therefore proceeded with its consideration

of possible changes to the published amendments in response to the comments. The version of the rule in Attachment 1 shows by underling in red and strikethroughs the changes that the Subcommittee is recommending be made to the published draft.

Subdivision (a). Only two stylistic changes are proposed to this subsection. They are the capitalization of "chapter" to conform to the convention of the restyled rules and the substitution of "provides for" for "requires" to reflect the nature of a chapter 13 plan more accurately.

Subdivision (b). The Subcommittee recommends several changes to this subdivision. One is a structural change: the texts of (b)(2) and (b)(3) are reversed, so that the requirements for giving notice of HELOC changes in payment amounts are addressed before the provision on late payments. The Subcommittee thought that this order is more logical.

In response to several comments, the Subcommittee recommends making optional the provision for annual notices of HELOC-payment changes. The provision is intended to be for the benefit of the claim holder, so if such a claim holder prefers to provide notices more frequently, the Subcommittee could see no reason not to allow it to do so. Other changes in this subdivision that the Subcommittee recommends with respect to HELOCs include a clarification of the amounts of the next two payments following an annual notice and the addition of an explicit exception for HELOCs in (b)(1). References to the HELOC provision—(b)(2)—are added to other provisions where appropriate.

The Subcommittee recommends several changes to (b)(4) (*Party in Interest's Objection*) in response to comments. A service requirement is added, and the effective date of a payment change when there is no objection is clarified ("on that date" instead of "immediately"). The reference to § 1322(b)(5) is also deleted. A reference to this Code provision was deleted from

subdivision (a) in 2016 to make clear that the rule applies even if there is no prepetition arrearage, but two other references to the provision in the rule were overlooked at that time.

The changes the Subcommittee recommends to subdivisions (c), (d), and (e) are primarily stylistic. In addition, the words "or imposed" were deleted in (c) to restore the provision to its current wording. A comment pointed out that the date of imposition could be different from the date of incurrence and that the addition of those words was unnecessary in one place and confusing in another. In (e) "the party" was changed to "a party in interest" because, as a comment noted, the moving party would not need to seek a shortening of the time to file the motion; it could just file its motion earlier. The reference to § 1322(b)(5) was also deleted.

The Subcommittee recommends that significant changes be made to subdivision (f). This provision, which as published required a midcase review of the status of the mortgage claim, received the most criticism. As revised, it would be optional, not mandatory; could be initiated by either the trustee or the debtor, not just the trustee; could be sought at any time during the case, not just between 18 and 24 months after the petition was filed; and would be initiated by a motion, not a notice. The claim holder would have to respond to the motion only if it disagreed with the facts set forth in the motion, rather than in all cases. Finally, a sentence was added that authorizes the court to enter an order favorable to the moving party if the claim holder does not respond.

These proposed changes are responsive to comments that said such a determination during the case is not needed. Now it would not have to be sought if neither the trustee nor the debtor wanted it. On the other hand, if either the trustee or debtor wanted to reconcile records with the claim holder or obtain a court order that payments were current, either one could seek such a determination at any time (although the committee note says that such a motion should be

limited to when it is necessary and appropriate for carrying out the plan). The change from a notice—with an order to compel a response and an objection to the response—to a motion, followed by a response if there is a disagreement, responds to comments that said the procedure as published was too complex.

The Subcommittee recommends that all of the provisions about an end-of-case determination be consolidated in subdivision (g), rather than being addressed in two subdivisions. In response to comments that the current rule is working well, the Subcommittee recommends that the current procedure of Rule 3002.1(f)-(h) be retained, with some changes to make it more effective. Rather than starting with a motion by the trustee, as the published rule did, the end-of-case procedure would continue to start with a notice by the trustee indicating whether and in what amounts he or she had cured any prepetition arrearage and made any payments to the claim holder that came due postpetition. Rather than being triggered by the debtor's final cure payment, the notice would have to be filed "within 45 days after the debtor complete[d] all payments due to the trustee" under the plan. This change would clarify that the trustee's obligation to file a notice applied whether or not there was a prepetition arrearage to cure so long as "the trustee has made any payments on a claim described in (a)." As under the current rule, the claim holder would be required to file a response to the notice. The time limits for both the notice and response would be longer than under the current rule, and Official Forms would be created for both filings.

If the trustee or debtor wanted the court to determine whether the debtor had cured any default and paid all required postpetition amounts, either one could file a motion for a court determination. This procedure is similar to the existing procedure under Rule 3002.1(h). Proposed subdivision (g)(3) sets out deadlines for the motion. The Subcommittee recommends

that the rule not specify what information must be in the court's order, as the published rule did, but instead that a Director's Form be created for this purpose that a court could choose to use.

In addition to a stylistic change, the Subcommittee recommends two changes to the final subdivision, now (h), in response to comments. First, the word "as" would be reinserted in the first sentence—which begins, "If the claim holder fails to provide any information as required by this rule"—in order to require compliance with the provisions for how information must be provided. Second, authorization would be given for "noncompensatory sanctions" in appropriate circumstances. Several comments suggested this addition in response to the Second Circuit's decision in PHH Mortg. Corp. v. Sensenich (*In re* Gravel), 6 F.4th 503 (2021), which held that "[p]unitive sanctions do not fall within the 'appropriate relief' authorized by Rule 3002.1." *Id.* at 515. The court reasoned that "'other appropriate relief' is limited to non-punitive sanctions, as that would cabin it to the most general attribute shared with an award of expenses and fees." *Id.* at 514-15. The Subcommittee agreed with comments that noncompensatory relief, whether punitive, declaratory, or injunctive, could be appropriate under some circumstances and therefore should be expressly authorized.

Finally, the Subcommittee recommends changes to the committee note to reflect the changes made to the rule.

Republication

After the discussion of all the changes that the Subcommittee is recommending be made to the published rule, the recommendation of republication may seem obvious. The Subcommittee did, however, discuss why republication might not be necessary before reaching its conclusion.

Judiciary policy regarding rulemaking provides the following guidance:

> If the advisory committee makes substantial changes, the proposed rule should be republished for an additional period of public comment unless the advisory committee determines that republication would not be necessary to achieve adequate public comment and would not assist the work of the rules committees.

Guide to Judiciary Policy ¶ 440.20.50(b). The Subcommittee recognized that it clearly is recommending that "substantial changes" be made to the published amendments. The question it debated was whether republication was needed in order to achieve adequate public comment and to assist the Advisory and Standing Committees. It might be argued that the proposed changes are within the scope of what was published and are responsive to comments that were submitted. The most extensive changes are to what would now be subdivisions (b), (f), and (g), and they make some parts optional, simplify others, and return another provision closer to the existing rule. A new round of comments might not be needed because the public has already weighed in on these topics.

The Subcommittee, however, concluded that republication would be helpful. There is not such an urgency to amend Rule 3002.1 that a year's delay would be harmful. And there are some new provisions—such as the authorization of noncompensatory sanctions and the elimination of any restriction on when a motion to determine the status of a mortgage claim can be filed—that might attract significant comment. Furthermore, the rule addresses some fairly technical issues on which further input from mortgage experts and trustees might be useful to the Committee.

Therefore, the Subcommittee recommends that the Advisory Committee approve for republication the proposed amendments to Rule 3002.1 as shown in Attachment 2. Because the Forms Subcommittee still needs to review the implementing forms in light of the comments and proposed changes to the rule, the Subcommittee recommends that the revised rule not go to the Standing Committee until the June 2023 meeting.

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

Rule 3002.1. Chapter 13—-Claim Secured by a Security Interest in the Debtor's Principal Residence

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

(b) NOTICE OF A PAYMENT CHANGE; ~~EFFECT OF AN UNTIMELY NOTICE;~~ HOME-EQUITY LINE OF CREDIT; EFFECT OF AN UNTIMELY NOTICE; OBJECTION.

[1] New material is underlined in red; matter to be omitted is lined through. The changes shown are to the rule as published in 2021 (without showing changes to the existing rule).

(1) *Notice by the Claim Holder*. The claim holder ~~shall~~must file a notice of any change in the payment amount—including any change resulting from an interest-rate or escrow-account adjustment. Except as provided in (b)(2), ~~At~~ at least 21 days before the new payment is due, the notice must be filed and served on:

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

~~(2) *Effect of an Untimely Notice*. If the claim holder does not timely file and serve the notice required by (b)(1), the effective date of the new payment 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 date stated in the untimely notice.~~

~~(3)~~ *Notice of a Change in a Home-Equity Line of Credit*.

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

(B) *Contents of the Annual Notice.* The annual notice ~~shall~~must:

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

(2) 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 ~~after the effective date of the annual notice shall be increased or decreased by the reconciliation amount~~ 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) ~~shall~~ will be effective on the first payment due date ~~that is at least 21 days after the annual notice is filed and served~~ after the payment under (C) is made and ~~shall~~will remain effective until a new notice becomes effective.

(E) *Payment Changes Greater Than $10.* If the claim holder opts to give annual notices under (b)(2) and the monthly payment increases or decreases by more than $10 in any month, the claim holder ~~shall~~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 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 first payment due date that is after the date of the notice.

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

(c) FEES, EXPENSES, AND CHARGES INCURRED AFTER THE CASE WAS FILED; NOTICE BY THE CLAIM HOLDER. The claim holder ~~shall~~must file a notice itemizing all fees, expenses, and charges that the claim holder has incurred ~~or imposed~~ after the case was filed that the claim holder asserts are recoverable against the debtor or the debtor's principal residence. Within 180 days after the fees, expenses, or charges are incurred ~~or imposed~~, the notice ~~shall~~ must be filed and served on~~: the debtor; the~~

~~debtor's attorney; and the trustee.~~ the individuals listed in (b)(1).

(d) FILING NOTICE AS A SUPPLEMENT TO A PROOF OF CLAIM. A notice under (b) or (c) ~~shall~~must be filed as a supplement to a proof of claim, and be prepared using ~~the appropriate~~ Official 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, the court ~~shall~~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) of the Code~~. The motion ~~shall~~must be filed within one year after the notice under (c) was served, unless ~~the~~ a party in interest has requested and the court orders a shorter period.

(f) ~~TRUSTEE'S MIDCASE NOTICE OF THE STATUS OF A MORTGAGE CLAIM~~ MOTION TO

DETERMINE STATUS; RESPONSE; COURT DETERMINATION.

(1) *Timing; Content and Service.* ~~Between 18 and 24 months~~ At any time after the ~~bankruptcy petition was filed~~ date of the order for relief under Chapter 13 and until the case is closed, the trustee or debtor ~~shall~~ may file a ~~notice about~~ motion to determine the status of ~~any~~ any ~~mortgage~~ claim described in (a). The ~~notice~~ ~~shall~~ motion must be prepared using ~~the appropriate~~ Official Form [ ] and be served on:

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

(2) *Response; ~~Motion to Compel a Response; Objection to the Response; Court~~*

~~*Determination*~~ *Content and Service*. ~~(A)~~ ~~*Deadline; Content and Service.*~~ If the~~The~~ claim holder disagrees with facts set forth in the motion, it ~~shall~~ must file a response ~~to the trustee's notice~~ within 21 days after ~~it~~ the motion is served. The response ~~shall~~ must be prepared using ~~the appropriate~~ Official Form [ ] and be served on:~~the debtor; debtor's counsel~~attorney~~; and the trustee~~ the individuals listed in (b)(1).

~~(B) *Motion for an Order Compelling a Response.* If the claim holder does not timely file a response, a party in interest may move for an order compelling one.~~

~~(C) *Objection.* A party in interest may file an objection to the claim holder's response.~~

(~~D~~3) *Court Determination.* If ~~a party in interest objects to the response~~ the claim holder's

response asserts a disagreement with facts set forth in the motion, the court ~~shall~~ must, after notice and a hearing, determine the status of the ~~mortgage~~ claim and enter an appropriate order. If the claim holder does not respond to the motion, the court may enter an order favorable to the moving party based on the facts set forth in the motion.

(g) TRUSTEE'S END-OF-CASE ~~MOTION TO DETERMINE THE STATUS OF~~ NOTICE OF PAYMENTS MADE ~~ON A MORTGAGE CLAIM~~; RESPONSE; COURT DETERMINATION.

(1) *Timing; Content and Service.* Within 45 days after the debtor completes all payments due to the trustee under a ~~chapter~~ Chapter 13 plan, the trustee—if the trustee has made any payments on a claim described in (a)—~~shall~~ must file a ~~motion~~ notice stating:

(A)~~to determine the status of a mortgage claim, including whether any prepetition arrearage has been cured.~~ the amount, if any, the trustee paid to the claim holder to cure any default and whether the default has been cured; and

(B) the amount, if any, the trustee paid to the claim holder for contractual payments that came due during the pendency of the case and whether contractual payments are current as of the date of the notice.

The notice must also inform the claim holder of its obligation to respond under (g)(2). The ~~motion shall~~ notice must be prepared using ~~the appropriate~~ Official Form [ ] and be served on:

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

(2) *Response; ~~Motion to Compel a Response; Objection to the Res ponse~~*. ~~(A) Deadline; Content and Service.~~ The claim holder ~~shall~~ must file a response to the ~~motion~~ notice within 28 days after its service ~~of the motion~~. The response must be filed as a supplement to the claim holder's proof of claim and is not subject to Rule 3001(f). The response ~~shall~~ must be prepared using ~~the appropriate~~ Official Form [ ] and be served on~~: the debtor; debtor's counsel; and the trustee~~ the individuals listed in (b)(1).

~~(B) *Motion for an Order Compelling a Response.* If the claim holder does not timely file a response, a party in interest may move for an order compelling one.~~

~~(C) *Objection.* Within 14 days after service of a response, a party in interest may file an objection to the response.~~

~~(h) ORDER DETERMINING THE STATUS OF A MORTGAGE CLAIM.~~

(~~1~~3) ~~*No Response*~~ *Court Determination of Final Cure and Payment.* ~~If the claim holder fails to comply with an order under (g)(2)(B) to respond to the trustee's motion, the court may enter an order determining that:~~

~~(A) as of the date of the motion, the debtor is current on all payments that the plan requires to be paid to the claim holder, including all escrow amounts; and~~

~~(B) all postpetition legal fees, expenses, and charges incurred or imposed by the claim holder have been satisfied in full.~~

~~(2) *No Objection.* If the claim holder timely responds and no objection is filed, the court may, by order, determine that the amounts stated in~~

~~the claim holder's response reflect the status of the claim as of the date the response was filed.~~

~~(3) *Contested Motion.* If an objection is filed, the court shall, after notice and a hearing, determine the status of the mortgage claim and issue an appropriate order.~~ On motion of the debtor or trustee and after notice and hearing, the court must determine whether the debtor has cured any default and paid all required postpetition amounts. The trustee or debtor may seek such a determination within the following time periods:

- within 28 days after service of the response under (g)(2);
- within 45 days after service of the trustee's notice under (g)(1) if no response is filed by the claim holder under (g)(2); or

- before the Chapter 13 case is closed if the trustee does not file the notice under (g)(1).

~~(4) *Contents of the Order.*~~

~~(A) *Issued Under (h)(2) or (h)(3).*~~ ~~An order issued under (h)(2) or (h)(3) shall include the following information, current as of the date of the claim holder's response or such other date that the court may determine:~~

~~(i) the principal balance owed;~~

~~(ii) the date that the debtor's next payment is due;~~

~~(iii) the amount of the next payment separately identifying the amount due for principal, interest, mortgage insurance, taxes, and other escrow amounts, as applicable;~~

~~(iv) the amounts held in any escrow, suspense, unapplied funds, or similar account; and~~

~~(v) the amount of any fees, expenses, or charges properly noticed under (c) that remain unpaid.~~

~~(B) *Issued Under (h)(1).* An order issued under (h)(1) may include any of the information described in (A) and may address the treatment of any payment that becomes delinquent before the court grants the debtor a discharge.~~

(~~i~~h) CLAIM HOLDER'S FAILURE TO GIVE NOTICE OR RESPOND. If the claim holder fails to provide any information as required by this rule, the court may, after notice and a hearing, do one or more of the following:

(1) preclude the holder from presenting the omitted information in any form as evidence in

any contested matter or adversary proceeding in the case—unless the court determines that the failure was substantially justified or is harmless; ~~or~~

(2) award other ~~appropriate~~ relief, including reasonable expenses and attorney's fees caused by the failure and, in appropriate circumstances, noncompensatory sanctions; 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 ~~provide a more straight-forward and familiar procedure for determining the status of a mortgage claim at the end of a chapter 13 case. It also provides for a new midcase~~ allow assessments of ~~the~~ 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, ~~remains largely unchanged. However, the~~ is amended to delete the word "installment" in the phrase "contractual installment payment" ~~was deleted here and throughout the rule~~ in order to clarify the rule's applicability to reverse mortgages, which are not paid in installments.

In addition to stylistic changes, subdivision (b) is amended ~~to add provisions about the effective date of late payment change notices and~~ 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. ~~Subdivision (b)(2) now provides that late notices of a payment increase do not go into effect until the required notice period (at least 21 days) expires. There is no delay, however, in the effective date of an untimely notice of a payment decrease.~~

———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)(~~3~~2),

a HELOC claimant ~~only needs~~ 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 change 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.

~~Only stylistic~~ The changes ~~are~~ 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 ~~the~~ a procedure for ~~a midcase assessment of~~ assessing the status of the mortgage at any point while the chapter 13 case is pending.~~,~~ ~~which~~ 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 ~~in the chapter 13 case~~ to become current before the case is closed. The procedure ~~begins with the trustee providing notice of the status of the mortgage~~ is initiated by motion of the trustee or debtor. An Official Form has been adopted for this purpose. The ~~mortgage~~ claim holder then has to respond if it disagrees with facts

stated in the motion, again using an Official Form to provide the required information. ~~If the claim holder fails to respond, a party in interest may seek an order compelling a response. A party in interest may also object to the claim holder's response.~~ If ~~an objection is made~~the claim holder's response asserts such a disagreement, the court, after notice and a hearing, will determine~~s~~ the status of the mortgage claim. If the claim holder fails to respond, the court may enter an order favorable to the moving party by default.

As under the former rule, ~~there is an assessment of the status of the mortgage at the end of a chapter 13 case—when the debtor has completed all payments under the plan. The procedure is changed, however, from a notice to a motion procedure that results in a binding order, and time periods for the trustee and claim holder to act have been lengthened~~ the trustee must file a notice at the end of the case if the trustee has made payments to the claim holder on a claim covered by the rule. Under subdivision (g), ~~the trustee begins the procedure by filing~~—within 45 days after the last plan payment is made to the trustee~~,~~ ~~—a motion to determine the status of the mortgage~~ the trustee must file a notice of final cure and payment. 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, if any, that the trustee has paid on contractual obligations that came due during the case and whether those payments are current as of the date of the notice. The claim holder then must respond within 28 days after service of the ~~motion~~notice, again using an Official Form to provide the required information. ~~If the claim holder fails to respond, a party in interest may seek an order compelling a response. A party in interest may also object to the response.~~

~~This process ends with a court order detailing the status of the mortgage (subdivision (h)).~~ Either the trustee or the debtor may file a motion for a determination of final cure and payment. The motion must be filed within 28 days after the claim holder responds to the trustee's notice under (g)(1), or if ~~If~~ the claim holder fails to respond to the notice, within 45 days after the notice was served. If no notice was filed, the motion may be made at any time before the case is closed. ~~to an order compelling a response, the court may enter an order stating that the debtor is current on the mortgage. If there is a response and no objection to it is made, the order may accept as accurate the amounts stated in the response. If there is both a response and an objection, the~~ The court ~~must~~ will then determine the status of the mortgage. ~~Subdivision (h)(4) specifies the contents of the order.~~ 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. It also expressly states that noncompensatory sanctions may be awarded in appropriate circumstances. Stylistic changes have also been made to the subdivision.

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~~ payments. 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.

(b) NOTICE OF A PAYMENT CHANGE; HOME-EQUITY LINE OF CREDIT; EFFECT OF AN UNTIMELY NOTICE; OBJECTION.

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

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

(1) *Notice by the Claim Holder.* The claim holder must file a notice of any change in the payment amount ~~of an installment payment~~ including any change resulting from an interest-rate or escrow-account adjustment. Except as provided in (b)(2), ~~At~~ at least 21 days before the new payment is due,the notice must be filed and served on:

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

~~If the claim arises from a home-equity line of credit, the court may modify this requirement.~~

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

(A) *Deadline.* 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 was filed and then at least annually.

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

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

(2) 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) will be effective on the first payment due date after the payment under (C) is made and will remain effective until a new notice becomes effective.

(E) *Payment Changes Greater Than $10.* If the claim holder opts to give annual notices under (b)(2) and the monthly payment increases or decreases by more than $10 in any month, the claim 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 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 first payment due date that is after the date of the notice.

(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 validity of the payment change. 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 that the

claim holder has 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 has requested 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 case is closed, the trustee or debtor may file a motion to determine the status of any claim described in (a). The motion must be prepared using Official Form [ ] 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 21 days after the motion is served. The response must be prepared using Official Form [ ] 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, the court may enter an order favorable to the moving party based on the facts set forth in the motion.

(fg) ~~NOTICE OF THE FINAL CURE PAYMENT.~~ TRUSTEE'S END-OF-CASE NOTICE OF PAYMENTS MADE; RESPONSE; COURT DETERMINATION.

(1) ~~*Contents of a Notice*~~ *Timing; Content and Service*. Within ~~30~~ 45 days after the debtor completes all payments due to the trustee under a Chapter 13 plan, the trustee~~—~~if the trustee has made any payments on a claim described in (a)~~—~~ must file a notice stating:

(A) ~~stating that the debtor has paid infull~~ the amount ~~required~~, if any, the trustee paid to the claim holder to cure any default ~~on the claim~~and whether the default has been cured; and

(B) the amount, if any, the trustee paid to the claim holder for contractual payments that came due during the pendency of the case and whether contractual payments are current as of the date of the notice.

~~informing the claim holder of itsobligation to file and serve a response under (g).~~

The notice must also inform the claim holder of its obligation to respond under (g)(2). The notice must be prepared using Official Form [ ] and be served on:

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

~~(2) *Serving the Notice*. The notice mustbe served on:~~

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

(2) *Response*. The claim holder must file a response to the notice within 28 days after its service. The response must be filed as a supplement to the claim holder's proof of claim and is not subject to Rule 3001(f). The response must be prepared using Official Form [ ] 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; and~~

~~the debtor contends that the final cure payment has been made andall plan payments have been completed.~~

Court Determination of Final Cure and Payment. On motion of the debtor or trustee and after notice and hearing, the court must determine whether the debtor has cured any default and paid all required postpetition amounts. The trustee or debtor may seek such a determination within the following time periods:

- within 28 days after service of the response under (g)(2);
- within 45 days after service of the trustee's notice under (g)(1) if no

response is filed by the claim holder under (g)(2); or

- before the chapter 13 case is closed if the trustee does not file the notice under (g)(1).

~~(g) RESPONSE TO A NOTICE OF THE FINAL CUREPAYMENT.~~

~~(1) *Required Statement.* Within 21 days after the notice under (f) is served, theclaim 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 holdermust 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 a hearing, 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 bothof these actions~~do one or more of the following:

(1) preclude the holder from presenting the omitted information in any form as evidence in any 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, in appropriate circumstances, noncompensatory sanctions; 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 word "installment" in the phrase "contractual installment payment" in order to clarify the rule's applicability to reverse mortgages, which are not paid in installments.

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 change 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.

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 while the chapter 13 case is pending. 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 has to 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, the court may enter an order favorable to the moving party by default.

As under the former rule, the trustee must file a notice at the end of the case if the trustee has made payments to the claim holder on a claim covered by the rule. Under subdivision (g), within 45 days after the last plan payment is made to the trustee, the trustee must file a notice of final cure and payment. 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, if any, that the trustee has paid on contractual obligations that came due during the case and whether those payments are current as of the date of the notice. 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 must be filed within 28 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 no notice was filed, the motion may be made at any time before the case is closed. 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. It also expressly states that noncompensatory sanctions may be awarded in appropriate circumstances. Stylistic changes have also been made to the subdivision.

Comments on Rule 3002.1 Amendments

Lauren Helbling (BK-2021-0002-0003) – I am a chapter 13 trustee, and we rarely find errors or issues when we file a notice of final cure at the end of the case. Rule 3002.1(f)'s requirement of a midcase notice of the status of a mortgage claim will impose additional costs on our office and the mortgage lender's office without providing an equivalent associated benefit. I do not think this rule is needed.

Keith Rodriguez (BK-2021-0002-0004) – (f)(2)(A): Change "shall" to "may" in requiring a claim holder to file a response. Bankruptcy proceedings are based on notice and an "opportunity for hearing." If a claim holder chooses not to respond, then the matter can still be completed without the necessity of a hearing. In that way you also eliminate (2)(B) compelling a response.

Subdivision (g)(2)(A) and (2)(B): Change "shall" to "may" for the same reason.

Subdivision (h)(1): Since this gives an opportunity to obtain an order without a response having been filed, remove the requirement to file a response in either (f) or (g).

Subdivision (h)(4): If there is no objection to a response by a claim holder or if there was a hearing, then an order will be entered. Presumably the claim holder is preparing this order since the trustee cannot know the information called for in (4)(A)(i), (ii), (iii) or (iv).

Keith Lundin (BK-2021-0002-0005) – Overall: (1) The proposed amendments introduce a new "mid-case" mortgage claim status review -- which is a great idea -- but for no obvious good reason, the mid-case and end-of-case procedures are completely different. This will guarantee confusion, mistakes, opposition, and poor absorption of the mid-case review. The overall structure should be rewritten to create a unitary status review process that is available, with minor differences at "mid-case" and "end-of-case." Both reviews should be motion practice using the same Official Form, the same internal deadlines and very similar default consequences.

(2) The introduction of a new "motion for an order compelling a response" is a bad idea that should be abandoned; at the very least, it should be substantially modified to mimic Rule 37(a) of the FRCP, as detailed below. This new step in the procedure for determining the status of a mortgage is a tacit acknowledgment that the mortgage servicing community has failed to teach itself how to manage Rule 3002.1 after a decade of not really trying. Rather than forcing the industry to fix that failure, the proposed compulsion motion imposes a substantial new layer of cost and delay on the innocent victims of servicer misconduct and rewards mortgage servicers for their incompetence by delaying consequences and creating new defenses.

Subdivision (a): Limiting the rule to plans that "require[ ]…contractual payments" is step in right direction but remains unnecessarily ambiguous. Many chapter 13 plans don't require "contractual payments" of home mortgages. They "modify" the contractual payments, they provide nothing (wholly unsecured junior liens; stripped liens), or they surrender the property without payment of secured claims. The rule should apply in all such situations because the debtor remains liable for amounts with respect to which the rule requires notices, motions, and orders. The rule should apply to "*all claims secured by a security interest in the debtor's*

principal residence with respect to which the plan provides for the claim, addresses the claim, or deals with the claim in any manner." This approximates some Supreme Court language and clarifies the broad application of this rule to all home mortgages in chapter 13 cases.

Terminating application of Rule 3002.1 when an order "terminating or annulling the automatic stay" becomes effective is backwards and unnecessarily limited. Stay relief is about forum selection; it tells us nothing about whether a plan will control the debtor's relationship with the mortgage claim holder, and it tells us nothing about when something material will happen with respect to the property, the claim, and/or the debtor's liability. The rule should continue to apply unless the order for stay relief says that it won't (the opposite default position). This would simplify the processing of mortgage claims in chapter 13 cases without requiring debtors to always seek an order keeping Rule 3002.1 in place after stay relief. Also, what happened to orders "*modifying*" the automatic stay? Orders modifying the stay are very common in chapter 13 practice and arguably aren't addressed by this provision as drafted. Stay relief orders with respect to mortgages often "modify" the stay by stating specific conditions on continuation of the stay. Rule 3002.1 should continue to apply after a stay modification order unless the order says otherwise.

Subdivision (b)(1): This is first use of "claim holder," and I suggest either a broader term or a specific definition that clarifies that claim holder includes (throughout this rule) "servicers" and other "agents" that act on behalf of mortgagees in chapter 13 cases. There has been endless, unproductive litigation about standing to file proofs of claim, supplements, and notices. Some of that litigation could be avoided by making it clear that mortgage servicers and other agents are subject to all the provisions of Rule 3002.1 without regard to whether they have proper assignments from the actual mortgagee and that mortgagees are subject to Rule 3002.1 without regard to whether they have correctly assigned, sold, or otherwise transferred servicing rights.

Subdivision (b)(4): The motion in this paragraph should be "file[d] *and served*"—not just "file[d]"—to be consistent with the instructions and counting protocols elsewhere in the rule. Perhaps the service list for this motion should be specified, to be consistent with the treatment of service of notices and motions elsewhere in the rule. Some suggested expansion of the service list is mentioned below: adding the U.S. trustee and all other lien holders on the property.

The reference to "under § 1322(b)(5) of the Code" should be stricken. This is a vestige of a prior version of Rule 3002.1, and this is one of two references to cure and maintain plans under § 1322(b)(5) that should have been removed in an earlier revision but weren't (see (e) below). Payment change notices should not be limited to cure and maintain plans.

What does "immediately" mean here? A more specific date would be helpful. Perhaps "*the effective date determined by subdivision (b).*"

Subdivision (c): This subdivision ambiguously requires both filing and service of the notice of postpetition fees, expenses, and charges, but then counts the 180-day limitation from service without mention of filing. This should be remedied to require the *filing and service* of the notice within the 180-day period after fees, expenses, or charges are incurred or imposed.

Subdivision (d): Consider adding at end of this subdivision: "*The notice is subject to Rule 3006.*" There are big problems with servicers withdrawing their notices when they get caught by a debtor or trustee doing something they shouldn't. Trustees and debtors often need conditions on the withdrawal of a notice, and Rule 3002.1 should state clearly that "supplements" to a proof of claim are subject to the same withdrawal rules as the underlying proof of claim.

Subdivision (e): The phrase, "to cure a default or maintain payments under § 1322(b)(5) of the Code" should be deleted. This is the second vestigial reference to § 1322(b)(5), and it should be eliminated for the same reasons given above.

The one-year requirement in the last sentence is curiously worded and confusing. Counting the year from service of the notice instead of from filing of the notice is guaranteed to create unnecessary litigation. After correcting the wording of (c) discussed above, the one-year limitation should be counted from "filing" or from "filing and service" of the notice. The confusing part is the reference to "the party" in the last sentence. In context, the party seems to refer to the "party in interest" that has filed a motion to determine fees, expenses, or charges. Why would the moving party request a court order to shorten the time within which the motion can be filed? Perhaps "party" should be "*claim holder*" in the last sentence.

Subdivision (f): It makes no sense to have a mid-case "notice" and an end-of-case "motion" as the proposed amended rule now reads. Most of the same review and exchange of information will be needed at both times during the case, and both reviews should end in an order that cements the key data points. Consider rewording the first sentence: "*Between 18 and 24 months after the bankruptcy petition was filed – or at such other time as the court fixes by order or local rule – the trustee shall file a motion to determine the status of a mortgage claim, including whether any prepetition arrearage has been cured. The motion shall be prepared using the appropriate Official Form and be served on . . . .*" With a little work, (f) and (g) could be usefully combined into a single subdivision with the same procedure and form but slightly different content to the resulting orders.

The rest of the comments below apply in large part to both the mid- and end-of-case provisions, as if both are motion practice.

The mid- and end-of-case motions should be served on all other claim holders secured by the same property, and the U.S. trustee should be added to the service list. Junior lien holders are often impacted by the status of payments to a senior lien holder, and vice versa – even if not all lien holders are receiving payments under the plan. The UST has performed monitoring functions with respect to the behavior of mortgage servicers, and including the UST in the 3002.1 process seems wise.

Subdivision (f)(2)(B): The motion to compel is troubling on several levels. The provision should be fully fleshed-out with sanctions provisions that mirror Rule 37(a), including costs, attorney fees, and the like. As written, this motion to compel is toothless and confusing. Is it intended to limit the right to other remedies under the rule? Is it prerequisite to other remedies? Is this compulsion process in addition to the remedies in (i)? Does the filing of a

motion to compel do anything except potentially extend the 21-day deadline for filing a response? This confusion is compounded by the provision in Rule 3002.1(h)(1), discussed below, that authorizes court action with respect to an end-of-case motion when the claim holder fails to comply with an order of compulsion under Rule 3002.1(g)(2)(B). There is no analogue when a claim holder fails to comply with a mid-case compulsion order under Rule 3002.1(f)(2)(B).

Subdivision (f)(2)(C): The provision for objecting to a mid-case response illustrates why (f) and (g) should be rewritten as a single rule. There is no limitation period for an objection to a mid-case response, but there is a 14-day deadline for an objection to the response to an end-of-case motion in Rule 3002.1(g)(2)(C). This kind of incongruence creates nightmares for the bankruptcy community for no good reason.

Subdivision (f)(2)(D): There is also incongruence here. In (g) there is an elaborate provision for what happens if there is no timely response to the end-of-case motion. In (f) there is no guidance with respect to what happens when the claim holder fails to respond to a mid-case notice (other than the inadequate motion to compel discussed above). Subdivision (f)(2)(D) authorizes the court to determine the status of the mortgage only if a response is filed to the mid-case motion, and then only if an objection to that response is filed. The rule should authorize the court to determine the status of the mortgage claim at mid-case in the same manner that (g) authorizes the court to make specific findings when a claim holder fails to timely respond to an end-of-case motion. Again, a single rule would solve this problem.

Subdivision (g): The 45-days within which the trustee must file the end-of-case motion—"after the debtor completes all payments under a chapter 13 plan"—should be changed. Assessing the status of the mortgage after it is too late to modify the plan under § 1329 severely limits the effectiveness of the rule. Reset the end-of-case motion to "*no later than 90 days before the date on which the trustee projects that the debtor will complete all payments under a chapter 13 plan—or such earlier date as the court may direct by order or local rule.*"

Rule 3002.1(g) has the same problems discussed above with respect to the service list and the motion to compel.

Subdivision (h): The phrase "to comply with an order under (g)(2)(B)" should be stricken. As mentioned above, the motion to compel process added to this amended rule creates ambiguity about the availability of remedies when a claim holder fails to respond to a mid-case notice or end-of-case motion and shifts burdens to trustees and debtors to file multiple unnecessary motions to force servicers to do what they are required to do. As written, Rule 3002.1(h)(1) limits court authority to make the listed determinations to circumstances in which (1) no timely response was filed by the claim holder to an end-of-case motion, (2) a motion to compel a response was filed, (3) an order compelling a response was entered, and (4) the claim holder failed to comply with the order compelling a response. This multi-step procedure is an unjustifiable regression from the current rule and serves only to reward mortgage servicers for failing to comply with notices and motions from the trustee. The failure to respond to a trustee's end-of-case motion is itself the transgression that should trigger the consequences in Rule 3002.1(h)(1)(A) and (B).

The reference to "payments that the plan requires to be paid to the claim holder" in Rule 3002.1(h)(1)(A) could be a problem in the 11th Circuit and other jurisdictions in which "direct payments" by the debtor to a mortgage holder are not considered to be "payments under the plan." Perhaps the phrase should be reworded, "*payments required to be paid to the claim holder*" without limitation.

The word, "legal" should be stricken from Rule 3002.1(h)(1)(B). The fees that mortgage claim holders add to their ledgers are not limited to legal fees. All postpetition fees, expenses and charges should be declared "satisfied" without regard to source.

Rule 3002.1(h)(4)(A)(v) should be rewritten to say, "properly noticed under (c) *and not disallowed* that remain unpaid."

Subdivision (i): The ambiguity created by the addition of the motion to compel process should be eliminated by eliminating the proposed motion to compel; but if that is not going to happen, the first sentence of (i) should be rewritten to clarify that the remedies in (i) apply without regard to the motion to compel: "If the claim holder fails to provide any information required by this rule – *including failing to timely give a notice or failing to timely respond to a notice or motion or being compelled to respond by motion or court order* – the court may, ..."

A fix is needed for *In re Gravel*, 6 F.4th 503 (2nd Circuit 2021). Part of the (mistaken) rationale of the majority in *Gravel* was the absence of specific mention in Bankruptcy Rule 3002.1(i) of punitive damages as an available remedy for violation of the rule. Please reword Rule 3002.1(i)(2) by adding after "failure," "*and, in appropriate circumstances, punitive damages;*".

68 Chapter 13 Trustees (BK-2021-0002-0006) – If the Committee proceeds with the proposed amendments, the rule should be revised to permit the party making the postpetition mortgage payments—either the trustee or the debtor—to file the notice or motion that triggers the obligation of the claim holder to respond. The rule's one-size-fits-all approach (for both conduit and nonconduit plans) does not work well. While the procedure is appropriate for a conduit trustee who has records of all payments to cure prepetition arrearages and to maintain the mortgage postpetition, a nonconduit trustee does not have all of the needed information. It is the debtor that has records of postpetition payments. The proposed end-of-case motion form for a nonconduit case requires the trustee to request that the debtor be deemed current, but the trustee has no basis for seeking that determination, and the debtor is not required to document that he or she is current. The debtor in a nonconduit situation therefore should be the one to initiate the process leading to the midcase and end-of-case determinations.

It might also be questioned whether a change in the current procedure under Rule 3002.1 is needed. Currently nothing prevents a trustee or debtor from filing a motion to determine that the mortgage is current. Such a motion is required only when there's a dispute. Under the proposed amendments, a motion will be required in every case, thereby creating more work for the court and the parties. Moreover, debtors have access to mortgage payment information from a number of sources. Chapter 13 trustees send debtors and their attorneys annual reports of

receipts and disbursements; parties in interest can review plan payments and disbursements online; mortgage servicers are now required to send monthly mortgage statements to chapter 13 debtors; and notices of payment changes and postpetition fees, expenses, and charges are docketed. The new requirements may therefore be unnecessary.

Laila Gonzalez (BK-2021-0002-0008) – A midcase audit is not needed. The notices of payment change and the motion to determine final care payment are sufficient. The midcase audit will do nothing but increase the attorney's fees for the debtor.

O. Max Gardner III (BK-2021-0002-0010) – As a consumer bankruptcy attorney for 47 years, the biggest problem I've had to deal with is the difference between the status of the debtor's mortgage obligations as maintained by the debtor, the chapter 13 trustee, and the mortgage servicer. In recent years, this problem has been exacerbated by the constant selling of mortgage servicing rights during a chapter 13 case and the substantial increase in non-bank sub-servicers. We are also dealing with two sets of records of the mortgage servicer or sub-servicer: the system of record, which runs as if no bankruptcy has been filed, and the non-system of record that purports to track mortgage payments under the confirmed chapter 13 plan. As a result, the primary system will never be in sync with the chapter 13 plan. This new rule will add a new obligation on servicers and sub-servicers at least to reconcile their records once before the completion of the case. Such a process should reduce the deemed current violations and enhance the enforcement of Rule 3002.1.

Mary Beth Ausbrooks (BK-2021-0002-0012) – I have been a consumer bankruptcy attorney representing debtors in chapter 13 bankruptcies since 1996. In my district, the trustee has always filed a mid-case audit and a final cure at the end of the case. Motions are better than notices, as an order is generated. The trustee is in the best position to file the motion as he/she is the keeper of the records in conduit jurisdictions. This process has worked seamlessly in my district. The Order Declaring the Mortgage Current is as important as the Discharge Order. The mid-case review gives an opportunity for the servicer "to shore up" their records. The end of the case motion makes it clear that this mortgage obligation is contractually current at the time of the discharge of the case.

Keith Slocum (BK-2021-0002-0013) – Mortgage servicers keep two sets of records to deal with loans that are involved in chapter 13. The normal system fails to accurately account for the chapter 13 payments and plan, which often leads to the discrepancies between the status of the debtor's mortgage obligations as maintained by the debtor, the chapter 13 trustee, and the mortgage servicer. Rule 3002.1 is a critical tool to make sure that the debtor, the chapter 13 trustee, and the mortgage servicer reconcile numbers before the debtor gets a discharge. The entire chapter 13 system will work better and run more smoothly the more often servicers and sub-servicers reconcile the numbers with the trustee and the debtor. The mortgage industry takes advantage of borrowers in chapter 13, which is why Rule 3002.1 is so important.

Jennifer Johnson (BK-2021-0002-0014) – The proposed rule changes are similar to what we require in the Middle District of TN. These rules protect creditor and debtor interests alike, ensuring all the proper documentation/information is provided to back up the accuracy of the status of the mortgage. I fully support these rules nationwide.

Daniel Castagna (BK-2021-0002-0015) – (Consumer bankruptcy attorney.) The most effective rule that has been implemented in the last two decades has been Rule 3002.1, but the rule is not perfect. I support adoption of the amended rule be adopted because it would allow debtors and their attorneys to continue to monitor their payments with respect to their mortgage in a clearer and more forthcoming way. These mid-case audits will work for the benefit of all involved – debtor, trustee, and mortgage creditors. If there are problems with payments, they can be dealt with while there is still time in the plan to remedy them. In addition, the end of case requirements help to ensure that the discharge is backed up by proper accounting and that all parties are in agreement before the debtor leaves the protection of the bankruptcy system.

National Bankruptcy Conference (BK-2021-0002-0016) – As written, HELOCs are literally subject to both (b)(1) and (b)(3). The obvious intent is that HELOCs only need to comply with (b)(3). This ambiguity could be fixed by adding a clause to (b)(1) that states "except as provided in paragraph (3),".

Although part of the substantive changes, there is a stylistic issue with the new last sentence in (e). It allows the court to shorten the time period for challenging a payment change notice, but it uses the definite article "the" to refer to "the party." That would seem to be a reference back to earlier in the subsection about the party bringing the motion. It makes no sense that a party bringing a motion would want to shorten the time period for so doing – such a party could just bring the motion earlier. We suggest that the last sentence should substitute "a party in interest" for "the party," which is consistent also with the comment that it is intended to allow a party in interest to move to shorten the time.

In (f)(2)(A), "debtor's counsel" should be changed to "debtor's attorney" to be consistent with the usage in the rest of the rule.

Subdivisions (f), (g), and (h) refer to a "mortgage claim." That is not a defined term and is also overbroad to the extent a mortgage can be on something other than the debtor's principal residence. Although the intent seems to be to apply these subsections only to "mortgages" covered by the rule, it would be better to use the word "claim" here or make clear these subsections apply to mortgages to which the rule applies, perhaps by a reference back to subsection (a). If the intent was to cover mortgages on real property other than the debtor's residence, then the rule should make that clear, using language that mimics the Bankruptcy Code and that accounts for different usages across state law (e.g., deeds of trust) – "a claim secured by real property".

Kyle Craddock (BK-2021-0002-0017) – Rule 3002.1 is the most helpful rule that has been added since the enactment of BAPCPA, short of the provisions in the CARES act that allowed for modification of a chapter 13 past 60 months. In our district, the conduit system works well. I note that the "extra work" trustees don't want to do is mostly done by computer software. So, in general, I am very much in favor of the proposed new changes to Rule 3002.1.

Specific suggestions: Subdivision (g)(1) sounds like a good idea, and it would work as long as there are no problems. If, however, a response to the trustee's motion is filed saying that

the mortgage is not current at the end of the plan and that turns out to be accurate, there's no mechanism to address the problem. The plan is over and, assuming the plan is at or past 60 months by that point, 11 USC § 1329 will prevent modification. The mid-case audit would help prevent this, but the final audit should be moved to some time prior to the completion of the case.

Henry Hildebrand (BK-2021-0002-0018) – (Chapter 13 trustee; member of ABI Consumer Bankruptcy Commission.) Rule 3002.1 and Rule 3001(c) have been the most beneficial rules for helping debtors emerge from chapter 13 current in mortgage payments. There are, however, some remaining problems with the rules. By waiting until after the last payment under the plan, the existing rule precludes any modification of the plan that might cure the default. By creating a "mid case notice," the proposed rule will work to diminish the current "gotcha" element when the discrepancy is discovered at the end of the case.

Although I feel that a motion as suggested by the NACTT and ABI Commission would bring more people to the table, and the establishment of similar processes in the mid-case true-up and the end of the case reconciliation makes sense, I acknowledge that the notice as proposed will have a reduced cost to the servicers and, in non-conduit jurisdictions, to the debtor.

A mid-case true-up should apply in both conduit and non-conduit jurisdictions. A common procedure is desirable. Also, I recognize a benefit to the process for a "conduit" jurisdiction, but I also see the absolute necessity for the process in a "non-conduit" jurisdiction.

Subdivision (f)(1): The mid-case notice should be filed 18 to 24 months after confirmation, rather than after filing. That timing would be a better gauge of the status of the mortgage, particularly when some cases take an extremely long time to achieve confirmation.

The end-of-case determination will allow debtors to emerge from their bankruptcy secure in the knowledge that their mortgage payments are current, with a federal court order that so finds. It is altogether appropriate that the end-of-case motion be filed both in conduit and in non-conduit jurisdictions. As a conduit trustee, I am using the end-of-case motion to align a servicer's records with my records to assist the debtors as they emerge. In a non-conduit jurisdiction, the reconciliation would obviously assist both the debtor and the servicer to ensure that the debtor and servicer agree about the status of the mortgage as the debtor emerges from bankruptcy.

Subdivision (h): I encourage the Committee to avoid the use of the word "current" as employed in proposed subsection (h). The question is whether the debtor has made all payments required by the plan (which include those paid directly to the servicer by the debtor). After all, the debtor and the creditor may have mutually agreed to make some fees, expenses, or charges after the discharge. In such a case, the debtor may not be current, but he or she has completed payments under the plan.

Many servicers have advised that in non-conduit jurisdictions, there are a significant number of cases where no notice, let alone a motion, is filed by the trustee at the end of the case. Some of my colleagues in those jurisdictions are reluctant to initiate the "true-up" if they lack the records to back them up. I believe that the proposed rule as drafted would work in both

situations – "conduit" and "non-conduit" – by changing the Official Forms language in section 6 (the prayer section) as follows:

> 6. Therefore, I ask the court for an order under Rule 3002.1(h) determining that, as of the date of this motion, the debtor has cured the prepetition arrearage on the mortgage. I also ask the court to determine the status of the long-term mortgage obligation treated in the Plan and whether the payments required by the plan have been made.

Subdivision (i): The Second Circuit has held that the current rules does not authorize the award of punitive damages. I suggest that in this process the Rules Committee bolster the remedies in the rule in a manner similar to F.R. Civ. P. 37.

National Conference of Bankruptcy Judges (BK-2021-0002-0020) – NCBJ does not oppose the proposed subdivision (b)(3). However, NCBJ is concerned that the rule may be vulnerable to challenge because the annual review and reconciliation procedure effects a change in the parties' contractual rights by deferring the claimant's right to collect a portion of a monthly payment when it is due. If a chapter 13 plan does not modify the HELOC claim, or if modification is prohibited by the Code (*see* §1123(b)(5) and §1322(b)(2)), the proposed rule is arguably inconsistent with the Code. To avoid this problem, NCBJ suggests that the Rules Committee redraft the rule to make the proposed changes voluntary, i.e., to permit a HELOC claimant to elect between the monthly notice of payment change procedures in 3002.1(b)(1) or the annual notice of payment changes in 3002.1(b)(3). Perhaps the language in 3002.1(b)(3)(A) -- "within one year after the bankruptcy petition was filed and then at least annually" – was intended to accomplish this result. If so, clarifying language would be helpful.

With respect to the midcase and end-of-case determinations, NCBJ takes no position on whether an amendment to the existing rule to impose new obligations on the parties is necessary. The parties most affected by proposed additional burdens imposed by the proposed rule are debtors, chapter 13 trustees, and residential mortgage lenders. NCBJ suggests that the Rules Committee carefully consider the views of those constituencies in evaluating whether the benefits of proposed Rule 3002.1(f) and (g) outweigh the costs of their new requirements in the aggregate and, if so, how best to allocate the procedural obligations among those constituencies.

Subdivision (g): Although NCBJ takes no position on the general advisability of adopting the proposed amendments, it perceives an inherent flaw in the proposed end-of case procedure to the extent it authorizes the entry of a court order determining the status of a mortgage without a proper factual foundation in "non-conduit/direct pay" cases. The trustee's representation in the end-of-case motion is limited to the terms of the confirmed plan and evinces the trustee's lack of knowledge regarding the debtor's payment of the ongoing postpetition mortgage payments required by the plan. In this respect, Paragraph 5 of the Form is incongruous with Paragraph 6, in which the trustee requests "the court for an order under Rule 3002.1(h) determining that, as of the date of this motion, the debtor has cured the prepetition arrearage on the mortgage and that all postpetition fees, expenses, and charges are satisfied in full." If the

claim holder fails to comply with an order compelling a response, under proposed Rule 3002.1(h)(1), the court may enter an order determining that, as of the date of the motion, the debtor is current on all payments that the plan requires to be paid to the claim holder, including all escrow amounts, postpetition legal fees, expenses, and charges incurred or imposed by the claim holder. In effect, the proposed rule contemplates the entry of an order either as a default or as a sanction. In the absence of a representation by a party with knowledge that all payments required by the plan have been paid, it is inappropriate for the court to issue an order making that finding and determination.

The proposed procedure cannot be analogized to the entry of a default judgment because, in the conventional default judgment scenario, the plaintiff has filed a pleading, subject to Rule 11, in which factual representations have been made which, if proven, purportedly would sustain the grant of the relief requested. Nor does an analogy to a sanction order under Fed. R. Civ. P. 37(b)(2)(A) provide a justification for the proposed procedure because under Rule 37(b)(2)(A), a prior pleading filed subject to Rule 11, supports the requested relief.

NCBJ suggests that the proposed rule be revised to require, at a minimum, that a party with knowledge (presumably, the debtor) make a representation to the court regarding the status of the payments required by the plan to be paid to the claim holder, including all escrow amounts, postpetition legal fees, expenses, and charges incurred or imposed by the claim holder before the court enters an order under proposed Rule 3002.1(h)(1). If the Rules Committee continues to prefer that the trustee—rather than the debtor— initiate the end-of-case determination process, the rule should require that the debtor in a non-conduit/direct pay case file a response to the motion stating whether the direct postpetition payments have been made or stating the amount of any arrearage, as well as addressing the status of the other items (e.g., escrows) that any proposed order would address. If the debtor's statement or a response from the claim holder states an arrearage on the mortgage loan or escrows, the rule should authorize the court to enter an order that establishes the amount and composition of the arrearage, rather than finding (counterfactually) that the debtor is current.

Subdivision (h)(4): NCBJ questions the propriety of the mandated provisions of the end-of-case order. Although a court's determination that fees, expenses, or charges properly noticed under Rule 3002.1(c) were not paid relates directly to the rules of court and the administration of the chapter 13 plan (and in some courts, may affect the debtor's entitlement to a chapter 13 discharge), the other mandated findings may not be in dispute. In the absence of a dispute, there may be no case or controversy to justify a federal court determination. Further, even if certain matters are disputed, the required findings may relate more directly to the post-bankruptcy servicing of the mortgage loan than to the bankruptcy case and the confirmed plan and therefore, may not bear a sufficient nexus to the bankruptcy case to warrant the exercise of bankruptcy jurisdiction. NCBJ suggests the Rules Committee delete the mandatory findings as listed in subdivision (h)(4)(A), so that the bankruptcy court may exercise its discretion in fashioning an appropriately supported end-of-case order.

Christopher Kerney (BK-2021-0002-0021) – I wholeheartedly believe the best practice is for the chapter 13 trustee to be the disbursing agent. Having practiced with implementation of a system in which the trustee files the mid-case audit and Order Declaring Mortgage Current, I

know this is best for my clients, and I can't imagine retreating to a system that would be detrimental to the debtor and the system as a whole.

National Consumer Law Center, Inc. (BK-2021-0002-0022) – We support the amendment that would delete "installment" in subdivision (a) and the committee note that explains that the reason for the change is to clarify that the rule applies to reverse mortgages.

Subdivision (b)(2): Because (b)(2)(A) does not refer to a reconciliation amount as is provided in the change for HELOCs in proposed Rule 3002.1(b)(3), we have assumed that the rule operates effectively as a procedural sanction for the claim holder's noncompliance with Rule 3002.1(b)(1), barring the claim holder from seeking payment from the debtor for the difference between the old and new payment amounts for the period of noncompliance. If that is the effect of an untimely payment change notice, we urge the Committee to include discussion of this in the Committee Note.

Proposed Rule 3002.1(b)(2)(B) should be changed as follows: "when the notice concerns a payment decrease, on the first payment due date that is after the date of the notice." While the Committee likely contemplated that the date stated in the untimely notice would be the first payment due date after the date of the notice, the language in proposed Rule 3002.1(b)(2)(B) does not compel this or provide sufficient direction.

The mortgage holder should not benefit from its noncompliance with Rule 3002.1(b)(1). The committee note regarding (b)(2)(B) should state that the claim holder must take steps to address any overpayment by the debtor in accordance with the terms of the mortgage documents, such as by issuing a credit on payments that come due after the payment change or a refund to the debtor or trustee (if the trustee is disbursing ongoing mortgage payments).

If the Committee does not adopt our suggestion to include language in the committee note on the effect of an untimely payment change notice as to underpayments and overpayments, we urge the Committee to add a new subsection (b)(2)(C) as follows: "Nothing in (A) or (B) limits the power of the court to take any of the actions under (i) for any failure to timely file and serve the payment change notice."

Subdivision (b)(3): Rule 3002.1(b)(3)(A) instructs the holder of a HELOC claim to file and serve the payment change notice "within one year after the bankruptcy petition was filed and then at least annually." The rule should be more precise as to when the annual notice must be sent, such as "… and then at least annually, not more than 21 days after the conclusion of each 1-year period."

Rule 3002.1(b)(3)(C) refers to the "next payment" as the "first payment due after the effective date of the annual notice," and the amount of this next payment is to be disclosed in the annual notice as an amount that "shall be increased or decreased by the reconciliation amount." Rule 3002.1(b)(3)(D) refers to the "new payment amount" as the "first payment due date that is at least 21 days after the annual notice," and it is to be disclosed in the annual notice as an amount that disregards the reconciliation amount. If there is a reconciliation amount, the "next payment" under Rule 3002.1(b)(3)(C) and the "new payment amount" under Rule

3002.1(b)(3)(D) would be two different amounts, and yet they appear to be due at the same time. These provisions should be changed to have "next payment" with the reconciliation amount under Rule 3002.1(b)(3)(C) be the first payment due date that is at least 21 days after the annual notice, and the "new payment amount" without the reconciliation amount under Rule 3002.1(b)(3)(D) be the first payment due date after the next payment under Rule 3002.1(b)(3)(C).

Subdivision (c): The proposed changes are not all stylistic. The words "or imposed" are added in the first sentence, so that the phrase "incurred or imposed" is used. The combination of adding "or imposed" and deleting the "and" completely changes the substance of the provision, so that a claim holder would be required to send a notice of a fee that has been incurred but is not recoverable against the debtor or the debtor's principal residence. Moreover, the phrase "or imposed" is not needed because the imposition of fees is already covered by the language "that the claim holder asserts are recoverable against the debtor or the debtor's principal residence." We urge the Committee to delete "or imposed" from the first sentence and return it to its current formulation.

The addition of "or imposed" in the second sentence in subdivision (c) is also a substantive change because it significantly affects the timing of when the fee notice must be sent. The current rule very intentionally requires that the notice be sent within 180 days after a fee is incurred, which is generally the date when any service related to the fee or expense is performed. By adding "or imposed" to this sentence, a claim holder could incur a fee in the first year of the debtor's chapter 13 plan but then not send the notice until the fifth year of the plan or even after the bankruptcy case closed, contending that it only then decided to impose it. The current rule requires the claim holder to make an affirmative decision within 180 days after a fee is incurred as to whether it will impose it.

Subdivision (f): The midcase review process set out in proposed Rule 3002.1(f) will help identify debtors, particularly in non-conduit districts, who have fallen behind on postpetition mortgage payments and give them an opportunity to cure any postpetition default before the end of the case. We support this general concept but have concerns that the proposed rule will increase costs for all debtors in chapter 13 cases, even those who would not benefit from the rule.

When Rule 3002.1 was initially adopted, it was intended that most, if not all, of the rule's requirements would be performed by non-attorney personnel who work for mortgage servicers. Sadly, however, servicers have recently begun charging excessive fees for compliance with Rules 3001 and 3002.1, claiming that these fees can be passed on to debtors as attorney fees under the fee shifting provision of the mortgage documents. Mortgage servicers will likely contend that the midcase review under proposed Rule 3002.1(f) will require attorney involvement. To avoid all debtors in chapter 13 cure plans being charged excessive and unnecessary fees, we urge the Committee to revise proposed Rule 3002.1(f) in the manner set out below that still preserves its basic purpose.

Rather than have the midcase review initiated by the filing of a notice by the trustee, we propose that the process begin with the submission by the claim holder of an existing periodic mortgage statement that is prepared in the normal course of servicing the mortgage loan. Rule

3002.1(f)(1) should provide that the claim holder must send to the trustee, the debtor, and the debtor's attorney, between 18 and 24 months after the petition was filed, a periodic statement that the claim holder has prepared in accordance with the Truth in Lending Act and Regulation Z, 12 C.F.R. § 1026.41(f). The periodic statement should be current for the month in which it is sent. These statements must disclose the amount due, an explanation of the amount due, a past payment breakdown, recent transaction activity, partial payment information, the total of all prepetition payments received since the last statement, the total of all prepetition payments received since the beginning of the consumer's bankruptcy case, and the current balance of the consumer's prepetition arrearage.

The information contained on the periodic mortgage statement will permit the trustee to assess, based on the servicer's records, whether the servicer believes the debtor is current with prepetition and postpetition payments. If the claim holder fails to timely send a mortgage statement, or if the trustee is unable to determine the status of the mortgage claim after reviewing the statement because the information is insufficient or the trustee believes it is inaccurate, the trustee may file a notice as contemplated by proposed Rule 3002.1(f)(1), using proposed Official Form 410C13-1N. Thus, the claim holder will be required to file a response under proposed Rule 3002.1(f)(2) only in cases in which the case status cannot be adequately determined from the periodic statement. This change, if adopted, will significantly reduce the number of cases in which the midcase review procedure will be invoked, thereby minimizing costs to debtors, trustees, and claim holders.

We urge the Committee to amend proposed Rule 3002.1(f)(2) to state that the claim holder's response is not subject to Rule 3001(f). It is important that the claim holder's response not be given a presumption of validity, particularly if an objection to the claim holder's response is filed under proposed subdivision (f)(2)(C) and the claim holder fails to participate at a hearing on the objection conducted under subdivision (f)(2)(D).

Subdivision (g): The option for the debtor to file a motion to begin the end-of-case procedure under the circumstances set out in the current rule should be restored in Rule 3002.1(g) in case the trustee does not file the motion.

Although the response under proposed Rule 3002.1(g)(2) operates in the same manner as the response to the notice of final cure under current Rule 3002.1(g), proposed Rule 3002.1(g)(2) does not state that the response shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f). The rule should do so.

Subdivision (h): Proposed Rule 3002.1(h) establishes a procedure for the debtor to obtain an order that contains the information specified in subdivision (h)(4). This information is necessary to establish that the debtor is fully current on the mortgage and to avoid disputes between the claim holder and the debtor after the chapter 13 case is concluded. We support these amendments.

While the entry of an order by the court pursuant to proposed Rule 3002.1(h)(1) is appropriate as a sanction for the claim holder's failure to respond after being ordered to do so, we believe that that an order pursuant to proposed Rule 3002.1(h) should be entered only upon

the request of a party in interest. We are concerned that the debtor or trustee may not have information sufficient to determine that the response was inaccurate, or that other grounds to object to the response exist, until after the 14-day objection period has expired. Debtors who fail to object to the claim holder's response due to informational imbalances or a lack of awareness of potential consequences should not be barred from later disputing the status of their mortgage. Thus, we urge the Committee to delete subdivision (h)(2).

Proposed Rule 3002.1(h)(3) authorizes the court to enter an order determining the status of the mortgage claim only if an objection is filed to the claim holder's response. Consistent with our suggestion to delete subdivision (h)(2), we believe subdivision (h)(3) should permit the debtor or trustee to request an order containing the information specified under subdivision (h)(4) without objecting to the claim holder's response. This would be consistent with current Rule 3002.1(h), which permits an order to be entered on motion of the debtor or trustee, after notice and hearing.

Norma Hammes and James Gold (BK-2021-0002-0023) – We believe that changing, expanding, and making more complicated the processes required under FRBP 3002.1, create the dangers of producing unintended consequences, and moving the rule further away from its original intent – assisting Chapter 13 debtors. Both the midcase and end-of-case reviews may be helpful to some debtors. But, more likely, they also will increasingly be used to justify aggressive attempts by trustees to improperly dismiss their cases. Consequently, we strongly suggest that the proposed amendment to FRBP 3002.1 permit a debtor to opt out of the application of FRBP 3002.1, in whole or in part, to their case at any time during the pendency of the case. Those debtors will continue to be able to rely upon non-bankruptcy law for (among other protections) obtaining account histories and bankruptcy law for assuring correct application of plan payments.

We do, however, agree that the proposed rule needs improvement. Therefore, to the extent the comments of the National Association of Consumer Bankruptcy Attorneys and the National Consumer Law Center suggest specific improvements to the amendments under

Corrine Bielejeski (BK-2021-0002-0024) – Adding a midterm audit is a great idea. This allows all parties to compare notes and correct any accounting problems while there is still time to modify the plan. A simple notice procedure, like the one currently used at the end of the case, is enough to make everyone aware it is time to review the payment history. This should have enough teeth in it so that if a creditor fails to respond, it is bound by the determination that the debtor is current.

The end-of-plan notice does not need all of the changes that have been suggested. The change from a notice to a motion creates more work, much of which is not necessary. I would suggest the timing of the end of case notice be moved earlier – six months before the end of a confirmed plan – but otherwise keep the current procedures the same.

Subdivisions (f) and (g) – The motion to compel procedures should be removed from the proposed rule change, returning the default procedures to the ones currently in place. Alternatively, the Rules Committee should clarify within the rule whether a timely response is

with regard to the original notice or to the order compelling response. If it is to the order, the Committee should include a short deadline for responding to the court's order.

If a creditor fails to respond to the midterm audit, (f)(2)(B) authorizes filing of a motion to compel, but there is no provision telling the court what to do after that. If the Rules Committee chooses to require motions to compel, (f)(2)(B) needs to be added to subsection (h). For example, "if the claim holder fails to comply with an order under (f)(2)(B) or (g)(2)(B), the court may enter an order deeming the debtor current."

Subdivision (g): Chapter 13 trustees and creditors are given more time to respond, but debtors are given less time, than under the current rule. Debtors should continue to have at least 21 days to file objections to responses, since these objections have to include declarations and other evidence necessary to refute a creditor's payment history.

I agree that notices under the rule should continue to be sent out by trustees. The burden should not be shifted to debtors.

Pam Bassel (BK-2021-0002-0025) – Subdivision (a): It is unclear what the rule applies to. For example, does it apply to *ad valorem* taxes, reverse mortgages, and full payment of a mortgage under the plan? My suggested revision is to state that the rule applies to "all claims (1) secured by a security interest in the debtor's principal residence and (2) on which the trustee or the debtor will disburse payments during the pendency of the case or which the plan addresses in any way, other than payments to governmental taxing authorities."

Subdivision (b): The term "claim holder" should be defined. I suggest "claim holder is defined as any entity secured by a lien on the debtor's principal place of residence, except governmental taxing authorities, or any servicer or agent of such entity."

In the situation of a payment increase, there should be a consequence for failing to file the notice timely, in addition to delaying the date on which increased payments will begin. The rule should include a forgiveness of the amount of the increase on any payment for which the 21-day notice is not timely given. Otherwise, the debtor may have to pay the difference eventually to bring the loan current.

In (b)(4), the language should be changed from "filed" to "filed and served" on lines 77 and 80.

In (b)(5), the reference to § 1322(b)(5) should be stricken. Otherwise, this provision could be interpreted to mean that the only time a party in interest can object is in a "cure and maintain" plan. You could strike the first sentence (starting on line 75 and ending on line 79) and substitute, "A party in interest may object to the payment change by filing a motion to determine the validity of the payment change." I also suggest rewording the second sentence in this subpart to clarify the deadline for filing the motion to determine. As currently drafted, it is hard to tell whether a motion to determine can or cannot be filed after the change takes effect. I suggest a deadline of either three days before the payment change is to take effect or 14 days after the notice is filed.

Subdivision (c): The provision does not contain negative consequences for failing to file the Notice of Fees, Expenses, and Charges on time. My suggestion is that if the notice is not timely filed, the claim holder be barred from attempting to collect the fees, expenses, and charges from the debtor at any time and by any method. Arguably, subdivision (i) as currently written does not cover this situation. Also, on line 95 change "served" to "filed and served."

Subdivision (e): One year to file a motion to determine is a long time. Please consider reducing this time period to 60 or 90 days. The notices are straightforward, and it should be quickly apparent whether there is a fee, expense, or charge that should be objected to. Also the reference to § 1322(b)(5) should be stricken.

Subdivision (f): The midcase procedure should be conducted by motion rather than a notice. The claim holder's response should be permissive, rather than mandatory. The objection to the response should be permissive and in no way a prerequisite to the court entering an order on the status of the claim. The motion should contain an "as of" date and provide information about every component of the claim. An order should issue on every midcase notice/motion, specifically determining the status of the claim as of the date the midcase notice/motion was filed. The order should be binding on all parties and preclude the claim holder from asserting different cure amounts on the claim in any contested matter or adversary proceeding in the bankruptcy case, or in any other manner, matter, or forum after a discharge is entered in the bankruptcy case.

The reason to conduct a midcase review is to compel the claim holder to true up its records during the case. Even though the trustees send the claim holders detailed vouchers with each disbursement, telling them how much of the disbursement should be applied to what component of the claim, and even though many trustees make their payment records available online and the claim holder could review the trustee's payment records and perform its own audit at any point in the case (which they do not do), they still have incorrect payment records. The problem is exacerbated by servicing transfers. If we do not want debtors to exit their bankruptcy only to have the claim holder assert that it is owned more money, often in an amount that is easier and cheaper for the debtor to pay than to dispute, a reconciliation of the amounts owed on the claim is necessary.

A midcase procedure is a good idea, but I hope the Committee will consider procedures to reduce costs as much as possible and to require the claim holder to justify any charge against the debtor.

As currently drafted, the proposed rule is ambiguous about when an order will be entered. It is arguable that an order would be entered only when (1) the claim holder files a response and (2) a party-in-interest has filed an objection to the claim holder's response [See proposed Rule 3002.1(f)(2)(D)]. It could also be argued that the court can enter orders under other factual scenarios because the language does not preclude that. As currently drafted, the rule is also unclear about what happens if the claim holder does not respond. It would be helpful if the rule was made clear on these points and the process was streamlined.

The claim holder's response should be permissive to reduce potential costs to the debtor. If a claim holder agrees with the midcase notice/motion, there is no need for it to hire an attorney to file a response, incurring legal fees it may attempt to recover from the debtor. If the claim holder fails to respond, a default order should enter, or the rule should provide that the status of the claim is deemed to be as stated in the midcase notice/motion. I am not sure there is a need for a motion to compel at this stage of the case. Under the procedure I am proposing, either the claim holder responds in opposition and the matter is treated as a contested matter, or the claim holder does not answer and a default order is entered. However, if the Committee decides the claim holder's response is mandatory rather than permissive, the rule should clearly state that the claim holder may be responsible for fees and costs incurred by a party who files a motion to compel.

There should be a deadline in (f)(2)(C) for filing the objection. I suggest 21 days from the filing of the response. This will keep the matter moving. In the current draft of the rule, filing an objection is permissive, which is good. Allowing a permissive objection is a way for the debtor to file a relevant pleading if needed and, if necessary, for the trustee to respond to an allegation in the claim holder's response.

Filing an objection to the response should not be a prerequisite to obtaining an order regarding the status of the loan. My suggestion is to provide in (f)(2)(D) that if the claim holder fails to respond, the court shall enter an order deeming the statements in the trustee's notice/motion correct. If the claim holder responds, it should be treated as a contested matter and, after notice and the opportunity to be heard, the court should enter an appropriate order determining the status of the loan as of the date of the filing of the notice/motion.

While I hope the Committee will adopt the suggestion to conduct the midcase review by motion, another way to do this would be to state that the trustee, or other appropriate party, files a notice and any party who wishes to object must file a motion for determination, rather than a response. This is like the procedure for notices regarding payment changes and notices regarding fees, expenses, and charges. There should be a specific deadline by which a motion for determination must be filed. And in all cases, the status of the mortgage loan should be determined, either by deeming the recitation in the notice to be correct or by the entry of an order.

Subdivisions (g) and (h): I support the idea that this be handled as a motion practice, but I think the procedure can be streamlined a bit. My suggestion is that the motion should have a clear response deadline and an "as of" date. Since we must rely on a response from the claim holder to acquire the information required for the order, if the claim holder does not respond, a motion to compel should be filed. If the claim holder then responds, any disagreement with the trustee's motion can be treated as a contested matter without the necessity of a party filing an objection to the claim holder's response. If the claim holder does not respond to the order compelling it to, the court can enter an order finding that the loan is completely current. Any order should be binding on the claim holder once the discharge is entered.

I suggest that the language in (g)(1) be amended to state that the trustee must file this motion within 45 days after the debtor completes the plan payments and the final payment has been made by the trustee to the claim holder. Until the trustee makes that final payment to the claim holder, its records will not show that it has been paid in full, leading to unnecessary responses because the claim holder's records will not match the trustee's motion until that last payment is received and posted.

In (g)(2)(C) 14 days is probably too short a time deadline to file an objection. Please consider setting the deadline at 21 days.

The word "legal" should be struck in (h)(1)(B) so that line 223 reads, "all postpetition fees," etc. Post-petition fees can include fees other than legal fees.

The claim holder's response should not be deemed to be correct if no party objects to the claim holder's response, and filing an objection should not be a prerequisite for obtaining a hearing. The language in (h)(2) is permissive ("the court may enter an order") but is likely to lead to orders being entered even when there are unresolved issues. This is a motion practice. The trustee files the motion, and if the claim holder responds in opposition, it should be treated just like any other contested matter. The matter should be set for hearing after the deadline for filing an objection. But it should not be a possibility that an order issues in favor of the claim holder if a party in interest does not object to its response. Please consider streamlining the process by deleting 3002.1(h)(2) and (3) and simply stating that if the claim holder files a response, the court will enter an order after an opportunity for the parties to be heard, and the order will contain the information currently set out in 3002.1(h)(4)(A).

The provision in (h)(4)(A) should be applicable to all orders issued after a response is filed, and reference to (h)(2) and (h)(3) in lines 237 and 238 should be deleted.

I do not understand the purpose of (h)(4)(B). It refers to an order issued under (h)(1), which requires non-compliance with an order compelling a response. Why would this be singled out as a circumstance under which the court "may address the treatment of any payment that becomes delinquent before the court grants the debtor a discharge"?

Subdivision (i): The title of this section is somewhat misleading. The title includes the claimholder's failure to give a required notice or to respond, but the subpart itself refers only to the failure to provide information required by the Rule. Something like "CLAIM HOLDER'S FAILURE TO PROVIDE REQUIRED INFORMATION" would be more descriptive.

It would be preferable if this section did not address the claim holder's failure to file a required response or give a required notice. It would add clarity if these issues were addressed separately in the provisions regarding the midcase notice/motion and the end-of-case motion or the specific notice provisions. This would put what the claim holder needs to do to comply alongside the consequences for non-compliance.

Beverly Burden (BK-2021-0002-0026) – Rule 3002.1(f) should mirror proposed Rule 3002.1(g) and be a motion process. The rule should also clarify that no hearing is required on the trustee's

midcase or end-of-case motion. The trustee can easily file a motion to determine the status of the mortgage to get the process started. By filing such a motion in accordance with the rule, the trustee does not need to make any statement of fact; the trustee does not need to ask that the debtor be deemed current in their mortgage. To the extent the proposed forms require non-conduit trustees to make these allegations, the forms are flawed.

If a party objects to the creditor's response and a contested matter is triggered, the prevailing party should be responsible for preparing the order determining the status of the mortgage. The more burdensome aspect of the process for non-conduit trustees is if the trustee must prepare an order setting forth the "data points" that are reflected in the creditor's response. This is one part of the process where it might be preferable to have the debtor/debtor's attorney prepare an order setting forth the detailed information contained in the creditor's response.

Rule 3002.1(g)(1) requires the trustee to file a motion to determine the status of the mortgage "within 45 days *after the debtor completes all payments under a chapter 13 plan*." Many courts have held that a debtor who has not made all postpetition mortgage payments has not completed all payments under the plan. The rule should be changed to read "within 45 days after the trustee receives all payments due the trustee under the plan."

Omar Hooper (BK-2021-0002-0028) – I believe the notices of payment change and the motion to determine final cure payment are sufficient. The audit will not help or change anything other than increase the attorneys' fees of all parties involved.

Ronda Winnecour (BK-2021-0002-0029) – The proposed changes to the rule are meritorious and will enhance my ability (and the ability of all of the relevant parties) to administer mortgages with accuracy and detailed record keeping. I have always been completely conduit, paying all of the mortgage payments on behalf of the chapter 13 debtors in my district. Since 3002.1 was originally proposed, I have filed a "Notice of Interim Cure" addressing the payment of the pre-petition arrears record and a Notice of Final Cure telling all of the parties exactly when the post-petition payments have concluded. Converting that notice to a motion will result in a court order affirming the facts that I have asserted and will most likely reduce additional confusion. And my records in this regard are far more accurate than those kept by either the debtors or the mortgage services as they change frequently thought the case. All of this will ensure continued accuracy and transparency and I support the proposed changes.

Neil Jonas (BK-2021-0002-0030) – The proposed amendments to Rule 3002.1(a) alter the scope of applicability of the rule from loans for which the plan requires payment of "contractual installment payments" to just "contractual payments." The Committee Notes indicate that that the purpose of this change is to "clarify the rule's applicability to reverse mortgages, which are not paid in installments." If the reference to "contractual payments" is interpreted to cover any obligation which requires the borrower to maintain taxes and insurance on the subject property, this will make the rule applicable to virtually all secured obligations, regardless of how it is treated in the plan. That is overbroad and a radical change from the current rule.

The revised rule would seem to require chapter 13 trustees to file Motions to Determine Status of Claims for reverse mortgages. If the plan does not provide for payment on a reverse

mortgage (which is common), it's hard to see what the point of filing such a motion would be. Simply to say that nothing was paid? Trustees should be excused from filing Motions for Status for reverse mortgage claims that are not paid through the plan.

James Davis (BK-2021-0002-0031) – Subdivision (b)(4): Because the escrow account is a system for accumulating funds to pay externally determined amounts, and because the payment adjusts each year based on the funds in the account, the proposed language for subdivision (b) delaying the effective date of an increase appears to just shift amounts to the next escrow analysis, rather than relieving the debtor of the obligation to pay. Especially for a large increase, deferring the payment adjustment for a year or more may make the eventual increase harder for the debtor to absorb. Because of these issues, I think it is important to be clear that subdivision (b) does not provide the exclusive remedy for an untimely notice of payment change.

Subdivision (f): In (f)(1) it would be better to specify that the new notice requirement applies to "any mortgage claim of the type specified in subdivision (a)."

The rule should authorize the trustee to serve the notice at the "notice" address last specified by the claimholder—similar to Rule 3007(a)(2)(A).

I would suggest revising proposed Rule 3002.1(f)(2)(D) to make clear that a party in interest may obtain a court determination regardless of whether the claim holder files the response required by the proposed rule. For example: "If a party in interest objects to the response or requests a determination in the absence of a response, the court shall . . . ."

Perhaps the rule should specify that the claim holder's response is a supplement to the claim to help ensure that non-attorneys would be able to file the responses.

Subdivisions (g) and (h): For consistency, it might make sense to use a multiple of seven for the filing deadline under proposed Rule 3002.1(g)(1)—making it either 42 days or 49 days.

There are some potential downsides to Judge Lundin's suggestion that the final determination be made before the last plan payment. Debtors occasionally stop making plan payments or start making mortgage payments directly based on a misinterpretation of the motion or order seeking a mortgage status determination. Obtaining the status order before the completion of the plan may also reduce the likelihood of identifying errors in the transition from bankruptcy to post-bankruptcy accounting. Finally, in conduit cases a determination during the plan means that the trustee will distribute at least one final mortgage payment after the status determination. That makes it likely that a debtor in a post-bankruptcy dispute with the claim holder about the status would need not just the court order but also the trustee's records of the final disbursement(s).

As with the mid-case notice, I would propose that the rule authorize service of the motion under Rule 3002.1(g) at the notice address last specified by the claimholder.

The proposed process for resolving a disagreement about the loan status seems inefficient. If a trustee has filed a motion under subdivision (g)(1) requesting a determination that

the loan is current and a claimholder has filed a response in opposition to that request, the rule should allow the matter to move directly to a court determination. It should not require the trustee (or another party in interest) to file what amounts to a second request that the court determine the status.

Proposed subdivision (h)(1) should be revised to remove the requirement that a party seeking a determination in the absence of a claimholder response must first request an order compelling a response. If the trustee has filed and properly served a motion, the court should have the authority to enter an order in the absence of any opposition.

Strike "legal" from (h)(1)(B).

In proposed subdivision (h)(4), consider making the determinations of account balances discretionary. The principal balance, the escrow account balance, and the suspense/unapplied funds balances are all important, but because many trustees may not have independent records for these balances, a mandatory determination risks blindly validating creditor records without any actual check of their accuracy. It also fits poorly with a "negative notice" process if the order must include figures that the trustee lacks the data to propose.

In proposed subdivision (h)(4)(A)(v), strike "properly noticed under (c)." The order should establish the amount of *any* remaining fee, expense, or charge—not just properly noticed ones. The evidence-exclusion sanction under subdivision (i) may have the effect of excluding amounts not properly noticed, but, for that process to work, the order must establish the amounts due, not just the amounts properly noticed.

As with the mid-case process, perhaps the rule should specify that claim holders may file responses in agreement as supplements to their claims (to facilitate handling my non-attorneys). Attorney involvement may be unavoidable when the creditor is contesting the trustee's requested relief. But when the creditor's records agree with the trustee's records, a ministerial filing by a creditor representative seems preferable to a process that would add new attorney's fees.

Subdivision (i) – I would change the title of the proposed subdivision (i) to: "CLAIM HOLDER'S FAILURE TO COMPLY ~~GIVE NOTICE OR RESPOND~~." And, in the text, I would suggest retaining the word "as" to make clear that courts have authority to grant relief for *any* non-compliance with the rule (including, for example, an untimely provision of information), not just for a failure to provide information: "If the claim holder fails to provide any information as required by this rule, ..."

I would suggest a clearer statement that the authority under subdivision (i) is available even when the rule specifies a self-effectuating remedy. Instead of adding (i)(3), I would propose adding a separate statemen to that effect, such as: "The availability or existence of any other remedy or relief under this rule shall not limit a court's authority under this subdivision (i)."

National Assoc. of Consumer Bankruptcy Attorneys (BK-2021-0002-0032) – Subdivision (a): The committee note should make explicit that the rule does not apply to a plan that does not provide for a secured claim.

The deletion of "installment" clarifies that the rule applies to reverse mortgages and requires notice of postpetition fees under (c).

Subdivision (b): The rule should include a definition of "home-equity line of credit": "an 'open-end credit plan,' pursuant to 15 U.S.C. § 1602(j), that is secured by the debtor's principal residence."

Subdivision (b)(3)(E) should require a notice of payment change "if the monthly payment has increased or decreased by more than $10 a month since the filing of the proof of claim or the last allowed notice of payment change." It should also specify what happens if the increase or decrease is less than $10: "If the monthly payment increases or decreases by less than $10 a month since the filing of the proof of claim or the last allowed notice of payment change, the claim holder shall file and serve (in addition to the annual notice) a notice under (c)." The committee note should state that a HELOC claim holder may file a notice of payment change for changes less than $10 and that the failure to do so may result in the disallowance of late fees with respect to such changes.

Subdivision (f): We oppose the midcase notice as proposed. It will result in attorneys' fees claims by the mortgage holder, and the debtor can obtain this information without cost.

If the provision is retained, the following changes should be made:

- In (f)(1) change the time period to run from confirmation rather than filing.
- Add "unless the court orders otherwise" to (f)(1). This would allow the court to excuse compliance with the provision in conduit districts in which the trustee has reliable records.
- Instead of a trustee requirement, (f)(1) should require the claim holder to send the trustee, debtor, and debtor's attorney a periodic statement prepared in accordance with the Truth in Lending Act and Regulation Z between 18 to 24 months after confirmation. The servicer could do this without incurring attorneys' fees.
- If there's a dispute, the trustee and debtor can obtain a status update and full payment history from a claim holder by sending a request under RESPA. No fees may be charged for responding, a fact that the committee note should point out.

Subdivision (g): The rule should continue to allow the debtor to initiate the end-of-case process if the trustee fails to do so.

Subdivision (h): The court order provided for in this subdivision is the most important part of the proposed revision of the rule. Currently an order is entered only if the claim holder files a response to the trustee's notice and a determination is sought. The order will provide greater clarity to the debtor, non-bankruptcy attorneys, title insurers, and future lenders.

The requirement that the order specify the principal balance owed is a vital improvement. It should, however, be called "total amount owed," so that a mortgage servicer does not later contend that the amount did not include fees, charges, and interest that were not otherwise allowed.

Subdivision (i): Subdivision (i)(3) should explicitly put the claim holder on notice that "the court may take any other action authorized by this Rule, the Bankruptcy Code, or other state or federal law" for noncompliance.

Style usage in Rule 3002.1: There are some inconsistencies in hyphenation. Home-equity and end-of-case are hyphenated, but midcase is not.

Rick Yarnall (BK-2021-0002-0033) – I join in and agree with the comments made by the 68 Chapter 13 Standing Trustees posted on December 7, 2021, and by Hon. Keith Lundin (Ret.) posted on November 4, 2021. I write to highlight my concerns over the undue administrative burden this rule would impose on trustees who are in non-conduit jurisdictions and in cases where debtors pay the mortgage directly. Further, the change in the procedure at the end of a debtor's case may result in a delay in a discharge being entered in cases where there is no dispute with respect to whether the mortgage payment is current. I urge the committee to strongly consider the arguments raised in the various comments and respectfully recommend the rule be revised and republished for further comment.

Nancy Whaley (BK-2021-0002-0034) – I believe that the proposed rule amendments are not the appropriate remedy to ensure that a debtor's mortgage payments are reconciled when they exit a chapter 13 case. While the current rules may need corrective amendments, the use of notices work and are cost effective, and the current rules provide the appropriate remedies if used by all parties. The proposed process is costly and time consuming for debtors, creditors, trustees, and the court without necessarily bringing about a different result of the current rules. [She includes statistics showing that there are very few cases in her district in which there is a motion filed disputing the status of the mortgage at the end of the case.]

Subdivision (f): Creating a midcase review that is initiated by a non-conduit trustee stating the payment on prepetition arrearages does not resolve any known problem and seems to be a solution in search of a problem. While I do not dispute that having a reconciliation of post-petition mortgage payments during the pendency of a case would be beneficial to the debtor and creditor, a rule is not necessary. A debtor, a holder of a claim, or a conduit trustee can do this at any point in a case, and as some conduit trustees have stated, they already do this without the requirement of a rule. If it is determined that a rule would be beneficial, then the rule should be optional, and the rule should be created to resolve the concern of payments on post-petition payments. The most effective way to do this is by requiring the party making the post-petition payment or the holder of the claim to file the midcase notice.

Subdivision (g): The changes in 3002.1(g) are problematic for a non-conduit trustee by requiring a trustee to file a motion, not a notice, at the end of the case. I fully support and incorporate the National Association of Bankruptcy Judges position on the flaws of having a non-conduit trustee file a motion at the end of the case. I, as non-conduit trustee, do not have the factual foundation to file this motion, and I support the notice practice at the end of the case. If a motion is required, having the party that is making the post-petition payments or the holder of the claim file the motion will be more successful in bringing to the table the parties that can resolve the matter.

Current subdivision (f): Some mortgage servicers' representatives and fellow trustees believe that the current rule as written requires trustees to file a Notice of Final Cure Payment (NFCP) under the current Rule 3002.1(f) regardless of whether there is a default to be cured. This is based upon the amendment to the rule in 2016 and the committee note that states that the rule applies "even if there is not prepetition arrearage to be cured." I, along with many trustees, file a NFCP when we have paid a prepetition or post-petition default on the debtor's principal residence, and we believe that we are fully compliant with the rule, but others disagree. I would suggest to this Committee that many trustees interpret the committee note to mean that the Notice of Payment Change and other requirements of 3002.1 apply regardless of a prepetition arrearage, but it does not make logical sense that that subdivision (f) applies, since that section specifically addresses a *notice of final cure payment.* If the intent of the rule is that a trustee is to file something in every case in which a debtor has a principal residence, I believe the current rule needs to be clarified and indicate what the trustee is to file.

TAB 4B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: SUGGESTION FOR AMENDING RULE 5009(b)

DATE: AUGUST 18, 2022

Professor Laura Bartell submitted Suggestion 22-BK-D, which arises out of research she has conducted concerning individual debtors emerging from bankruptcy without a discharge because of their failure to timely file a statement of completion of a course on personal financial management. In order to reduce the number of these cases, she suggested that the timing of the notice under Rule 5009(b), which reminds the debtor of the need to file documentation of course completion, be moved up to just after the conclusion of the meeting of creditors. This Suggestion was considered by the Subcommittee during its August 12 meeting.

The Suggestion

Section 727(a)(11) of the Code provides, subject to limited exceptions, that a debtor will not receive a discharge if "after filing the petition, the debtor failed to complete an [approved] instructional course concerning personal financial management." This restriction applies to individual debtors in chapter 7, in certain chapter 11 cases (*see* § 1141(d)(3)), and in chapter 13 (*see* § 1328(g)(1)). Rule 1007(b)(7) implements these provisions by requiring such a debtor to file a statement of completion of the course.[1] Rule 1007(c) provides the deadline for filing the statement: in a chapter 7 case, 60 days after the first date set for the meeting of creditors; in a

[1] The Standing Committee has published an amendment to Rule 1007(b)(7) that would change the requirement for filing a statement to requiring the filing of a certificate of course completion issued by the provider. If finally approved, the amendment will become applicable in December 2024.

chapter 11 or 13 case, no later than the date that the debtor makes the last payment as required by the plan or a motion is filed for a hardship discharge. In order to promote the debtor's compliance with these requirements, Rule 5009(b) provides that, if an individual debtor in a chapter 7 or 13 case who is required to file a statement under Rule 1007(b)(7) fails to do so by 45 days after the first date set for the meeting of creditors, the court must promptly notify the debtor of the obligation to do so by the prescribed deadline. The notice must also explain that the failure to comply will result in the case being closed without a discharge.

Professor Bartell examined all the chapter 7 and chapter 13 cases filed in 2019 on the interactive Federal Judicial Center Integrated Database. She discovered that over 6400 cases—primarily in chapter 7—were closed without a discharge because of the failure to submit a statement of completion of a course concerning personal financial management. Laura B. Bartell, SECTION 727(A)(11) – MODEST PROPOSALS FOR CHANGE at 8 (May 18, 2022, draft). Some of these debtors eventually received a discharge after getting their cases reopened—at additional expense—but others never did, despite having satisfied all of the other requirements for receiving a discharge.

Professor Bartell suggested that, to reduce the number of cases where this problem occurs, the Rule 5009(b) notice should be sent just after the conclusion of the § 341 meeting, rather than 45 days after the first date set for that meeting, and that, to the extent possible, a specific filing deadline be stated. She explained that, although most debtors file their statements within the 45-day period, "many others now file shortly after they receive the Rule 5009(b) notice, and a significant number file just after the case is closed, suggesting that the fifteen days following the Rule 5009(b) notice was not quite enough time to complete the course and get the certificate filed." Professor Bartell suggested that the notice may not reach the debtor or may be

delayed by changes in address or circumstances and that the debtor's attorney may no longer be in contact with the debtor. A notice sent at the conclusion of the meeting of creditors, she said, is more likely to reach the debtor and to be acted on, especially if it specifies a date by which compliance must occur.

She proposed the following amendment to Rule 5009(b)[2]:

> (b) **Notice of Failure to File Rule 1007(b)(7) Statement**. If an individual debtor in a chapter 7 or 13 case is required to file a statement under Rule 1007(b)(7) and fails to do so ~~within 45 days after the first date set for~~ before the conclusion of the meeting of creditors under § 341(a), the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the required statement is filed ~~within the applicable time limit under Rule 1007(c).~~
>
> (i) in the case of a chapter 7 debtor, no later than the date specified in such notice, which date will be sixty days after the first date set for the meeting of creditors, and
>
> (ii) in the case of a chapter 13 debtor, within the applicable time limit under Rule 1007(c).

The Subcommittee's Discussion

The Subcommittee shares Professor Bartell's desire to reduce the number of individual debtors who go through bankruptcy but do not receive a discharge because they either fail to take the required course on personal financial management or merely fail to file the needed documentation of their completion of the course.[3] In discussing this proposed amendment, members of the Subcommittee noted Professor Bartell's statement in her Suggestion that "[s]ince

[2] The quoted proposal is a revision of the language that Professor Bartell included in her original submission to the Advisory Committee.

[3] In pursuit of this goal, the Forms Subcommittee is recommending that the initial notices sent to individual debtors in chapter 7 cases—Official Forms 309A and 309B—be amended to include a notice of the debtor's obligation to complete a course in personal financial management and the deadline for filing proof of that completion. Its report appears at Tab 5A of the agenda book.

the amendment to Rule 1007(c)[4] and the adoption of Rule 5009(b), the number of cases closed without a discharge because of the debtor's failure to file the certificate on a timely basis—although still very high—has plummeted."

The issue for the Subcommittee then was whether sending the Rule 5009(b) notice earlier in the case will increase its effectiveness and thereby decrease even further the number of noncompliant debtors in chapter 7 and 13 cases. Professor Bartell suggested that it will do so because at the conclusion of the meeting of creditors debtors will be focused on their bankruptcy case and likely to still be in contact with their attorneys and reachable by the court.

Additionally, the Subcommittee discussed what should be the timing of an earlier notice. Members concluded that the date should not be expressed as a number of days after the conclusion of the meeting of creditors for two reasons. First, the meeting may be continued and not concluded until after the deadline for filing the certificate of course completion. Second, the clerk's office is generally not aware of when the meeting of creditors concludes. The Subcommittee therefore discussed moving up the time of the Rule 5009(b) notice to a number of days after the filing of the petition or after the first date set for the meeting of creditors. It did not settle on a date, however. To inform the Subcommittee's decision, Ken Gardner offered to gather information from his staff about when filings in his district occur under the current rule in relation to when the Rule 5009(b) notice is sent.

The Subcommittee discussed possible alternatives to Professor Bartell's Suggestion, such as sending two notices: an earlier notice, as she suggested, and another one 45 days after the first date set for the meeting of creditors, as Rule 5009(b) currently requires. The Subcommittee

[4] Rule 1007(c) was amended in 2010 to increase the time for filing a statement of course completion in a chapter 7 case from 45 to 60 days after the first date set for the meeting of creditors. At the same time, Rule 5009(b) was added.

also questioned, but did not decide, whether there is any need for an earlier notice in chapter 13 cases. The Subcommittee plans to make a recommendation regarding the Suggestion at the spring meeting and welcomes any thoughts members of the Advisory Committee want to share at this meeting.

TAB 5

TAB 5A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: SUGGESTION FOR AMENDING OFFICIAL FORMS 309A, 309B, 309E1, 309E2, AND 309I

DATE: AUGUST 18, 2022

Professor Laura Bartell has submitted Suggestion 22-BK-E, which arises out of research she has conducted concerning individual debtors who emerge from bankruptcy without a discharge because of their failure to timely file a statement of completion of a course on personal financial management. In order to reduce the number of such cases, she suggests that the various forms providing notice of a bankruptcy filing by an individual debtor in a chapter 7, 11, or 13 case be amended to include a provision notifying the debtor of the obligation to file a certificate of completion and stating the filing deadline.[1] This Suggestion was considered by the Subcommittee during its meeting on July 18.

The Suggestion

Section 727(a)(11) of the Code provides, subject to limited exceptions, that a debtor will not receive a discharge if "after filing the petition, the debtor failed to complete an [approved] instructional course concerning personal financial management." This restriction applies to individual debtors in chapter 7, in certain chapter 11 cases (*see* § 1141(d)(3)), and in chapter 13 (*see* § 1328(g)(1)). Rule 1007(b)(7) implements these provisions by requiring such a debtor to

[1] Professor Bartell has made a related suggestion to change the deadline for filing the reminder notice required by Rule 5009(b). That suggestion was considered by the Consumer Subcommittee, and its report appears at Tab 4B.

file a statement of completion of the course.[2] Rule 1007(c) provides the deadline for filing the statement: in a chapter 7 case, 60 days after the first date set for the meeting of creditors; in a chapter 11 or 13 case, no later than the date that the debtor makes the last payment as required by the plan or a motion is filed for a hardship discharge.

Professor Bartell has examined chapter 7 and chapter 13 cases filed in 2019 on the interactive Federal Judicial Center Integrated Database. She discovered that in over 6400 cases the debtor's case was closed without a discharge because of the failure to submit a statement of completion of a course concerning personal financial management. Laura B. Bartell, SECTION 727(A)(11) – MODEST PROPOSALS FOR CHANGE at 8 (May 18, 2022, draft). Some of these debtors eventually received a discharge—at additional expense—after getting their cases reopened, but others never did, despite having satisfied all of the other requirements for receiving a discharge.

Professor Bartell suggests that "[p]roviding the debtor early and official notice of the [course completion and filing] requirement would encourage early compliance." This notice could be accomplished, she says, by adding the following provision to Official Forms 309A, 309B, 309E1, 309E2, and 309I:

> **Deadline to File Financial Management Course Certificate:** **Filing deadline: _____**
>
> After filing for bankruptcy, the debtor must take an approved course about personal financial management and file the certificate showing completion of the course with the court.

She points out that, while the 309 forms primarily provide information relevant to creditors, they also address debtors. Each form states that it "has important information about the case for

[2] The Standing Committee has published an amendment to Rule 1007(b)(7) that changes the requirement for filing a statement to requiring the filing of a certificate of course completion issued by the provider. If finally approved, the amendment will become applicable in December 2024.

creditors, debtors, and trustees, including information about the meeting of creditors and deadlines."

The Subcommittee's Recommendation

The Subcommittee agreed that the number of individual debtors who go through bankruptcy but do not receive a discharge—because they either fail to take the required course on personal financial management or merely fail to file the needed documentation of their completion of the course—should be reduced as much as possible. While members were doubtful that an addition to the 309 forms would have a big impact, they did agree that attempting to call the debtor's attention to these requirements at the outset of a bankruptcy case could help and that using Official Form 309 is a way to do so without placing an additional burden on the court.

The Subcommittee concluded, however, that the amendment should only be proposed for the chapter 7 forms— Official Forms 309A and 309B—because Professor Bartell confirmed that the problem is primarily limited to those cases. The Subcommittee recommends that the proposed notice be added to the section on deadlines in those forms with the wording Professor Bartell suggests. These amendments could be accompanied by the following committee note:

> Official Forms 309A and 309B are amended to add to the section on deadlines a notice to the debtor of the need to complete an approved course on personal financial management and to file a certificate of completion by the specified deadline. Because failure to satisfy this requirement will, subject to certain exceptions, result in the closing of a case without a discharge, it is important that the debtor be aware of these requirements.

The Subcommittee recommends that the Advisory Committee seek publication for comment of the proposed amendments in August 2023, with a proposed effective date of December 2024.

Information to identify the case:

Debtor 1 _____ (First Name / Middle Name / Last Name)

Last 4 digits of Social Security number or ITIN ___ ___ ___ ___

EIN __ __ - __ __ __ __ __ __ __

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

Last 4 digits of Social Security number or ITIN ___ ___ ___ ___

EIN __ __ - __ __ __ __ __ __ __

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

[Date case filed for chapter 7 _____ MM / DD / YYYY OR

[Date case filed in chapter _____ _____ MM / DD / YYYY

Date case converted to chapter 7 _____] MM / DD / YYYY

Case number: _____

Official Form 309A (For Individuals or Joint Debtors)

Notice of Chapter 7 Bankruptcy Case — No Proof of Claim Deadline 12/24

For the debtors listed above, a case has been filed under chapter 7 of the Bankruptcy Code. An order for relief has been entered.

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

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

The debtors are seeking a discharge. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 9 for more information.)

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

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

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

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

	About Debtor 1:	About Debtor 2:
1. **Debtor's full name**		
2. **All other names used in the last 8 years**		
3. **Address**		**If Debtor 2 lives at a different address:**
4. **Debtor's attorney** Name and address		Contact phone _____ Email _____
5. **Bankruptcy trustee** Name and address		Contact phone _____ Email _____

For more information, see page 2 ▶

6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at https://pacer.uscourts.gov.		Hours open _____ Contact phone _____
7. Meeting of creditors Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so.	_____ at _____ Date Time The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.	Location:
8. Presumption of abuse If the presumption of abuse arises, you may have the right to file a motion to dismiss the case under 11 U.S.C. § 707(b). Debtors may rebut the presumption by showing special circumstances.	[The presumption of abuse does not arise.] [The presumption of abuse arises.] [Insufficient information has been filed to permit the clerk to determine whether the presumption of abuse arises. If more complete information is filed and shows that the presumption has arisen, the clerk will notify creditors.]	
9. Deadlines The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.	**File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:** **You must file a complaint**: if you assert that the debtor is not entitled to receive a discharge of any debts under any of the subdivisions of 11 U.S.C. § 727(a)(2) through (7), or if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6). **You must file a motion** if you assert that the discharge should be denied under § 727(a)(8) or (9).	**Filing deadline:** _____
	Deadline to object to exemptions: The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.	**Filing deadline**: 30 days after the conclusion of the meeting of creditors
	Debtor's Deadline to File Financial Management Course Certificate: After filing for bankruptcy, the debtor must take an approved course about personal financial management and file the certificate showing completion of the course with the court.	**Filing deadline**:_____
10. Proof of claim Please do not file a proof of claim unless you receive a notice to do so.	No property appears to be available to pay creditors. Therefore, please do not file a proof of claim now. If it later appears that assets are available to pay creditors, the clerk will send you another notice telling you that you may file a proof of claim and stating the deadline.	
11. Creditors with a foreign address	If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.	
12. Exempt property	The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at https://pacer.uscourts.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 9.	

Information to identify the case:

Debtor 1 _____ (First Name / Middle Name / Last Name)
Last 4 digits of Social Security number or ITIN ___ ___ ___ ___
EIN __ __ – __ __ __ __ __ __ __

Debtor 2 (Spouse, if filing) _____ (First Name / Middle Name / Last Name)
Last 4 digits of Social Security number or ITIN ___ ___ ___ ___
EIN __ __ – __ __ __ __ __ __ __

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

Case number: _____

[Date case filed for chapter 7 _____ MM / DD / YYYY OR

[Date case filed in chapter _____ _____ MM / DD / YYYY

Date case converted to chapter 7 _____] MM / DD / YYYY

Official Form 309B (For Individuals or Joint Debtors)

Notice of Chapter 7 Bankruptcy Case — Proof of Claim Deadline Set 12/24

For the debtors listed above, a case has been filed under chapter 7 of the Bankruptcy Code. An order for relief has been entered.

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

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

The debtors are seeking a discharge. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 9 for more information.)

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

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

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

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

	About Debtor 1:	About Debtor 2:
1. **Debtor's full name**		
2. **All other names used in the last 8 years**		
3. **Address**		**If Debtor 2 lives at a different address:**
4. **Debtor's attorney** Name and address		Contact phone _____ Email _____
5. **Bankruptcy trustee** Name and address		Contact phone _____ Email _____

For more information, see page 2 ▶

6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at https://pacer.uscourts.gov.		Hours open _____ Contact phone _____
7. Meeting of creditors Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so.	_____ at _____ Date Time The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.	Location:
8. Presumption of abuse If the presumption of abuse arises, you may have the right to file a motion to dismiss the case under 11 U.S.C. § 707(b). Debtors may rebut the presumption by showing special circumstances.	[The presumption of abuse does not arise.] [The presumption of abuse arises.] [Insufficient information has been filed to permit the clerk to determine whether the presumption of abuse arises. If more complete information is filed and shows that the presumption has arisen, the clerk will notify creditors.]	
9. Deadlines The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.	**File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:** **You must file a complaint**: if you assert that the debtor is not entitled to receive a discharge of any debts under any of the subdivisions of 11 U.S.C. § 727(a)(2) through (7), or if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6). **You must file a motion:** if you assert that the discharge should be denied under § 727(a)(8) or (9).	**Filing deadline**:_____
	Deadline for all creditors to file a proof of claim (except governmental units):	**Filing deadline:**_____
	Deadline for governmental units to file a proof of claim:	**Filing deadline:**_____
	Deadlines for filing proof of claim: A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office. If you do not file a proof of claim by the deadline, you might not be paid on your claim. To be paid, you must file a proof of claim even if your claim is listed in the schedules that the debtor filed. Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.	
	Deadline to object to exemptions: The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.	**Filing deadline:** 30 days after the *conclusion* of the meeting of creditors
	Debtor's Deadline to File Financial Management Course Certificate: After filing for bankruptcy, the debtor must take an approved course about personal financial management and file the certificate showing completion of the course with the court.	**Filing deadline**:_____
10. Creditors with a foreign address	If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.	
11. Liquidation of the debtor's property and payment of creditors' claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them in the order specified by the Bankruptcy Code. To ensure you receive any share of that money, you must file a proof of claim as described above.	
12. Exempt property	The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at https://pacer.uscourts.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 9.	

Committee Note

Official Forms 309A and 309B are amended to add to the section on deadlines a notice to the debtor of the need to complete an approved course on personal financial management and to file a certificate of completion by the specified deadline. Because failure to satisfy this requirement will, subject to certain exceptions, result in the closing of a case without a discharge, it is important that the debtor be aware of these requirements.

TAB 5B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 22-BK-C – OFFICIAL FORM 410

DATE: AUG. 13, 2022

We have received a suggestion from Dana C. McWay, Chair of the Administrative Office of the U.S. Courts' Unclaimed Funds Expert Panel, 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 insertion of the line permitting voluntary inclusion of a uniform claim identifier on a proof of claim was made at the suggestion of George W. Stevenson, a chapter 13 trustee in Memphis, Tennessee in 2009 (09-BK-K) and became effective Dec. 1, 2011. Mr. Stevenson's proposal was a response to the required redaction of debtor information under Fed. R. Bankr. P. 9037(a) which, he claimed, made proper identification and crediting of payments more difficult. The uniform claim identifier -- a 24-character number composed of a three-character creditor identification, a three-character internal designation of the creditor division, a seven-character bankruptcy case number, a three-character bankruptcy court identifier, the last four digits of the debtor's social security number and the last four digits of the debtor's account number – would allow electronic transmission of multiple payments to a single payment address for a single creditor. As stated by Judge Rebecca B. Connelly (then a chapter 13 trustee), the UCI was intended to "permit centralization for payment locations – that is, potentially a single address for chapter 13 distributions to the largest creditors, rather than the hundreds of myriad address and payment locations used by national creditors."[1] Judge Connelly noted that "[s]ignificant resources from trustees and creditors are currently spent addressing payment application disputes sometimes stemming from processing delays. Processing errors and delays have led to battles in our courts over a loan's status post-bankruptcy."[2]

The last line of Box 3 of Form 410 currently reads as follows:

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

__ __

The reason for the new suggestion is that "[c]ase trustees make payments to creditors in chapter 7 asset cases, chapter 12 cases, chapter 13 cases, and when acting also as a disbursing agent, in Subchapter V chapter 11 cases. Allowing any creditor to provide this identifier can assist trustees in all case types to issue electronic payments in lieu of paper checks."

[1] Rebecca B. Connelly, *New Claim Form Presents New Opportunity: The Uniform Claim Identifier*, ABI Journal (Feb. 2012)
[2] *Id.*

The Subcommittee concluded that the suggestion should be adopted, but expanded even further. Rather than simply removing the words "in chapter 13" from that line as suggested, the Subcommittee approved removing the entire phrase "for electronic payments in chapter 13". There is no reason the UCI could not be used for paper checks as well as electronic payments (and indeed it is currently being used in that context).

Use of the UCI is entirely voluntary, and very few creditors actually use the UCI (Wells Fargo, which was instrumental in developing the original suggestion, is one of them), but there is no policy reason to limit its use to chapter 13 or to electronic payments. The Subcommittee recommends that the last line of Box 3 of Form 410 be modified to read as follows:

Uniform claim identifier (if you use one):

_ _

Advisory 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.

The Subcommittee recommends the amendment to Form 410 to the Advisory Committee for approval for publication.

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 ~~for electronic payments in chapter 13~~ (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)(2) 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.

Official Form 410

Instructions for Proof of Claim

United States Bankruptcy Court 12/24

These instructions and definitions generally explain the law. In certain circumstances, such as bankruptcy cases that debtors do not file voluntarily, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy process and privacy regulations.

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.

How to fill out this form

- **Fill in all of the information about the claim as of the date the case was filed.**
- **Fill in the caption at the top of the form.**
- **If the claim has been acquired from someone else, then state the identity of the last party** who owned the claim or was the holder of the claim and who transferred it to you before the initial claim was filed.
- **Attach any supporting documents to this form.** Attach redacted copies of any documents that show that the debt exists, a lien secures the debt, or both. (See the definition of *redaction* on the next page.)

  Also attach redacted copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added. Federal Rule of Bankruptcy Procedure (called "Bankruptcy Rule") 3001(c) and (d).
- **Do not attach original documents because attachments may be destroyed after scanning.**
- **If the claim is based on delivering health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the claim and in the attached documents.**
- **A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual's tax identification number, or financial account number, and only the year of any person's date of birth.** See Bankruptcy Rule 9037.
- **For a minor child, fill in only the child's initials and the full name and address of the child's parent or guardian.** For example, write *A.B., a minor child* (*John Doe, parent, 123 Main St., City, State*). See Bankruptcy Rule 9037.

Confirmation that the claim has been filed

To receive confirmation that the claim has been filed, either enclose a stamped self-addressed envelope and a copy of this form or go to the court's PACER system (www.pacer.psc.uscourts.gov) to view the filed form.

Understand the terms used in this form

Administrative expense: Generally, an expense that arises after a bankruptcy case is filed in connection with operating, liquidating, or distributing the bankruptcy estate. 11 U.S.C. § 503.

Claim: A creditor's right to receive payment for a debt that the debtor owed on the date the debtor filed for bankruptcy. 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Creditor: A person, corporation, or other entity to whom a debtor owes a debt that was incurred on or before the date the debtor filed for bankruptcy. 11 U.S.C. §101 (10).

Debtor: A person, corporation, or other entity who is in bankruptcy. Use the debtor's name and case number as shown in the bankruptcy notice you received. 11 U.S.C. § 101 (13).

Evidence of perfection: Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded, such as a mortgage, lien, certificate of title, or financing statement.

Information that is entitled to privacy: A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if the trustee or someone else in interest objects to the claim.

Priority claim: A claim within a category of unsecured claims that is entitled to priority under 11 U.S.C. §507(a). These claims are paid from the available money or property in a bankruptcy case before other unsecured claims are paid. Common priority unsecured claims include alimony, child support, taxes, and certain unpaid wages.

Proof of claim: A form that shows the amount of debt the debtor owed to a creditor on the date of the bankruptcy filing. The form must be filed in the district where the case is pending.

Redaction of information: Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out information entitled to **privacy** on the *Proof of Claim* form and any attached documents.

Secured claim under 11 U.S.C. §506(a): A claim backed by a lien on particular property of the debtor. A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien. Any amount owed to a creditor that is more than the value of the property normally may be an unsecured claim. But exceptions exist; for example, see 11 U.S.C. § 1322(b) and the final sentence of 1325(a).

Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment may be a lien.

Setoff: Occurs when a creditor pays itself with money belonging to the debtor that it is holding, or by canceling a debt it owes to the debtor.

Uniform claim identifier: An optional 24-character identifier that some creditors use to facilitate ~~electronic~~ payment.

Unsecured claim: A claim that does not meet the requirements of a secured claim. A claim may be unsecured in part to the extent that the amount of the claim is more than the value of the property on which a creditor has a lien.

Offers to purchase a claim

Certain entities purchase claims for an amount that is less than the face value of the claims. These entities may contact creditors offering to purchase their claims. Some written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, or the debtor. A creditor has no obligation to sell its claim. However, if a creditor decides to sell its claim, any transfer of that claim is subject to Bankruptcy Rule 3001(e), any provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.) that apply, and any orders of the bankruptcy court that apply.

Do not file these instructions with your form.

TAB 6

TAB 6A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: PRIVACY, PUBLIC ACCESS, AND APPEALS SUBCOMMITTEE

SUBJECT: 21-BK-M – RULE 8006(g)

DATE: AUG. 13, 2022

At its winter meeting the Subcommittee recommended to the Advisory Committee an amendment to Fed. R. Bankr. P. 8006(g) suggested by Judge A. Benjamin Goldgar to make explicit what the Subcommittee believed was the existing meaning of the Rule--that any party to an appeal may submit a request to the court of appeals to accept a direct appeal under 28 U.S.C. § 158(d)(2). The language approved by the Subcommittee and submitted to the Advisory Committee read as follows:

> **"(g) Request for Leave to Take a Direct Appeal to a Court of Appeals After Certification.** A request for leave to take a direct appeal to a court of appeals may be filed with the circuit clerk in accordance with Fed. R. App. P. 6(c) not later than 30 days after the date the certification becomes effective under (a). A request may be filed by any party to the prospective appeal."[1]

Advisory Committee Note

Rule 8006(g) is revised to clarify that any party to the prospective appeal may file a request for leave to take a direct appeal not later than 30 days after the date the certification becomes effective. There is no obligation to file a request for leave to take a direct appeal if no party to the prospective appeal wishes to pursue it.

At the Advisory Committee meeting Professor Cathie Struve, Reporter to the Standing Committee, expressed concern that the amended rule (and perhaps the existing rule) did not work properly with Fed. R. App. P. 6(c). She suggested that the recommendation be recommitted to the Subcommittee to work with the Advisory Committee on Appellate Rules to ensure that the two rules worked together. The Advisory Committee agreed with her proposal.

The reporters for the Bankruptcy Rules Committee and the Appellate Rules Committee have since conferred and believe they have appropriate coordinated proposals. Professor Edward A. Hartnett has drafted proposed changes to Fed. R. App. P. 6 which are shown on Appendix A. These proposals have not been reviewed by the Appellate Rules Committee (which does not operate through standing subcommittees as does the Bankruptcy Rules Committee) and therefore reflect only his own suggestions, but he intends to present them to the Appellate Rules Committee at its next meeting.

[1] Changes to Rule 8006(g) shown in this memo are to the restyled version published for comment on August 15, 2022.

The proposed revisions to Fed. R. Bankr. P. 8006(g) that the reporters have discussed with Professor Hartnett and believe work with his proposed changes to the appellate rule are as follows:

> **(g) Request After Certification for a Court of Appeals To Authorize a Direct Appeal.** Within 30 days after the certification has become effective under (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 in accordance with Fed. R. App. P. 6(c).

Advisory 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.

The Subcommittee recommends the proposed amendments to Rule 8006(g) to the Advisory Committee for publication.

Appendix A

Rule 5. Appeal by Permission

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition with the circuit clerk and serve it on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.(b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 10 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) Form of Papers; Number of Copies. All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

Except by the court's permission, and excluding the accompanying documents required by Rule 5(b)(1)(E):

(1) a paper produced using a computer must not exceed 5,200 words; and

(2) a handwritten or typewritten paper must not exceed 20 pages.

(d) Grant of Permission; Fees; Cost Bond; Filing the Record.

(1) Within 14 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).

Rule 6. Appeal in a Bankruptcy Case

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

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

(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 under 28 U.S.C. §158(a) or (b), but with these qualifications:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(c), 13–20, 22–23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to "Forms 1A and 1B in the Appendix of Forms" must be read as a reference to Form 5; and

(C) when the appeal is from a bankruptcy appellate panel, "district court," as used in any applicable rule, means "appellate panel"; and

(D) in Rule 12.1, "district court" includes a bankruptcy court or bankruptcy appellate panel.

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

(A) Motion for Rehearing.

(i) If a timely motion for rehearing under Bankruptcy Rule 8022 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree—but before disposition of the motion for rehearing—becomes effective when the order disposing of the motion for rehearing is entered.

(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 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.

(iii) No additional fee is required to file an amended notice.

(B) The record on appeal.

(i) Within 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8009—and serve on the appellee—a statement of the issues to be presented on appeal and a designation of the record to be certified and made available to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 14 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel; and
- a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) Making the Record Available.

(i) When the record is complete, the district clerk or bankruptcy-appellate-panel clerk must number the documents constituting the record and promptly make it available to the circuit clerk. If the clerk makes the record available in paper form, the clerk will not send documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals, unless directed to do so by a party or the circuit clerk. If unusually bulky or heavy exhibits are to be made available in paper form, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble and forward the record. The court of appeals may provide by rule or order that a certified copy of the docket entries be sent in place of the redesignated record, but any party may request at any time during the pendency of the appeal that the redesignated record be sent.

(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 noted on the docket serves as the filing date of the record. The circuit clerk must immediately notify all parties of the filing date.

(c) Direct Appeal by Permission Under 28 U.S.C. § 158(d)(2).

(1) Applicability of Other Rules. These rules apply to a direct appeal by permission under 28 U.S.C. § 158(d)(2), but with these qualifications:

(A) Rules 3–4, 5(a)(3), 5(d), 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.

(2) Additional Rules. In addition, the following rules apply:

(A) Authorizing a Direct Appeal. After the notice of appeal has been filed in the bankruptcy court and a certification under 28 U.S.C. § 158(d) has been filed in the appropriate court under Bankruptcy Rule 8006(b), any party to the appeal may petition the court of appeals to authorize a direct appeal.

(B) Content of the Petition. The petition must include, in addition to the material required by Rule 5(b), a copy of the notice of appeal and of the certificate under § 158(d). If the appeal to the district court or bankruptcy appellate panel is not as of right under 28 U.S.C. § 158(a)(1) or (2) but requires leave of court under § 158(a)(3), the petition must also include a copy of any decision on a motion under Bankruptcy Rule 8004.

(C) Actions After Authorization. If the court of appeals authorizes a direct appeal:
(1) Calculating Time. The date the authorization is entered serves as the date of the notice of appeal for calculating time under these rules.

(2) Bond for Costs on Appeal. The court in which the certificate under 28 U.S.C. § 158(d) was filed may require an appellant to file a bond or provide other security for costs on appeal under Rule 7.

(3) The Record on Appeal. Bankruptcy Rule 8009 governs the record on appeal.

(4) Making the Record Available. Bankruptcy Rule 8010 governs completing the record and making it available. (5) Stays Pending Appeal. Bankruptcy Rule 8007 applies to stays pending appeal.

(6) 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 noted on the docket serves as the filing date of the record. The circuit clerk must immediately notify all parties of the filing date.

(7) Filing a Representation Statement. Unless the court of appeals designates another time, within 14 days after entry of the order granting permission to appeal, any attorney who sought permission must file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

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

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

* * * * *

(g) REQUEST AFTER CERTIFICATION FOR ~~LEAVE TO TAKE A DIRECT APPEAL TO~~ A COURT OF APPEALS ~~AFTER CERTIFICATION~~ TO AUTHORIZE A DIRECT APPEAL. 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~~ any party to the appeal may ask the court of appeals to authorize a direct appeal by filing a petition with the circuit clerk in accordance with Fed. R. App. P. 6(c).

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

[2] The changes indicated are to the restyled version of Rule 8006, not yet in effect, which is included in the August 15, 2022 Preliminary Draft of Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and the Rules of Evidence posted on uscourts.gov.

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.

TAB 7

TAB 7A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: RESTYLING SUBCOMMITTEE

SUBJECT: RESTYLING THE AMENDED RULES

DATE: AUG. 13, 2022

Since the restyling process has begun, some of the rules that were subject to restyling have been amended substantively in a way that has already become effective or will become effective before the restyled rules are finalized. The Subcommittee and style consultants have looked at all these rules and have agreed on restyling changes to the amended rules. The changes impact the following rules[1]:

Amendments effective December 1, 2020 -- Rules 2002 and 2004

Amendments effective December 1, 2021 -- Rules 2005, 3007, 7007.1, and 9036

Amendments effective December 1, 2022 -- Rules 1007, 1020, 2009, 2012, 2015, 3002, 3010, 3011, 3014, 3016, 3017.1, 3018, 3019, 5005, 7004, and 8023

Amendments effective December 1, 2023 -- Rules 3011, and 8003.[2]

The attached document shows for each of these rules the amended rule in the left-hand column and the approved restyled version (or version published for comment in August 2022 in the case of the rules in the 7000-9000 series) marked to show proposed changes for the recent substantive amendments. (The amendments published in August 2022 were made to the restyled rules.)

The Subcommittee has approved the revisions to the restyled rules shown in the right-hand column. The style consultants are reviewing these revisions in connection with their "top-to-bottom" review of all of the restyled rules.

Because both the original form of restyled rules and the substantive changes to the existing rules have been published, the Subcommittee does not believe any of these changes (or any changes recommended by the style consultants in their "top-to-bottom" review) require re-publication of any of the restyled rules.

[1] New Rules 3017.2 and 9038, on track to go into effect December 1, 2022, and December 1, 2023, respectively, are not included. As new rules they have been recommended and approved with restyling conventions in mind.
[2] Proposed amendments to Rule 3002.1, published for comment in August 2021, and initially on track to go into effect December 1, 2023, have been delayed until December 1, 2024, or later. The rule is therefore not included here.

Amendments effective December 1, 2020 are highlighted in red
(Rules 2002 and 2004)

Amendments effective December 1, 2021 are highlighted in blue
(Rules 2005, 3007, 7007.1, and 9036)

Amendments effective December 1, 2022 are highlighted in green
(Rules 1007, 1020, 2009, 2012, 2015, 3002, 3010, 3011, 3014, 3016, 3017.1, 3018, 3019, 5005, 7004, and 8023)

Amendments effective December 1, 2023 are highlighted in pink
(Rules 3011 and 8003)

ORIGINAL	REVISION
Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits	**Rule 1007. Lists, Schedules, Statements, and Other Documents; Time to File**
(a) CORPORATE OWNERSHIP STATEMENT, LIST OF CREDITORS AND EQUITY SECURITY HOLDERS, AND OTHER LISTS. (1) Voluntary Case. In a voluntary case, the debtor shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms. If the debtor is a corporation, other than a governmental unit, the debtor shall file with the petition a corporate ownership statement containing the information described in Rule 7007.1. The debtor shall file a supplemental statement promptly upon any change in circumstances that renders the corporate ownership statement inaccurate. (2) Involuntary Case. In an involuntary case, the debtor shall file, within seven days after entry of the order for relief, a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms. (3) Equity Security Holders. In a chapter 11 reorganization case, unless the court orders otherwise, the debtor shall file within 14 days after entry of the order for relief a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each holder, and the last known address or place of business of each holder. Chapter 15 Case. In addition to the documents required under § 1515 of	**(a) Lists of Names and Addresses.** **(1)** ***Voluntary Case.*** In a voluntary case, the debtor must file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H of the Official Bankruptcy Forms. Unless it is a governmental unit, a corporate debtor must: (A) include a corporate-ownership statement containing the information described in Rule 7007.1; and (B) promptly file a supplemental statement if changed circumstances make the original statement inaccurate. **(2)** ***Involuntary Case.*** Within 7 days after the order for relief has been entered in an involuntary case, the debtor must file a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H of the Official Bankruptcy Forms. **(3)** ***Chapter 11—List of Equity Security Holders.*** Unless the court orders otherwise, a Chapter 11 debtor must, within 14 days after the order for relief is entered, file a list of the debtor's equity security holders by class. The listmust show the number and type of interests registered in each holder's name, along with the holder's last known address or place of business. **(4)** ***Chapter 15—Information Required from a Foreign Representative.*** If a foreign representative files a petition under Chapter 15 for recognition of aforeign proceeding, the

Original Text Amendments:
12/1/20 in red, 12/1/21 in blue, 12/1/22 in green, and 12/1/23 in pink.

ORIGINAL	REVISION
the Code, a foreign representative filing a petition for recognition under chapter 15 shall file with the petition: (A) a corporate ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under § 1519 of the Code. (5) Extension of Time. Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to the United States trustee and to any trustee, committee elected under § 705 or appointed under § 1102 of the Code, or other party as the court may direct.	representative must—in addition to the documents required by § 1515—include with thepetition: (A) a corporate-ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the names and addresses of: (i) all persons or bodies authorized to administer the debtor's foreign proceedings; (ii) all entities against whom provisional relief is sought under § 1519; and (iii) all parties to litigation pending in the United States in which the debtor was a party when the petition was filed. **(5)** ***Extending the Time to File.*** On motion and for cause, the court may extend the time to file any list required by this Rule 1007(a). Notice of the motion must be given to: • the United States trustee; • any trustee; • any committee elected under § 705 or appointed under § 1102; and • any other party as the court orders.
(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED. (1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file the	**(b) Schedules, Statements, and Other Documents.** **(1)** ***In General.*** Except in a Chapter 9case or when the court orders otherwise, the debtor must file— prepared as

Original Text Amendments:
12/1/20 in red, 12/1/21 in blue, 12/1/22 in green, and 12/1/23 in pink.

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following schedules, statements, and other documents, prepared as prescribed by the appropriate Official Forms, if any: (A) schedules of assets and liabilities; (B) a schedule of current income and expenditures; (C) a schedule of executory contracts and unexpired leases; (D) a statement of financial affairs; (E) copies of all payment advices or other evidence of payment, if any, received by the debtor from an employer within 60 days before the filing of the petition, with redaction of all but the last four digits of the debtor's social security number or individual taxpayer-identification number; and (F) a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Code. (2) An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(a) of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be served on the trustee and the creditors named in the statement on or before the filing of the statement. (3) Unless the United States trustee has determined that the credit counseling requirement of § 109(h) does not apply in the district, an individual debtor must file a statement of compliance with the credit counseling requirement, prepared as prescribed by the appropriate Official Form which	prescribed by the appropriate Official Form, if any— (A) a schedule of assets and liabilities; (B) a schedule of current income and expenditures; (C) a schedule of executory contracts and unexpired leases; (D) a statement of financial affairs; (E) copies of all payment advices or other evidence of payment that the debtor received from any employer within 60 days before the petition was filed—with all but the last 4 digits of the debtor's social-security number or individual taxpayer-identification number deleted; and (F) a record of the debtor's interest, if any, in an account or program of the type specified in § 521(c). **(2)** ***Statement of Intention.*** In a Chapter 7 case, an individual debtor must: (A) file the statement of intention required by § 521(a) (Form 108); and (B) before or upon filing, serve a copy on the trustee and the creditors named in the statement. **(3)** ***Credit-Counseling Statement.*** Unless the United States trustee has determined that the requirement to file a credit-counseling statement under § 109(h) does not apply in the district, an individual debtor must file a statement of compliance (included in Form 101). The debtor must include one of the following: (A) a certificate and any debt-repayment plan required by § 521(b);

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must include one of the following: (A) an attached certificate and debt repayment plan, if any, required by § 521(b); (B) a statement that the debtor has received the credit counseling briefing required by § 109(h)(1) but does not have the certificate required by § 521(b); (C) a certification under § 109(h)(3); or (D) a request for a determination by the court under § 109(h)(4). (4) Unless § 707(b)(2)(D) applies, an individual debtor in a chapter 7 case shall file a statement of current monthly income prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, the information, including calculations, required by § 707(b), prepared as prescribed by the appropriate Official Form. (5) An individual debtor in a chapter 11 case (unless under subchapter V) shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form. (6) A debtor in a chapter 13 caseshall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicablestate and household size, a calculation of disposable income made in accordance	(B) a statement that the debtor has received the credit-counseling briefing required by § 109(h)(1), but does not have a § 521(b) certificate; (C) a certification under § 109(h)(3); or (D) a request for a court determination under § 109(h)(4). **(4)** ***Current Monthly Income—Chapter 7.*** Unless § 707(b)(2)(D) applies, an individual debtor in a Chapter 7 case must: (A) file a statement of current monthly income (Form 122A-1); and (B) if that income exceeds the median family income for the debtor's state and household size, file the Chapter 7 means-test calculation (Form 122A-2). **(5)** ***Current Monthly Income—Chapter 11.*** An individual debtor in a Chapter 11 case (unless under Subchapter V) must file a statementof current monthly income (Form 122B). **(6)** ***Current Monthly Income—Chapter 13.*** A debtor in a Chapter 13 case must: (A) file a statement of current monthly income (Form 122C-1); and (B) if that income exceeds the median family income for the debtor's state and household size, file the Chapter 13 calculation of disposable income (Form 122C-2). **(7)** ***Personal Financial-Management Course.*** Unless an approved providerhas notified the court that the

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with § 1325(b)(3), prepared as prescribed by the appropriate Official Form. (7) Unless an approved provider of an instructional course concerning personal financial management has notified the court that a debtor has completed the course after filing the petition: (A) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of the course, prepared as prescribed by the appropriate Official Form; and (B) An individual debtor in a chapter 11 case shall file the statement if § 1141(d)(3) applies. (8) If an individual debtor in a chapter 11, 12, or 13 case has claimed an exemption under § 522(b)(3)(A) in property of the kind described in § 522(p)(1) with a value in excess of the amount set out in § 522(q)(1), the debtorshall file a statement as to whether there is any proceeding pending in which the debtor may be found guilty of a felony of a kind described in § 522(q)(1)(A) or found liable for a debt of the kind described in § 522(q)(1)(B).	debtor has completed a course in personal financial management after filing the petition, an individual debtor in a Chapter 7 or Chapter 13 case—or in aChapter 11 case in which § 1141(d)(3)applies—must file a statement that such a course has been completed (Form 423). **(8)** ***Limitation on Homestead Exemption.*** This Rule 1007(b)(8) applies if an individual debtor in a Chapter 11, 12, or 13 case claims an exemption under § 522(b)(3)(A) in property of the type described in § 522(p)(1) and the property value exceeds the amount specified in § 522(q)(1). The debtor must file a statement about any pending proceeding in which the debtor may be found: (A) guilty of the type of felony described in § 522(q)(1)(A); or (B) liable for the type of debt described in § 522(q)(1)(B).
(c) TIME LIMITS. In a voluntary case, the schedules, statements, and other documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the petition or within 14 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h) of this rule. In an involuntary case, the schedules, statements, and other documents required by subdivision (b)(1) shall be filed by the debtor within 14 days after the entry of the order for relief. In a voluntary case, the documents required by paragraphs (A),	**(c) Time to File.** **(1)** ***Voluntary Case—Various Documents.*** Unless (d), (e), (f), or (h) provides otherwise, the debtor in a voluntary case must file the documents required by (b)(1), (b)(4), (b)(5), and (b)(6) with the petition or within 14 days after it is filed. **(2)** ***Involuntary Case—Various Documents.*** In an involuntary case, the debtor must file the documents required by (b)(1) within 14 days after the order for relief is entered.

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(C), and (D) of subdivision (b)(3) shall be filed with the petition. Unless the court orders otherwise, a debtor who has filed a statement under subdivision (b)(3)(B), shall file the documents required by subdivision (b)(3)(A) within 14 days of the order for relief. In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7) within 60 days after the first date set for the meeting of creditors under § 341 of the Code, and in a chapter 11 or 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7). The debtor shall file the statement required by subdivision (b)(8) no earlier than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the Code. Lists, schedules, statements, and other documents filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Except as provided in § 1116(3), any extension of time to file schedules, statements, and other documents required under this rule may be granted only on motion for cause shown and on notice to the United States trustee, any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.	**(3)** ***Credit-Counseling Documents.*** In a voluntary case, the documents requiredby (b)(3)(A), (C), or (D) must be filed with the petition. Unless the court orders otherwise, a debtor who has filed a statement under (b)(3)(B) must file the documents required by (b)(3)(A) within 14 days after the orderfor relief is entered. **(4)** ***Financial-Management Course.*** Unless the court extends the time to file, an individual debtor must file the statement required by (b)(7) as follows: (A) in a Chapter 7 case, within 60 days after the first date set for the meeting of creditors under § 341; and (B) in a Chapter 11 or Chapter 13 case, before the last payment is made under the plan or before a motion for a discharge is filed under § 1141(d)(5)(B) or § 1328(b). **(5)** ***Limitation on Homestead Exemption.*** The debtor must file the statement required by (b)(8) no earlier than the date of the last payment made under the plan, or the date a motion for a discharge is filed under § 1141(d)(5)(B), 1228(b), or 1328(b). **(6)** ***Documents in a Converted Case.*** Unless the court orders otherwise, a document filed before a case is converted to another chapter is considered filed in the converted case. **(7)** ***Extending the Time to File.*** Except as § 1116(3) provides otherwise, the court, on motion and for cause, may extend the time to file a document under this rule. The movant must give notice of the motion to: • the United States trustee; • any committee elected under

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	§ 705 or appointed under § 1102; and • any trustee, examiner, and other party as the court directs. If the motion is granted, notice must begiven to the United States trustee and to any committee, trustee, and other party as the court orders.
(d) LIST OF 20 LARGEST CREDITORS IN CHAPTER 9 MUNICIPALITY CASE OR CHAPTER 11 REORGANIZATION CASE. In addition to the list required bysubdivision (a) of this rule, a debtor in a chapter 9 municipality case or a debtor in a voluntary chapter 11 reorganization case shall file with the petition a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form. In an involuntary chapter 11 reorganization case, such list shall be filed by the debtor within 2 days after entry of the order for relief under § 303(h) of the Code.	**(d) List of the 20 Largest Unsecured Creditors in a Chapter 9 or Chapter 11 Case.** In addition to the lists required by (a), a debtor in a Chapter 9 case or in a voluntary Chapter 11 case must file with the petition a list containing the names, addresses, and claims of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form (Form 104 or 204). In an involuntary Chapter 11 case, the debtor must file the list within 2 days after the order for relief is entered under § 303(h).
(e) LIST IN CHAPTER 9 MUNICIPALITY CASES. The list required by subdivision (a) of this rule shall be filed by the debtor in a chapter 9municipality case within such time as thecourt shall fix. If a proposed plan requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect at the date the petition is filed, thedebtor shall also file a list showing the name and address of each known holderof title, legal or equitable, to real	**(e) Chapter 9 Lists.** In a Chapter 9 case, the court must set the time for the debtor to file a list required by (a). If a proposed plan requires the assessments on real estate to berevised so that the proportion of special assessments or special taxes for some property will be different from the proportion in effect when the petition is filed, the debtor must also file a list that shows—for each adversely affected property—the name and address of each known holder of title, both legal and equitable. On motion and for cause, the court may modify the requirements of this

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property adversely affected. On motion for cause shown, the court may modify the requirements of this subdivision and subdivision (a) of this rule.	Rule 1007(e) and those of (a).
(f) STATEMENT OF SOCIAL SECURITY NUMBER. An individual debtor shall submit a verified statement that sets out the debtor's social security number, or states that the debtor does not have a social security number. In a voluntary case, the debtor shall submit the statement with the petition. In an involuntary case, the debtor shall submit the statement within 14 days after the entry of the order for relief.	**(f) Social-Security Number.** In a voluntary case, an individual debtor must submit with the petition a statement that gives the debtor's social-security number or states that the debtor does not have one (Form 121). In an involuntary case, the debtor must submit the statement within 14 days after the order for relief is entered.
(g) PARTNERSHIP AND PARTNERS. The general partners of a debtor partnership shall prepare and file the list required under subdivision (a), schedules of the assets and liabilities, schedule of current income and expenditures, schedule of executory contracts and unexpired leases, and statement of financial affairs of the partnership. The court may order any general partner to file a statement of personal assets and liabilities within such time as the court may fix.	**(g) Partnership Case.** The general partners of a debtor partnership must file for the partnership the list required by (a) and the documents required by (b)(1)(A)–(D). The court may order any general partner to file astatement of personal assets and liabilities and may set the deadline for doing so.
(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the	**(h) Interests in Property Acquired or Arising After a Petition Is Filed.** After the petition is filed, in a Chapter 7, 11, 12, or 13 case, if the debtor acquires—or becomes entitled to acquire—an interest in property described in § 541(a)(5), the debtor must file a supplemental schedule and include any claimed exemption. Unless the court allows additional time, the debtor must file the schedule within 14 days after learning about the property interest. This duty continues even after the case is closed, except for property acquired after an order is entered:

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property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. ~~The~~ This duty to file a supplemental schedule ~~in accordance with this subdivision~~ continues even after the case is closed, except for property acquired after an order is entered: ~~notwithstanding the closing of the case, except that the schedule need not be filed in a chapter 11, chapter 12, or chapter 13 case with respect to property acquired after entry of the order~~ (1) confirming a chapter 11 plan (other than one confirmed under § 1191(b)); or (2) discharging the debtor in a chapter 12 case, ~~or~~ a chapter 13 case, or a case under subchapter V of chapter 11 in which the plan is confirmed under § 1191(b).	(1) confirming a Chapter 11 plan (other than one confirmed under § 1191(b)); or (2) discharging the debtor in a Chapter 12 case, a Chapter 13 case, or a case under Subchapter V of Chapter 11 in which the plan is confirmed under § 1191(b).
(i) DISCLOSURE OF LIST OF SECURITY HOLDERS. After notice and hearing and for cause shown, the court may direct an entity other than the debtor or trustee to disclose any list of security holders of the debtor in its possession or under its control, indicating the name, address and securityheld by any of them. The entity possessing this list may be required either to produce the list or a true copy thereof, or permit inspection or copying,or otherwise disclose the information contained on the list.	**(i) Security Holders Known to Others.** After notice and a hearing and for cause, the court may direct an entity other than the debtor or trustee to: (1) disclose any list of the debtor's security holders in its possession or under its control by: (A) producing the list or a copy of it; (B) allowing inspection or copying; or (C) making any other disclosure; and (2) indicate the name, address, and security held by each listed holder.
(j) IMPOUNDING OF LISTS. On motion of a party in interest and for cause shown the court may direct the	**(j) Impounding Lists.** On motion of a party in interest and for cause, the court may impound any list filed under this rule and

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impounding of the lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of the lists, however, by any party in interest on terms prescribed by the court.	may refuse inspection. But the court may permit a party in interest to inspect or use an impounded list on terms prescribed by the court.
(k) PREPARATION OF LIST, SCHEDULES, OR STATEMENTS ON DEFAULT OF DEBTOR. If a list,schedule, or statement, other than a statement of intention, is not prepared and filed as required by this rule, the court may order the trustee, a petitioning creditor, committee, or otherparty to prepare and file any of these papers within a time fixed by the court.The court may approve reimbursementof the cost incurred in complying with such an order as an administrative expense.	**(k) Debtor's Failure to File a Required Document.** If a debtor fails to properly prepare and file a list, schedule, or statement (other than a statement of intention) as required by this rule, the court may order: (1) that the trustee, a petitioning creditor, a committee, or other party do so within the time set by the court; and (2) that the cost incurred be reimbursed as an administrative expense.
(l) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of every list, schedule, and statement filed pursuant to subdivision (a)(1), (a)(2), (b), (d), or (h) of this rule.	**(l) Copies to the United States Trustee.** The clerk must promptly send to the United States trustee a copy of every list, schedule, or statement filed under (a)(1), (a)(2), (b), (d), or (h).
(m) INFANTS AND INCOMPETENT PERSONS. If the debtor knows that a person on the list of creditors or schedules is an infant or incompetent person, the debtor also shall include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant or incompetent person in accordance with Rule 7004(b)(2).	**(m) Infant or Incompetent Person.** If a debtor knows that a person named in a list of creditors or in a schedule is an infant or is incompetent, the debtor must include the name, address, and legal relationship of any person on whom process would be served in an adversary proceeding against that person under Rule 7004(b)(2).

Committee Note

The language of Rule 1007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 1020. ~~Small Business~~ Chapter 11 Reorganization Case for Small Business Debtors	**Rule 1020. Designating a Chapter 11 Debtor as a Small Business Debtor**
(a) SMALL BUSINESS DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply. ~~Except as provided in subdivision (c), the~~ The status of the case as a small business case or a case under subchapter V of chapter 11 shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.	**(a) In General.** In a voluntary Chapter 11 case, the debtor must state in the petition whether the debtor is a small business debtor and, if so, whether the debtor elects to have Subchapter V of Chapter 11 apply. In an involuntary case, the debtor must provide the same information in a statement filed within 14 days after the order for relief is entered.The case must proceed in accordance with the debtor's statement, unless and until the court issues an order finding that the debtor's statement is incorrect.
(b) OBJECTING TO DESIGNATION. ~~Except as provided in subdivision (c), the~~ The United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.	**(b) Objecting to the Designation.** The United States trustee or a party in interest may object to the debtor's designation. The objection must be filed within 30 days after the conclusion of the meeting of creditors held und § 341(a) or within 30 days after an amendment to the designation is filed, whichever is later.

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~~(c) APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS. If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case shall proceed as a small business case only if, and from the time when, the court enters an order determining that the committee has not been sufficiently active and representative to provide effective oversight of the debtor and that the debtor satisfies all the other requirements for being a small business. A request for a determination under this subdivision may be filed by the United States trustee or a party in interest only within a reasonable time after the failure of the committee to be sufficiently active and representative. The debtor may file a request for a determination at any time as to whether the committee has been sufficiently active and representative.~~	
(~~d~~c) PROCEDURE FOR OBJECTION OR DETERMINATION. Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; the creditors included on the list filed under Rule 1007(d) or, if ~~any~~ a committee has been appointed under § 1102(a)(3), the committee or its authorized agent~~, or, if no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d)~~; and any other entity as the court directs.	**(c) Procedure; Service.** An objection or request under this rule is governed by Rule 9014 and must be served on: • the debtor; • the debtor's attorney; • the United States trustee; • the trustee; • the creditors included on the list filed under Rule 1007(d)—or if a committee has been appointed under § 1102(a)(3), the committee or its authorized agent; and • any other entity as the court orders.

Committee Note

The language of Rule 1020 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee	**Rule 2002. Notices**
(a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Exceptas provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee,all creditors and indenture trustees at least 21 days' notice by mail of: (1) the meeting of creditors under § 341 or § 1104(b) of the Code, which notice, unless the court orders otherwise, shall include the debtor's employer identification number, social security number, and any other federal taxpayer identification number; (2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice; (3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent; (4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for	**(a) 21-Day Notices to the Debtor, Trustee, Creditors, and Indenture Trustees.** Except as (h), (i), (*l*), (p), and (q) provide otherwise, the clerk or the court's designee must give the debtor, the trustee, all creditors, and all indenture trustees at least 21 days' notice by mail of: (1) the meeting of creditors under § 341 or § 1104(b), which notice—unless the court orders otherwise—must include the debtor's: (A) employer-identification number; (B) social-security number; and (C) any other federal taxpayer-identification number; (2) a proposal to use, sell, or lease property of the estate other than in the ordinary course of business—unless the court, for cause, shortens the time or orders another method of giving notice; (3) a hearing to approve a compromise or settlement other than an agreement under Rule 4001(d)—unless the court, for cause, orders that notice not be sent; (4) a hearing on a motion to dismiss a Chapter 7, 11, or 12 case or to convert it to another chapter—unless the hearing is under § 707(a)(3) or § 707(b) or is on a motion to dismiss the case for failure to pay the filing fee;

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failure to pay the filing fee; (5) the time fixed to accept or reject a proposed modification of a plan; (6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000; (7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); (8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan; and (9) the time fixed for filing objections to confirmation of a chapter13 plan.	(5) the time to accept or reject a proposed modification to a plan; (6) a hearing on a request for compensation or for reimbursement of expenses, if the request exceeds $1,000; (7) the time to file proofs of claims under Rule 3003(c); (8) the time to file objections to—and the time of the hearing to consider whether to confirm—a Chapter 12 plan; and (9) the time to object to confirming a Chapter 13 plan.
(b) TWENTY-EIGHT-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; (2) for filing objections and the hearing to consider confirmation of a chapter 9 or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.	**(b) 28-Day Notices to the Debtor, Trustee, Creditors, and Indenture Trustees.** Except as (*l*) provides otherwise, the clerk or the court's designee must give the debtor, trustee, all creditors, and all indenture trustees at least 28 days' notice by mail of: (1) the time to file objections and the time of a hearing to: (A) consider approving a disclosure statement; or (B) determine under § 1125(f) whether a plan includes adequate information to make a separate disclosure statement unnecessary; (2) the time to file objections to—and the time of the hearing to consider whether to confirm—a Chapter 9 or 11 plan; and (3) the time of a hearing to consider whether to confirm a Chapter 13 plan.

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(c) CONTENT OF NOTICE. (1) *Proposed Use, Sale, or Lease of Property.* Subject to Rule 6004, the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property. The notice of a proposed sale or lease of personally identifiable information under § 363(b)(1) of the Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information. (2) *Notice of Hearing on Compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(6) of this rule shall identify the applicant and the amounts requested. (3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall: (A) include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction; (B) describe briefly the nature of the injunction; and (C) identify the entities that would be subject to the injunction.	**(c) Content of Notice.** **(1)** ***Proposed Use, Sale, or Lease of Property.*** Subject to Rule 6004, a notice of a proposed use, sale, or lease of property under (a)(2) must include: (A) the time and place of any public sale; (B) the terms and conditions of any private sale; and (C) the time to file objections. The notice suffices if it generally describes the property. In a notice of a proposed sale or lease of personally identifiable information under § 363(b)(1), the notice must state whether the sale is consistent with any policy that prohibits transferring the information. **(2)** ***Hearing on an Application for Compensation or Reimbursement.*** A notice under (a)(6) of a hearing on a request for compensation or for reimbursement of expenses must identify the applicant and the amounts requested. **(3)** ***Hearing on Confirming a Plan That Proposes an Injunction.*** If a plan proposes an injunction against conduct not otherwise enjoined under the Code, the notice under (b)(2) must: (A) state in conspicuous language (bold, italic, or underlined text) that the plan proposes an injunction; (B) describe briefly the nature of the injunction; and (C) identify the entities that would be subject to the injunction.

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(d) NOTICE TO EQUITY SECURITY HOLDERS. In a chapter 11 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders held pursuant to § 341 of the Code; (3) the hearing on the proposed sale of all or substantially all of the debtor's assets; (4) the hearing on the dismissal or conversion of a case to another chapter; (5) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (6) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (7) the time fixed to accept or reject a proposed modification of a plan.	**(d) Notice to Equity Security Holders in a Chapter 11 Case.** Unless the court orders otherwise, in a Chapter 11 case, the clerk or the court's designee must give notice as the court orders to the equity security holders of: (1) the order for relief; (2) a meeting of equity security holders under § 341; (3) a hearing on a proposed sale of all, or substantially all, the debtor's assets; (4) a hearing on a motion to dismiss a case or convert it to another chapter; (5) the time to file objections to—and the time of the hearing to consider whether to approve—a disclosure statement; (6) the time to file objections to—and the time of the hearing to consider whether to confirm—a Chapter 11 plan; and (7) the time to accept or reject a proposal to modify a plan.
(e) NOTICE OF NO DIVIDEND. In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.	**(e) Notice of No Dividend in a Chapter 7 Case.** In a Chapter 7 case, if it appears from the schedules that there are no assets from which to pay a dividend, the notice of the meeting of creditors may state: (1) that fact; (2) that filing proofs of claim is unnecessary; and (3) that further notice of the time to file proofs of claim will be given if enough assets become available to pay a dividend.

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(f) OTHER NOTICES. Except as provided in subdivision (*l*) of this rule,the clerk, or some other person as thecourt may direct, shall give the debtor,all creditors, and indenture trustees notice by mail of: (1) the order for relief; (2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under § 305; (3) the time allowed for filing claims pursuant to Rule 3002; (4) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004; (5) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007; (6) the waiver, denial, or revocation of a discharge as provided in Rule 4006; (7) entry of an order confirming a chapter 9, 11, ~~or~~ 12, or 13 plan; (8) a summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed $1,500; (9) a notice under Rule 5008 regarding the presumption of abuse; (10) a statement under § 704(b)(1) as to whether the debtor's case would be presumed to be an abuse under § 707(b); and (11) the time to request a delay in the entry of the discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h). Notice of the time fixed for accepting or	**(f) Other Notices.** **(1)** ***Various Notices to the Debtor, Creditors, and Indenture Trustees.*** Except as (*l*) provides otherwise, the clerk, or some other person as the court may direct, must give the debtor, creditors, and indenture trustees notice by mail of: (A) the order for relief; (B) a case's dismissal or conversion to another chapter; (C) a suspension of proceedings under § 305; (D) the time to file a proof of claim under Rule 3002; (E) the time to file a complaint to object to the debtor's discharge under § 727, as Rule 4004 provides; (F) the time to file a complaint to determine whether a debt is dischargeable under § 523, as Rule 4007 provides; (G) a waiver, denial, or revocation of a discharge, as Rule 4006 provides; (H) entry of an order confirming a plan in a Chapter 9, 11, 12, or 13 case; (I) a summary of the trustee's final report in a Chapter 7 case if the net proceeds realized exceed $1,500; (J) a notice under Rule 5008 regarding the presumption of abuse; (K) a statement under § 704(b)(1) about whether the debtor's case would be presumed to be an abuse under § 707(b); and (L) the time to request a delay in granting the discharge under §§ 1141(d)(5)(C), 1228(f), or

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rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).	1328(h). **(2)** ***Notice of the Time to Accept or Reject a Plan.*** Notice of the time to accept or reject a plan under Rule 3017(c) must be given inaccordance with Rule 3017(d).
(g) ADDRESSING NOTICES. (1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision— (A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and (B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address. (2) Except as provided in § 342(f) of the Code, if a creditor or indenture trustee has not filed a request designating a mailing address under Rule2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the addressshown on the list of equity security holders.	**(g) Addressing Notices.** **(1)** ***In General.*** A notice mailed to a creditor, indenture trustee, or equity security holder must be addressed as the entity or its authorized agent provided in its last request filed in the case. The request may be: (A) a proof of claim filed by a creditor or an indenture trustee designating a mailing address (unless a notice of no dividend has been given under (e) and a later notice of a possible dividend under Rule 3002(c)(5) has not been given); or (B) a proof of interest filed by an equity security holder designating a mailing address. **(2)** ***When No Request Has Been Filed.*** Except as § 342(f) provides otherwise, if a creditor or indenture trustee has not filed a request under (1) or Rule 5003(e), the notice must be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request, the notice must be mailed to the address shown on the list of equity security holders. **(3)** ***Notices to Representatives of an Infant or Incompetent Person.*** If a list or schedule filed under Rule 1007 includes a name and address of an infant's or an incompetent person's

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(3) If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim. (4) Notwithstanding Rule 2002(g)(1)–(3), an entity and a notice provider may agree that when the notice provider is directed by the court to give a notice, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law.) A creditor may treat a noticeas not ving been brought to the creditor's tention under § 342(g)(1) only if, prior to suance of the notice, the creditor has filed statement that designates the name and dress of the person or organizational bdivision ofthe creditor responsible for ceiving notices under the Code, and that scribes the procedures established bythe editor to cause such notices to be livered to the designated person or bdivision.	representative, and a person other than that representative files a request or proof of claim designating a different name and mailing address, then unless the court orders otherwise, the notice must be mailed to both persons attheir designated addresses. **(4)** ***Using an Address Agreed to Between an Entity and a Notice Provider.*** Notwithstanding (g)(1)-(3), when the court orders that a notice provider give a notice, the provider may do so in the manner agreed to between the provider and an entity, and at the address or addresses the entity supplies. An address supplied by the entity is conclusively presumed to be a proper address for the notice. But a failure to use a supplied address does not invalidate a notice that is otherwise effective under applicable law. **(5)** ***When a Notice Is Not Brought to a Creditor's Attention.*** A creditor may treat a notice as not having been brought to the creditor's attention under § 342(g)(1) only if, before the notice was issued, the creditor has filed a statement: (A) designating the name and address of the person or organizational subdivision responsible for receiving notices; and (B) describing the creditor's procedures for delivering notices to the designated person or organizational subdivision.
(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. ~~In a chapter 7 case, after 90 days following the first date set for the meeting of~~	**(h) Notice to Creditors That Have Filed Proofs of Claim in a Chapter 7, Chapter 12, or Chapter 13 Case.**

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~~creditors under § 341 of the Code,~~ (1) *Voluntary Case.* In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, after 70 days following the order for relief under that chapter or the date of the order converting the case to chapter 12 or chapter 13, the court may direct that all notices required by subdivision (a) of this rule be mailed only to: • the debtor; • the trustee; • all indenture trustees; • creditors that hold claims for which proofs of claim have been filed; and • creditors, if any, that are still permitted to file claims because an extension was granted under Rule 3002(c)(1) or (c)(2). (2) *Involuntary Case.* In an involuntary chapter 7 case, after 90 days following the order for relief under that chapter, the court may direct that all notices requiredby subdivision (a) of this rule be mailed only to: • the debtor~~,~~; • the trustee~~,~~; • all indenture trustees~~,~~; • creditors that hold claims for which proofs of claim have been filed~~,~~; and • creditors, if any, that are still permitted to file claims ~~by reason of~~ because an extension was granted ~~pursuant to~~ under Rule 3002(c)(1) or (c)(2). (3) *Insufficient Assets.* In a case where notice of insufficient assets to pay a dividend has been given to creditors ~~pursuant to~~ under subdivision (e) of this	**(1)** ***Voluntary Case.*** This paragraph (1) applies in a voluntary Chapter 7 case, or in a Chapter 12 or 13 case. After 70 days following the order for relief under that chapter or the date of the order converting the case to Chapter 12 or 13, the court may direct that all notices required by (a) be mailed only to: • the debtor; • the trustee; • the indenture trustees; • creditors with claims for which proofs of claim have been filed; and • creditors that have received an extension of time under Rule 3002(c)(1) or (2) to file proofs of claim. (2) ***Involuntary Case.*** In an involuntary Chapter 7 case, after 90 days following the order for relief under that chapter, the court may order that all notices required by (a) be mailed only to: • the debtor; • the trustee; • the indenture trustees; • creditors with claims for which proofs of claim have been filed; and • creditors that have received an extension of time under Rule 3002(c)(1) or (2) to file proofs of claim. **(3)** ***When a Notice of Insufficient Assets Has Been Given.*** If notice

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rule, after 90 days following the mailing of a notice of the time for filing claims ~~pursuant to~~ under Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.	of insufficient assets to pay a dividend hasbeen given to creditors under (e), after 90 days following the mailing of a notice of the time to file proofs of claim under Rule 3002(c)(5), the court may order that notices be mailed only to those entities listed in (1).
(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed pursuant to this rule shall be mailed to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed under § 1114 shall receive copies of all notices required by subdivisions (a)(1), (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.	**(i) Notice to a Committee.** **(1)** ***In General.*** Any notice required to be mailed under this Rule 2002 must also be mailed to a committee elected under § 705 or appointed under § 1102, or to its authorized agent. **(2)** ***Limiting Notices.*** The court may order that a notice required by (a)(2), (3), or (6) be: (A) sent to the United States trustee; and (B) mailed only to: (i) the committees elected under § 705 or appointed under § 1102, or to their authorized agents; and (ii) those creditors and equity security holders who file—and serve on the trustee or debtor in possession—a request that all notices be mailed to them. **(3)** ***Copy to a Committee.*** A notice required under (a)(1), (a)(5), (b), (f)(1)(B)–(C), or (f)(1)(H)—and any other notice as the court orders—mustbe sent to a committee appointed under § 1114.

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(j) NOTICES TO THE UNITED STATES. Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a written request to receive notices; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case, to the Internal Revenue Service at its address set out in the register maintained under Rule 5003(e) for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or (5) if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.	**(j) Notice to the United States.** A notice required to be mailed to all creditors under this Rule 2002 must also be mailed: (1) in a Chapter 11 case in which the Securities and Exchange Commission has filed either a notice of appearance or a request to receive notices, to the SEC at any place it designates; (2) in a commodity-broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a Chapter 11 case, to the Internal Revenue Service at the address in the register maintained under Rule 5003(e) for the district where the case is pending; (4) in a case for which the papers indicate that a debt (other than for taxes) is owed to the United States, to the United States attorney for the district where the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or (5) in a case for which the papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

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(k) NOTICES TO UNITED STATES TRUSTEE. Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (a)(9), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and notice of hearings on all applicationsfor compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules requires the clerk or any other person to transmitto the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et. seq.	**(k) Notice to the United States Trustee.** **(1)** ***In General.*** Except in a Chapter 9 case or unless the United States trustee requests otherwise, the clerk or the court's designee must send to the United States trustee notice of: (A) all matters described in (a)(2)–(4), (a)(8)–(9), (b), (f)(1)(A)–(C), (f)(1)(E),(f)(1)(G)–(I), and (q); (B) all hearings on applications for compensation or for reimbursement of expenses; and (C) any other matter if the United States trustee requests it or the court orders it. **(2)** ***Time to Send.*** The notice must be sent within the time (a) or (b) prescribes. **(3)** ***Exception Under the Securities Investor Protection Act.*** In a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq., these rules do not require any document to be sent to the United States trustee.
(*l*) NOTICE BY PUBLICATION. The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.	**(*l*) Notice by Publication.** The court may order notice by publication if notice by mail is impracticable or if it is desirable to supplement the notice.
(m) ORDERS DESIGNATING MATTER OF NOTICES. The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.	**(m) Orders Concerning Notices.** Except as these rules provide otherwise, the court may designate the matters about which, the entity to whom, and the form and manner in which a notice must be sent.

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(n) CAPTION. The caption of every notice given under this rule shall comply with Rule 1005. The caption of every notice required to be given by the debtor to a creditor shall include the information required to be in the notice by § 342(c) of the Code.	**(n) Notice of an Order for Relief in a Consumer Case.** In a voluntary case commenced under the Code by an individual debtor whose debts are primarily consumer debts, the clerk, or some other person as the court may direct, shall give the trustee and all creditors notice by mail of the order for relief not more than 20 days after the entry of such order.
(o) NOTICE OF ORDER FOR RELIEF IN CONSUMER CASE. In a voluntary case commenced by an individual debtor whose debts are primarily consumer debts, the clerk or some other person as the court may direct shall give the trustee and all creditors notice by mail of the order for relief within 21 days from the date thereof.	**(o) Caption.** The caption of a notice given under this Rule 2002 must conform to Rule 1005. The caption of a debtor's notice to a creditor must also include the information that § 342(c) requires.
(p) NOTICE TO A CREDITOR WITH A FOREIGN ADDRESS. (1) If, at the request of the United States trustee or a party in interest, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged. (2) Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are mailed shall be given at least 30 days' notice of the time fixed for filing a proof of claim under Rule 3002(c) or Rule 3003(c).	**(p) Notice to a Creditor with Foreign Address.** **(1)** ***When Notice by Mail Does Not Suffice.*** At the request of the United States trustee or a party in interest, or on its own, the court may find that a notice mailed to a creditor with a foreign address within the time these rules prescribe would not give the creditor reasonable notice. The court may then order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be extended. **(2)** ***Notice of the Time to File a Proof of Claim.*** Unless the court, for cause, orders otherwise, a creditor with a foreign address must be given at least 30 days' notice of the time to file a proof of claim under Rule 3002(c) or Rule 3003(c).

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(3) Unless the court for cause orders otherwise, the mailing address of a creditor with a foreign address shall be determined under Rule 2002(g).	**(3)** ***Determining a Foreign Address.*** Unless the court, for cause, orders otherwise, the mailing address of a creditor with a foreign address must bedetermined under (g).
(q) NOTICE OF PETITION FOR RECOGNITION OF FOREIGN PROCEEDING AND OF COURT'SINTENTION TO COMMUNICATEWITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES. (1) *Notice of Petition for Recognition.* After the filing of a petition for recognition of a foreign proceeding, the court shall promptly schedule and hold a hearing on the petition. The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding and shall include the petition and any other document the court may require. If the court consolidates the hearing on the petition with the hearing on a request for provisional relief, the court may set a shorter notice period, with notice to the entities listed in this subdivision. (2) *Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives.* The clerk, or some other person as the court may direct, shall give	**(q) Notice of a Petition for Recognition of a Foreign Proceeding; Notice of Intent to Communicate with a Foreign Court or Foreign Representative.** **(1)** ***Timing of the Notice; Who Must Receive It.*** After a petition for recognition of a foreign proceeding is filed, the court must promptly hold a hearing on it. The clerk or the court's designee must promptly give at least 21 days' notice by mail of the hearing to: • the debtor; • all persons or bodies authorized to administer the debtor's foreign proceedings; • all entities against whom provisional relief is being sought under § 1519; • all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and • any other entities as the court orders. If the court consolidates the hearing on the petition with a hearing on a request for provisional relief, the court may set a shorter notice period. **(2)** ***Contents of the Notice.*** The notice must: (A) state whether the petition seeks recognition as a foreign main proceeding or a foreign nonmain proceeding; and

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the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, notice by mail of the court's intention to communicate with a foreign court or foreign representative.	(B) include a copy of the petition and any other document the court specifies. **(3)** ***Communicating with a Foreign Court or Foreign Representative.*** If the court intends to communicate witha foreign court or foreign representative, the clerk or the court's designee must give notice by mail of the court's intention to all those listed in (q)(1).

Committee Note

The language of most provisions in Rule 2002 have been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. In (f) the phrase "or some other person as the court may direct" has not been restyled because it was enacted by Congress, P.L. 98-91, 97 Stat. 607, § 2 (1983). Rule 2002(n) has not been restyled because it was also enacted by Congress, P.L. 98-353, 98 Stat. 357, § 114 (1984). That subsection was erroneously redesignated as subdivision (o) in 2008, and amended to modify its time period from 20 to 21 days in 2009. Because the Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, provides no authority to modify statutory language, the subdivision is now returned to the language used by Congress.

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Rule 2004. Examination	**Rule 2004. Examinations**
(a) EXAMINATION ON MOTION. On motion of any party in interest, the court may order the examination of any entity.	**(a) In General.** On motion of a party in interest, the court may order the examination of any entity.
(b) SCOPE OF EXAMINATION. The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.	**(b) Scope of the Examination.** (1) *In General.* The examination of an entity under this Rule 2004, or of a debtor under § 343, may relate only to: (A) the debtor's acts, conduct, or property; (B) the debtor's liabilities and financial condition; (C) any matter that may affect the administration of the debtor's estate; or (D) the debtor's right to a discharge. (2) *Other Topics in Certain Cases.* In a Chapter 12 or 13 case, or in a Chapter 11 case that is not a railroad reorganization, the examination may also relate to: (A) the operation of any business and the desirability of its continuing; (B) the source of any money or property the debtor acquired or will acquire for the purpose of consummating a plan and the consideration given or offered; and (C) any other matter relevant to the case or to formulating a plan.
(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS OR ELECTRONICALLY STORED INFORMATION. The attendance of an entity for examination and for the production of documents or	**(c) Compelling Attendance and the Production of Documents or Electronically Stored Information.** Regardless ofthe district where the examination will be conducted, an entity may be compelled under Rule 9016 to attend and produce documents or

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electronically stored information, whether the examination is to be conducted within or without the district in which the caseis pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court ~~for the district in which the examination is to be held~~ where the case is pending if the attorney is admitted to practice in that court ~~or in the court in which the case is pending~~.	electronically stored information. An attorney may issue and sign a subpoena on behalf of the court where the case is pending if the attorney is admitted to practice in that court.
(d) TIME AND PLACE OF EXAMINATION OF DEBTOR. The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.	**(d) Time and Place to Examine the Debtor.** The court may, for cause and on terms it may impose, order the debtor to be examined under this Rule 2004 at any designated time and place, in or outside the district.
(e) MILEAGE. An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.	**(e) Witness Fees and Mileage.** (1) ***For a Nondebtor Witness.*** An entity, except the debtor, may be required to attend as a witness only if the lawful mileage and witness fee for 1 day's attendance are first tendered. (2) ***For a Debtor Witness.*** A debtor who is required to appear for examination more than 100 miles from the debtor's residence must be tendered a mileage fee . The fee need cover only the distance exceeding 100 miles from the nearer of where the debtor resides: (A) when the first petition was filed; or (B) when the examination takes place.

Committee Note

The language of Rule 2004 has been amended as part of the general restyling of the

Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination	**Rule 2005. Apprehending and Removing a Debtor for Examination**
(a) ORDER TO COMPEL ATTENDANCE FOR EXAMINATION. On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.	**(a) Compelling the Debtor's Attendance.** (1) *Order to Apprehend the Debtor.* On motion of a party in interest, supported by an affidavit, the court may order a marshal or other official authorized by law to bring the debtor before the court without unnecessary delay. The affidavit must allege that: (A) the examination is necessary to properly administer the estate, and there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid the examination; (B) the debtor has evaded service of a subpoena or an order to attend the examination; or (C) the debtor has willfully disobeyed a duly served subpoena or order to attend the examination. *(2) Ordering an Immediate Examination.* If, after hearing, the court finds the allegations to be true, it must: (A) order the immediate examination of the debtor; and (B) if necessary, set conditions for further examination and for the debtor's obedience to any further order regarding it.
(b) REMOVAL. Whenever any order tobring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may	**(b) Removing a Debtor to Another District for Examination.** (1) *In General.* When an order is issued under (a)(1) and the debtor is found in

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be taken into custody under the order and removed in accordance with the following rules: (1) If the debtor is taken into custody under the order at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order. (2) If the debtor is taken into custody under the order at a place 100 miles or more from the place of issue of the order, the debtor shall be brought without unnecessary delay before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the magistrate judge, bankruptcy judge, or district judge finds that an order has issued under this rule and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate judge, bankruptcy judge, or district judge shall order removal, and the person in custody shall be released on conditions ensuring prompt appearance before the court that issued the order to compel the attendance.	another district, the debtor may be taken into custody and removed as provided in (2) and (3). (2) ***Within 100 Miles.*** A debtor who is taken into custody less than 100 miles from where the order was issued must be brought promptly before the court that issued the order. (3) ***At 100 Miles or More.*** A debtor who is taken into custody 100 miles or more from where the order was issued must be brought without unnecessary delay for a hearing before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the judge finds that the person in custody is the debtorand is subject to an order under (a)(1), or if the person waives a hearing, the judge must order removal, and must release the person in custody on conditions ensuring prompt appearance before the court that issuedthe order compelling attendance.
(c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the relevant provisions and policies of title 18~~,~~ U.S.C.~~,~~ § ~~3146(a) and (b)~~ 3142.	(4) ***Conditions of Release.*** The relevant provisions and policies of 18 U.S.C. § 3142 govern the court's determination of what conditions will reasonably assure attendance and obedience under this Rule 2005.

Committee Note

The language of Rule 2005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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ORIGINAL	REVISION
Rule 2009. Trustees for Estates When Joint Administration Ordered	**Rule 2009. Trustees for Jointly Administered Estates**
(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.	**(a) Creditors' Right to Elect a Single Trustee.** Except in a case under Subchapter V of Chapter 7 or Subchapter V of Chapter 11, if the court orders that 2 or more estates be jointly administered under Rule 1015(b), the creditors may elect a single trustee for those estates.
(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.	**(b) Creditors' Right to Elect a Separate Trustee.** Except in a case under Subchapter V of Chapter 7 or Subchapter V of Chapter 11, any debtor's creditors may elect a separate trustee for the debtor's estate under § 702—even if the court orders joint administration under Rule 1015(b).
(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED. (1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapterV of chapter 7, the United States trusteemay appoint one or more interim trustees for estates being jointly administered in chapter 7 cases. (2) *Chapter 11 Reorganization Cases.* If the appointment of a trustee is ordered or is required by the Code, the United States trustee may appoint one or more trustees for estatesbeing jointly administered in chapter 11cases. (3) *Chapter 12 Family Farmer's Debt Adjustment Cases.* The United Statestrustee may appoint one or more	**(c) United States Trustee's Right to Appoint Interim Trustees in Cases with Jointly Administered Estates.** (1) ***Chapter 7.*** Except in a case under Subchapter V of Chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in Chapter 7. (2) ***Chapter 11.*** If the court orders or the Code requires the appointment of a trustee, the United States trustee may appoint one or more trustees for estates being jointly administered in Chapter 11. (3) ***Chapter 12 or 13.*** The United States trustee may appoint one or more trustees for estates being jointly administered in Chapter 12 or 13.

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trustees for estates being jointly administered in chapter 12 cases. *Chapter 13 Individual's Debt Adjustment Cases.* The United Statestrustee may appoint one or more trustees for estates being jointly administered in chapter 13 cases.	
(d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.	**(d) Conflicts of Interest.** On a showing that a common trustee's conflicts of interest will prejudice creditors or equity security holders of jointly administered estates, the court must order the selection of separate trustees for the estates.
(e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.	**(e) Keeping Separate Accounts.** A trustee of jointly administered estates must keep separate accounts of each estate's property and distribution.

Committee Note

The language of Rule 2009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2012. Substitution of Trustee or Successor Trustee; Accounting	**Rule 2012. Substituting a Trustee in a Chapter 11 or 12 Case; Successor Trustee in a Pending Proceeding**
(a) TRUSTEE. If a trustee is appointed in a chapter 11 case (other than under subchapter V), or the debtor is removed as debtor in possession in a chapter 12 case or in a case under subchapter V of chapter 11, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.	**(a) Substituting a Trustee.** The trustee is automatically substituted for the debtor in possession as a party in any pending action, proceeding, or matter if: (1) the trustee is appointed in a Chapter 11 case (other than under Subchapter V); or (2) the debtor is removed as debtor in possession in a Chapter 12 case or in a case under Subchapter V of Chapter 11.
(b) SUCCESSOR TRUSTEE. When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code (1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and (2) the successor trustee shall prepare, file, and transmit to the United States trusteean accounting of the prior administration of the estate.	**(b) Successor Trustee.** When a trustee dies, resigns, is removed, or otherwise ceases to hold office while a bankruptcy case is pending, the successor trustee is automatically substituted as a party in any pending action, proceeding, or matter. The successor trustee must prepare, file, and send to the United States trustee an accounting of the estate's prior administration.

Committee Note

The language of Rule 2012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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ORIGINAL	REVISION
Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status	**Rule 2015. Duty to Keep Records, Make Reports, and Give Notices**
(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor inpossession shall: (1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case (other than under subchapter V), file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed; (2) keep a record of receipts and the disposition of money and property received; (3) file the reports and summaries required by § 704(a)(8) of the Code, which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited; (4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case; (5) in a chapter 11 reorganizationcase (other than under	**(a) Duties of a Trustee or Debtor in Possession.** A trustee or debtor in possession must: (1) in a Chapter 7 case and, if the court so orders, in a Chapter 11 case (other than under Subchapter V), file and send to the United States trustee a complete inventory of the debtor's property within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed; (2) keep a record of receipts and the disposition of money and property received; (3) file: (A) the reports and summaries required by § 704(a)(8); and (B) if payments are made to employees, a statement of the amounts of deductions for all taxes required to be withheld or paid on the employees' behalf and the place where these funds are deposited; (4) give notice of the case, as soon as possible after it commences, to the following entities, except those who know or have previously been notified of the case: (A) every entity known to be holding money or property subject to the debtor's withdrawal or order, including every bank, savings- or building-and-loan association, public utility company, and Landlord with whom the debtor hasa deposit; and

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subchapter V), on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and (6) in a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the orderfor relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than 21 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph terminates on the effectivedate of the plan, or conversion or dismissal of the case.	(B) every insurance company that hasissued a policy with a cash-surrender value payable to the debtor; (5) in a Chapter 11 case (other than under Subchapter V), on or before thelast day of the month after each calendar quarter during which fees must be paid under 28 U.S.C. § 1930(a)(6), file and send to the United States trustee a statement of those fees and any disbursements made during that quarter; and (6) in a Chapter 11 small business case, unless the court, for cause, sets a different schedule, file and send to the United States trustee a report under § 308, using Form 425C, for each calendar month after the order for relief on the following schedule: • If the order for relief is within the first 15 days of a calendar month, the report must be filed for the rest of that month. • If the order for relief is after the 15th, the information for the rest of that month must be included in the report for the next calendar month. Each report must be filed within 21 days after the last day of the month following the month that the report covers. The obligation to file reports ends on the date that the plan becomes effective or the case is converted or dismissed.

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(b) TRUSTEE, DEBTOR IN POSSESSION, AND DEBTOR IN A CASE UNDER SUBCHAPTER V OF CHAPTER 11. In a case under subchapter V of chapter 11, the debtor in possession shall perform the duties prescribed in (a)(2)–(4) and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the debtor's property within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (b). The debtor shall perform the duties prescribed in (a)(6).	**(b) Trustee, Debtor in Possession, and Debtor in a Case Under Subchapter V of Chapter 11.** In a case under Subchapter V of Chapter 11, the debtor in possession must perform the duties prescribed in (a)(2)–(4) and, if the court directs, must file and send to the United States trustee a complete inventory of the debtor's property within the time set by the court. If the debtor is removed as debtor in possession, the trustee must perform the duties of the debtor in possession prescribed in this subdivision (b). The debtor must perform the duties prescribed in (a)(6).
(~~b~~c) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this ~~paragraph~~ subdivision (c).	**(c) Duties of a Chapter 12 Trustee or Debtor in Possession.** In a Chapter 12 case, the debtor in possession must perform the duties prescribed in (a)(2)–(4) and, if the court orders, file and send to the United States trustee a complete inventory of the debtor's property within the time the court sets. If the debtor is removed as debtor in possession, the trustee must perform these duties.

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(~~c~~d) CHAPTER 13 TRUSTEE ANDDEBTOR. (1) Business Cases. In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.(2) Nonbusiness Cases. In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.	**(d) Duties of a Chapter 13 Trustee and Debtor.** **(1)** ***Chapter 13 Business Case.*** In a Chapter 13 case, a debtor engaged in business must: (A) perform the duties prescribed by (a)(2)–(4); and (B) if the court so orders, file and send to the United States trustee a complete inventory of the debtor's property within the time the court sets. **(2)** ***Other Chapter 13 Case.*** In a Chapter 13 case in which the debtor is not engaged in business, the trustee must perform the duties prescribed by (a)(2).
(~~d~~c) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 14 days after the date when the representative becomes aware of the subsequent information.	**(e) Duties of a Chapter 15 Foreign Representative.** In a Chapter 15 case in which the court has granted recognition of a foreign proceeding, the foreign representative must file any notice required under § 1518 within 14 days after becoming aware of the subsequent information.
(~~e~~f) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.	**(f) Making Reports Available in a Chapter 11 Case.** In a Chapter 11 case, thecourt may order that copies or summaries of annual reports and other reports be mailed to creditors, equity security holders,and indenture trustees. The court may alsoorder that summaries of these reports be published. A copy of every such report or summary, whether mailed or published, must be sent to the United States trustee.

Committee Note

The language of Rule 2015 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology

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consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3002. Filing Proof of Claim or Interest	**Rule 3002. Filing a Proof of Claim or Interest**
(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.	**(a) Need to File.** Unless Rule 1019(c), 3003, 3004, or 3005 provides otherwise, every creditor or equity security holder must file a proof of claim or interest for the claim or interest to be allowed. A lien that secures a claim is not void solely because an entity failed to file a proof of claim.
(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.	**(b) Where to File.** The proof of claim or interest must be filed in the district where the case is pending and in accordance with Rule 5005.
(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 orchapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. But in all these cases, the following exceptions apply: (1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under § 1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return. The court may, for cause, enlarge the time for a governmental unit to file a proof of claim only upon motion of the	**(c) Time to File.** In a voluntary Chapter 7 case or in a Chapter 12 or 13 case, the proof of claim is timely if it is filed within 70 days after the order for relief or entry of an order converting the case to Chapter 12 or 13. In an involuntary Chapter 7 case, a proof of claim is timely filed if it is filed within 90 days after the order for relief is entered. These exceptions apply in all cases: **(1)** *Governmental Unit.* A governmental unit's proof of claim is timely if it is filed within 180 days after the order for relief. But a proof of claim resulting from a tax return filed under § 1308 is timely if it is filed within 180 days after the order for relief or within 60 days after the tax return is filed. On motion filed by a governmental unit before the time expires and for cause, the court may extend the time to file a proof of claim. **(2)** *Infant or Incompetent Person.* In the interests of justice, the court may extend the time for an infant or incompetent person—or a representative of either—to file a proof of claim, but only if the extension will not unduly delay case

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governmental unit made before expiration of the period for filing a timely proof of claim. (2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either. (3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed. (4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct. (5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed. (6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that:	administration. **(3)** ***Unsecured Claim That Arises from a Judgment.*** An unsecured claim that arises in favor of an entity or becomes allowable because of a judgment may be filed within 30 days after the judgment becomes final if it is to recover money or property from that entity or denies or avoids the entity's interest in property. The claim must not be allowed if the judgment imposes a liability that is not satisfied—or a duty that is not performed—within the 30 days or any additional time set by the court. **(4)** ***Claim Arising from a Rejected Executory Contract or Unexpired Lease.*** A proof of claim for a claim that arises from a rejected executory contract or an unexpired lease may be filed within the time set by the court. **(5)** ***Notice That Assets May Be Available to Pay a Dividend.*** The clerk must, by mail, give at least 90 days' notice to creditors that a dividend payment appears possible and that proofs of claim must be filed by the date set forth in the notice if: (A) a notice of insufficient assets to pay a dividend had been given under Rule 2002(e); and (B) the trustee later notifies the court that a dividend appears possible. **(6)** ***Claim Secured by a Security Interest in the Debtor's Principal Residence.*** A proof of a claim secured by a security interest in the debtor's principal residence is timely filed if: (A) the proof of claim and attachments required by Rule 3001(c)(2)(C) are filed within 70 days after the order for relief; and

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~~(A)~~ the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim ~~because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or~~ ~~(B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address~~. (7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if: (A) the proof of claim, together with the attachments required by Rule 3001(c)(2)(C), is filed not later than 70 days after the order for relief is entered; and (B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.	(B) the attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim within 120 days after the order for relief. **(7)** ***Extending the Time to File.*** On a creditor's motion filed before or after the time to file a proof of claim has expired, the court may extend the time to file by no more than 60 days from the date of its order. The motion may be granted if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

Committee Note

The language of Rule 3002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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ORIGINAL	REVISION
Rule 3007. Objections to Claims	**Rule 3007. Objecting to a Claim**
(a) TIME AND MANNER OF SERVICE. (1) *Time of Service.* An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing. *(2) Manner of Service.* (A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and (i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or (ii) if the objection is to a claim of an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, in the manner provided by Rule 7004(h). (B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.	**(a) Time and Manner of Serving the Objection.** **(1)** ***Time to Serve.*** An objection to a claim and a notice of the objection must be filed and served at least 30 days before a scheduled hearing on the objection or any deadline for the claim holder to request a hearing. **(2)** ***Whom to Serve; Manner of Service.*** (A) *Serving the Claim Holder.* The notice—substantially conforming to Form 420B— and objection must be served by mail on the person the claim holder most recently designated to receive notices on the claim holder's original or latest amended proof of claim, at the address so indicated. If the objection is to a claim of: (i) the United States or one of its officers or agencies, service must also be made as if it were a summons and complaint under Rule 7004(b)(4) or (5); or (ii) an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, service must also be made under Rule 7004(h). (B) *Serving Others.* The notice and objection must also be served, by mail (or other permitted means), on: • the debtor or debtor in possession; • the trustee; and

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	• if applicable, the entity that filed the proof of claim under Rule 3005.
(b) DEMAND FOR RELIEF REQUIRING AN ADVERSARY PROCEEDING. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.	**(b) Demanding Relief That Requires an Adversary Proceeding NotPermitted.** In objecting to a claim, a party in interest must not include a demand for atype of relief specified in Rule 7001 but may include the objection in an adversary proceeding.
(c) LIMITATION ON JOINDER OF CLAIMS OBJECTIONS. Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.	**(c) Limit on Omnibus Objections.** Unless the court orders otherwise or (d) permits, objections to more than one claim may not be joined in a single objection.
(d) OMNIBUS OBJECTION. Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because: (1) they duplicate other claims; (2) they have been filed in the wrong case; (3) they have been amended by subsequently filed proofs of claim; (4) they were not timely filed; (5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the	**(d) Omnibus Objection.** Subject to (e), objections to more than one claim may be joined in a single objection if: (1) all the claims were filed by the same entity; or (2) the objections are based solely on grounds that the claims should be disallowed, in whole or in part, because they: (A) duplicate other claims; (B) were filed in the wrong case; (C) have been amended by later proofs of claim; (D) were not timely filed; (E) have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (F) were presented in a form that does not comply with applicable rules and the objection states that because of the noncompliance the

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noncompliance; (7) they are interests, rather than claims; or (8) they assert priority in an amount that exceeds the maximum amount under § 507 of the Code.	objector is unable to determine a claim's validity; (G) are interests, not claims; or (H) assert a priority in an amount that exceeds the maximum amount allowable under § 507.
(e) REQUIREMENTS FOR OMNIBUS OBJECTION. An omnibus objection shall: (1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection; (2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claims; (3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds; (4) state in the title the identity of the objector and the grounds for the objections; (5) be numbered consecutively with other omnibus objections filed by the same objector; and (6) contain objections to no more than 100 claims.	**(e) Required Content of an Omnibus Objection.** An omnibus objection must: (1) state in a conspicuous place that claim holders can find their names and claims in the objection; (2) list the claim holders alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claim holders by category of claims; (3) state for each claim the grounds for the objection and provide a cross-reference to the pages where pertinent information about the grounds appears; (4) state in the title the objector's identity and the grounds for the objections; (5) be numbered consecutively with other omnibus objections filed by the same objector; and (6) contain objections to no more than 100 claims.
(f) FINALITY OF OBJECTION. The finality of any order regarding a claim objection included in an omnibus objection shall be determined as though the claim had been subject to an individual objection.	**(f) Finality of an Order When Objections Are Joined.** When objections are joined, the finality of an order regarding any claim must be determined as though the claim had been subject to an individual objection.

Committee Note

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The language of Rule 3007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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ORIGINAL	REVISION
Rule 3010. Small Dividends and Payments in Cases Under Chapter 7 ~~Liquidation~~, Subchapter V of Chapter 11, Chapter 12 ~~Family Farmer's Debt Adjustment~~, and Chapter 13 ~~Individual's Debt Adjustment Cases~~	**Rule 3010. Chapter 7, Subchapter V of Chapter 11, Chapter 12, or Chapter 13— Limits on Small Dividends and Payments**
(a) CHAPTER 7 CASES. In a chapter 7 case no dividend in an amount less than $5 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Any dividend not distributed to a creditor shall be treated in the same manner as unclaimed funds as provided in § 347 of the Code.	**(a) Chapter 7.** In a Chapter 7 case, the trustee must not distribute to a creditor any dividend less than $5 unless authorized to do so by local rule or court order. A dividend not distributed must be treated in the same manner as unclaimed funds under § 347.
(b) CASES UNDER SUBCHAPTER V OF CHAPTER 11, CHAPTER 12, AND CHAPTER 13 ~~CASES~~. In a case under subchapter V of chapter 11, chapter 12, or chapter 13, ~~case~~ no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment.	**(b) Subchapter V of Chapter 11, Chapter 12, or Chapter 13.** In a case under Subchapter V of Chapter 11, Chapter 12, or Chapter 13, the trustee must not distribute to a creditor any payment less than $15 unless authorized to do so by local rule or court order. Distribution must be made when accumulated funds total $15 or more. Anyremaining funds must be distributed with the final payment.

Committee Note

The language of Rule 3010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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ORIGINAL	REVISION
Rule 3011. Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13[1]	**Rule 3011. Chapter 7, Subchapter V of Chapter 11, Chapter 12, or Chapter 13—Listing Unclaimed Funds**
(a) The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code. (b) On the court's website, the clerk must provide searchable access to information about funds deposited under § 347(a). The court may, for cause, limit access to information about funds in a specific case.	(a) The trustee must: (1) file a list of the known names and addresses of entities entitled to payment from any remaining property of the estate that is paid into court under § 347(a); and (2) include the amount due each entity. (b) On the court's website, the clerk must provide searchable access to information about funds deposited under § 347(a). The court may, for cause, limit access to information about funds in a specific case.

Committee Note

The language of Rule 3011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

[1] The title of Rule 3011 reflects amendments currently proposed to take effect on December 1, 2022.

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ORIGINAL	REVISION
Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3014. Chapter 9 or 11—Secured Creditors' Election to Apply § 1111(b)**
An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. In a case under subchapter V of chapter 11 in which § 1125 of the Code does not apply, the election may be made not later than a date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class withrespect to the plan.	**(a) Time for an Election**. (1) *Chapter 9 or 11*. In a Chapter 9 or 11 case, before a hearing on the disclosure statement concludes, a class of secured creditors may elect to apply § 1111(b)(2). If the disclosure statement is conditionally approved under Rule 3017.1 and a final hearing on it is not held, the election must be made within the time provided in Rule 3017.1(a)(2). In either situation, the court may set another time for the election. (2) *Subchapter V of Chapter 11*. In a case under Subchapter V of Chapter 11 in which § 1125 does not apply, the election may be made no later than a date the court sets. **(b) Signed Writing; Binding Effect**. The election must be made in writing and signed unless made at the hearing on the disclosure statement. An election made by the majorities required by § 1111(b)(1)(A)(i) is binding on all members of the class.

Committee Note

The language of Rule 3014 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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ORIGINAL	REVISION
Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3016. Chapter 9 or 11—Plan and Disclosure Statement**
(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.	**(a) In General.** In a Chapter 9 or 11 case, every proposed plan or modification must be dated. In a Chapter 11 case, the plan or modification must name the entity or entities proposingor filing it.
(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement, if required under § 1125 of the Code, or evidence showing compliance with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated, and Rule 3017.1 shall apply as if the plan is a disclosure statement.	**(b) Filing a Disclosure Statement.** **(1)** ***In General.*** In a Chapter 9 or 11 case, unless (2) applies, the disclosure statement, if required by § 1125, or evidence showing compliance with § 1126(b) must be filed with the plan or at another time set by the court. ***(2) Providing Information Under § 1125(f)(1).*** A plan intended to provide adequate information under § 1125(f)(1) must be so designated. Rule 3017.1 then applies as if the plan were a disclosure statement.
(c) INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.	**(c) Injunction in a Plan.** If the plan provides for an injunction against conduct not otherwise enjoined by the Code, the plan and disclosure statement must: (1) describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined; and (2) identify the entities that would be subject to the injunction.
(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a small business case or a case under subchapter V of chapter 11, the court may approve a disclosure statement and may confirm aplan that conform substantially to the appropriate Official Forms or other standard forms approved by the court.	**(d) Form of a Disclosure Statement and Plan in a Small Business Case or a Case Under Subchapter V of Chapter 11.** In a small business case or a case under Subchapter V of Chapter 11, the court may approve a disclosure statement that substantially conforms to Form 425B and confirm a plan that substantially conforms to Form 425A—or, in either instance, to a standard form approved by the court.

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Committee Note

The language of Rule 3016 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11	**Rule 3017.1. Disclosure Statement in a Small Business Case or a Case Under Subchapter V of Chapter 11**
(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. In a small business case or in a case under subchapter V of chapter 11 in which the court has ordered that § 1125 applies, the court may, on application of the plan proponent or onits own initiative, conditionally approvea disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall: (1) fix a time within which the holders of claims and interests may accept or reject the plan; (2) fix a time for filing objections to the disclosure statement; (3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and (4) fix a date for the hearing on confirmation.	**(a) Conditionally Approving a Disclosure Statement.** In a small business case or a case under Subchapter V of Chapter 11 in which the court has ordered that § 1125 applies, the court may, on motion of the plan proponent or on its own, conditionally approve a disclosure statement filed under Rule 3016. On or before doing so, the court must: (1) set the time within which the claim holders and interest holders may accept or reject the plan; (2) set the time to file an objection to the disclosure statement; (3) set the date to hold the hearing on final approvalof the disclosure statement if a timely objection is filed; and (4) set a date for the confirmation hearing.
(b) APPLICATION OF RULE 3017. Rule 3017(a), (b), (c), and (e) do not apply to a conditionally approved disclosure statement. Rule 3017(d) applies to a conditionally approved disclosure statement, except that conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).	**(b) Effect of a Conditional Approval.** Rule 3017(a)–(c) and (e) do not apply to a conditionally approved disclosure statement. But conditional approval is considered approval in applying Rule 3017(d).
(c) FINAL APPROVAL. (1) *Notice.* Notice of the time fixed for filing objections and the hearing to consider final approval of thedisclosure statement shall be given in accordance with Rule 2002 and may	**(c) Time to File an Objection; Date of a Hearing.** **(1)** ***Notice.*** Notice must be given under Rule 2002(b) of the time to file an objection and the date of a hearing to consider final approval

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be combined with notice of the hearing onconfirmation of the plan. (2) *Objections.* Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix. (3) *Hearing.* If a timely objectionto the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.	of the disclosure statement. The notice may be combined with notice of theconfirmation hearing. **(2)** ***Time to File an Objection to the Disclosure Statement.*** An objection to the disclosure statement must be filed before the disclosure statement is finally approved or by an earlier date set by the court. The objection must beserved on: • the debtor; • the trustee; • any appointed committee; and • any other entity the court designates. A copy must also be sent to the United States trustee. **(3)** ***Hearing on an Objection to the Disclosure Statement.*** If a timely objection to the disclosure statement is filed, the court must hold a hearing on final approval either before or combined with the confirmation hearing.

Committee Note

The language of Rule 3017.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case	**Rule 3018. Chapter 9 or 11—Accepting or Rejecting a Plan**
(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017, 3017.1, or 3017.2. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court under Rule 3017.2, or fixed for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw anacceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the courtdeems proper for the purpose of accepting or rejecting a plan.	**(a) In General.** (1) ***Who May Accept or Reject a Plan.*** Within the time set by the court under Rule 3017, 3017.1, or 3017.2, a claim holder or equity security holder may accept or reject a Chapter 9 or Chapter 11 plan under § 1126. (2) ***Claim Based on a Security of Record.*** Subject to (b), an equity security holder or creditor whose claim is based on a security of record may accept or reject a plan only if the equity security holder or creditor is the holder of record: (A) on the date the order approving the disclosure statement is entered; or (B) on another date the court sets: (i) under Rule 3017.2; or (ii) for cause after notice and a hearing. (3) ***Changing or Withdrawing an Acceptance or Rejection.*** After notice and a hearing and for cause, the court may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. (4) ***Temporarily Allowing a Claim or Interest.*** Even if an objection to a claim or interest has been filed, the court may, after notice and a hearing, temporarily allow a claim or interest in an amount that the court considers proper for voting to accept or reject a plan.

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(b) ACCEPTANCES OR REJECTIONS OBTAINED BEFORE PETITION. An equity security holder or creditor whose claim is based on a security of record who accepted or rejected the plan before the commencement of the case shall not be deemed to have accepted or rejected the plan pursuant to § 1126(b) of the Code unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of such acceptance or rejection for the purposes of such solicitation. A holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Code shall not be deemed to have accepted or rejected the plan if the court finds after notice and hearing that the plan was not transmitted to substantially all creditors and equity security holders of the same class, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with § 1126(b) of the Code.	**(b) Treatment of Acceptances or Rejections Obtained Before the Petition Was Filed.** (1) *Acceptance or Rejection by a Nonholder of Record.* An equity security holder or creditor who accepted or rejected a plan before the petition was filed will not be considered to have accepted or rejected the plan under § 1126(b) if theequity security holder or creditor: (A) has a claim or interest based on a security of record; and (B)was not the security's holder of record on the date specified in the solicitation of the acceptance or rejection. (2) *Defective Solicitations.* A holder of a claim or interest who accepted or rejected a plan before the petition was filed will not be considered to have accepted or rejected the plan if the court finds, after notice and a hearing, that: (A) the plan was not sent to substantially all creditors and equity security holders of the same class; (B) an unreasonably short time was prescribed for those creditors and equity security holders to accept or reject the plan; or (C) the solicitation did not comply with § 1126(b).
(c) FORM OF ACCEPTANCE OR REJECTION. An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form. If more than one plan is	**(c) Form for Accepting or Rejecting a Plan; Procedure When More Than One Plan Is Filed.** (1) *Form.* An acceptance or rejection of a plan must: (A) be in writing; (B) identify the plan or plans;

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transmitted pursuant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security holder may indicate a preference or preferences among the plans so accepted.	(C) be signed by the creditor or equity security holder—or an authorized agent; and (D) conform to Form 314. (2) ***When More Than One Plan Is Distributed.*** If more than one plan is transmitted under Rule 3017, a creditoror equity security holder may accept orreject one or more plans and may indicate preferences among the plans accepted.
(d) ACCEPTANCE OR REJECTION BY PARTIALLY SECURED CREDITOR. A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.	**(d) Partially Secured Creditor.** If a creditor's claim has been allowed in part as a secured claim and in part as an unsecured claim, the creditor may accept or reject a plan in both capacities.

Committee Note

The language of Rule 3018 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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ORIGINAL	REVISION
Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case	**Rule 3019. Chapter 9 or 11—Modifying a Plan**
(a) MODIFICATION OF PLAN BEFORE CONFIRMATION. In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.	**(a) Modifying a Plan Before Confirmation.** In a Chapter 9 or 11 case, after a plan has been accepted and before confirmation, the plan proponent may file a modification. The modification is considered accepted by any creditor or equity security holder who has accepted it in writing. For others who have not accepted it in writing but have accepted the plan, the modification is considered accepted if, after notice and a hearing, the court finds that it does not adversely change the treatment of their claims or interests. The notice must be served on: • the trustee; • any appointed committee; and • any other entity the court designates.
(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification shall be filed and served on the debtor, the proponent of the modification, the	**(b) Modifying a Plan After Confirmation in an Individual Debtor's Chapter 11 Case.** (1) *In General.* When a plan in an individual debtor's Chapter 11 case has been confirmed, a request to modify it under § 1127(e) is governed by Rule 9014. The request must identify the proponent, and the proposed modification must be filed with it. **(2)** ***Time to File an Objection; Service.*** (A) *Time.* Unless the court orders otherwise for creditors who are not affected by the proposed modification, the clerk—or the court's designee—must give the debtor, trustee, and creditors at least 21 days' notice, by mail, of: (i) the time to file an objection; and (ii) if an objection is filed, the date of a hearing to consider

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trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.	the proposed modification. (B) *Service.* Any objection must be served on: • the debtor; • the entity proposing the modification; • the trustee; and • any other entity the court designates. A copy of the notice, modification,and objection must also be sent to the United States trustee.
(c) MODIFICATION OF PLAN AFTER CONFIRMATION IN A SUBCHAPTER V CASE. In a case under subchapter V of chapter 11, a request to modify the plan under § 1193(b) or (c) of the Code is governed by Rule 9014, and the provisions of this Rule 3019(b) apply.	**(c) Modifying a Plan After Confirmation in a Case Under Subchapter V of Chapter 11.** In a case under Subchapter V of Chapter 11, a request to modify the plan under § 1193(b) or (c) is governed by Rule 9014, and the provisions of (b) in this rule apply.

Committee Note

The language of Rule 3019 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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ORIGINAL	REVISION
Rule 5005. Filing and Transmittal of Papers	**Rule 5005. Filing Papers and Sending Copies to the United States Trustee**
(a) FILING. (1) *Place of Filing.* The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices. *(2) Electronic Filing and Signing.* (A) *By a Represented Entity—Generally Required; Exceptions.* An entity represented by an attorney shall file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule. (B) *By an Unrepresented Individual—When Allowed or Required.* An individual not represented by an attorney: (i) may file electronically only if allowed by court order or by local rule; and (ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.	**(a) Filing Papers.** **(1)** ***With the Clerk.*** Except as provided in 28 U.S.C. § 1409, the following papers required to be filed by these rules must be filed with the clerk in the district where the case is pending: • lists; • schedules; • statements; • proofs of claim or interest; • complaints; • motions; • applications; • objections; and • other required papers. The clerk must not refuse to accept for filing any petition or other paper solely because it is not in the form required by these rules or any local rule or practice. **(2)** ***With a Judge of the Court.*** A judge may personally accept for filing a paper listed in (1). The judge must note on the paper the date of filing and promptly send it to the clerk. ***(3) Electronic Filing and Signing.*** (A) *By a Represented Entity—Generally Required; Exceptions.* An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule. (B) *By an Unrepresented Individual—*

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(C) *Signing.* A filing made through a person's electronic filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature. (D) *Same as a Written Paper.* A paper filed electronically is a written paper for purposes of these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.	*When Allowed or Required.* An individual not represented by an attorney: (i) may file electronically only if allowed by court order or by local rule; and (ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions. (C) *Signing.* A filing made through a person's electronic filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature. (D) *Same as a Written Paper.* A paper filed electronically is a written paper for purposes of these rules,the Federal Rules of Civil Procedure made applicable by these rules, and § 107.
(b) TRANSMITTAL TO THE UNITED STATES TRUSTEE. (1) The complaints, notices, motions, applications, objections and other papers required to be transmitted to the United States trustee ~~by these rules shall be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending~~ may be sent by filing with the court's electronic-filing system in accordance with Rule 9036, unless a court order or local rule provides otherwise. (2) The entity, other than the clerk, transmitting a paper to the United States trustee other than through the court's electronic-filing system shall	**(b) Sending Copies to the United States Trustee.** **(1)** ***Papers Sent Electronically.*** All papers required to be sent to the United States trustee may be sent by using the court's electronic-filing system in accordance with Rule 9036, unless a court order or local rule provides otherwise. **(2)** ***Papers Not Sent Electronically.*** If an entity other than the clerk sends a paper to the United States trustee other than through the court's electronic-filing system, the entity must promptly file a statement identifying the paper and stating the manner by which and the date it was sent. The clerk need not send a copy of a paper to a United States trustee

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promptly file as proof of such transmittal a ~~verified~~ statement identifying the paper and stating the manner by which and the date on which it was transmitted to the United States trustee. (3) Nothing in these rules shall require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.	who requests in writing that it not be sent.
(c) ERROR IN FILING OR TRANSMITTAL. A paper intended to be filed with the clerk but erroneously delivered to the United States trustee, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. A paper intended to be transmitted to the United States trustee but erroneously delivered to the clerk, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the United States trustee. In the interest of justice, the court may order that a paper erroneously delivered shall be deemed filed with the clerk or transmitted to the United States trustee as of the date of its original delivery.	**(c) When a Paper Is Erroneously Filed or Delivered.** **(1)** ***Paper Intended for the Clerk.*** If a paper intended to be filed with the clerk is erroneously delivered to a person listed below, that person must note on it the date of receipt and promptly send it to the clerk: • the United States trustee; • the trustee; • the trustee's attorney; • a bankruptcy judge; • a district judge; • the clerk of the bankruptcy appellate panel; or • the clerk of the district court. **(2)** ***Paper Intended for the United States Trustee.*** If a paper intended for the United States trustee is erroneously delivered to the clerk or to another person listed in (1), the clerk or that person must note on it the date of receipt and promptly send it to the United States trustee. **(3)** ***Applicable Filing Date.*** In the interests of justice, the court may order that the original date of receipt

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	shown on a paper erroneously delivered under (1) or (2) be deemed the date it was filed with the clerk or sent to the United States trustee.

Committee Note

The language of Rule 5005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 7004. Process; Service of Summons, Complaint	**Rule 7004. Process; Issuing and Serving a Summons and Complaint**
(a) SUMMONS; SERVICE; PROOF OF SERVICE. (1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1),(d)(5), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person. (2) The clerk may sign, seal, and issue a summons electronically by putting an "s/" before the clerk's name and including the court's seal on the summons.	(b) **Issuing, Delivering, and Personally Serving a Summons and Complaint.** (1) ***In General.*** Except as provided in (3), Fed. R. Civ. P. 4(a), (b), (c)(1), (d)(5), (e)–(j), (*l*), and (m) applies in an adversary proceeding. (2) ***Issuing and Delivering a Summons.*** The clerk may: • sign, seal, and issue the summons electronically by placing an "s/" before the clerk's name and adding the court's seal to the summons; and • deliver the summons for service. (3) ***Personally Serving a Summons and Complaint.*** Any person who is at least 18 years old and not a party may personally serve a summons and complaint under Fed. R.Civ. P. 4(e)–(j).
(b) SERVICE BY FIRST CLASS MAIL. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows: (1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.	**(b) Service by Mail as an Alternative.** Except as provided in subdivision (h), in addition to the methods of service authorized by Fed. R. Civ. P. 4(e)-(j), a copy of a summons and complaint may be served by first-class mail, postage prepaid, within the United States on: (1) an individual except an infant or an incompetent person—by mailing the copy to the individual's dwelling or usual place of abode or where the individual regularly conducts a business or profession;

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(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.	(2) an infant or incompetent person—by mailing the copy: (A) to a person who, under the law of the state where service is made, is authorized to receive service on behalf of the infant or incompetent person when an action is brought in that state's courts of general jurisdiction; and (B) at that person's dwelling or usual place of abode or where the person regularly conducts a business or profession;
(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.	(3) a domestic or foreign corporation, or a partnership or other unincorporated association—by mailing the copy: (A) to an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service; and (B) also to the defendant if a statute authorizes an agent to receive service and the statute so requires;
(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The	(4) the United States, with these requirements: (A) a copy of the summons and complaint must be mailed to: (i) the civil-process clerk in the United States attorney's office in the district where the case is filed; (ii) the Attorney General of the United States in Washington, D.C.; and (iii) in an action attacking the validity of an order of a United States officer or agency that is not a party, also to that officer or agency; and

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court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. (5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.	(B) if the plaintiff has mailed a copy of the summons and complaint to a person specified in either (A)(i) or (ii), the court must allow a reasonable time to serve the others that must be served under (A); (5) an officer or agency of the United States, with these requirements: (A) the summons and complaint must be mailed not only to the officer or the agency—as prescribed in (3) if the agency is a corporation—but also to the United States, as prescribed in (4);[2] (B) if the plaintiff has mailed a copy of the summons and complaint to a person specified in either (4)(A)(i) or (ii), the court must allow a reasonable time to serve the others that must be served under (A); and (C) if a United States trustee is the trustee in the case, service may be made on the United States trustee solely as trustee, as prescribed in (10); (6) a state or municipal corporation or other governmental organization subject to suit, with these requirements: (A) the summons and complaint must be mailed to the person or office that, under the law of the state where service is made, is authorized to receive service in a case filed against that defendant in that state's courts of general jurisdiction; and

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(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof. (7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state. (8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision. (9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy ofthe summons and complaint to the debtor at the address shown in the	(B) if there is no such authorized person or office, the summons and complaint may be mailed to the defendant's chief executive officer; (7) a defendant of any class referred to in (1) and (3)—for whom it also suffices to mail the summons and complaint to the entity on which service must be made under a federal statute or under the law of the state where service is made when an action is brought against that defendant in that state's courts of general jurisdiction; (8) any defendant—for whom it also suffices to mail the summons and complaint to the defendant's agent under these conditions: (A) the agent is authorized by appointment or by law to accept service of process; (B) the mail is addressed to the agent's dwelling or usual place of abode or where the agent regularly conducts a business or profession; and (C) if the agent's authorization so requires, a copy is also mailed to the defendant as provided in this subdivision (b); (9) the debtor, with the qualification that after a petition has been filed by or served upon a debtor, and until the case is dismissed or closed—by addressing the mail to the debtor at the address shown on the debtor's petition or the address the debtor specifies in a filed writing; (10) a United States trustee who is the trustee in the case and service is made upon the United States trustee solely as trustee—by addressing the mail to the

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petition or to such other address as the debtor may designate in a filed writing. (10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.	United States trustee's office or other place that the United States trustee designates within the district.
(c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)–(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct.	**(c) Service by Publication in an Adversary Proceeding Involving Property Rights.** If a party to an adversary proceeding to determine or protect rights in property in the court's custody cannot be served under (b) or Fed. R. Civ. P. 4(e)–(j), the court may order the summons and complaint to be served by: (1) first-class mail, postage prepaid, to the party's last known address; and (2) at least one publication in a form and manner as the court orders.
(d) NATIONWIDE SERVICE OF PROCESS. The summons and complaint and all other process except a subpoena may be served anywhere in the United States.	**(d) Nationwide Service of Process.** A summons and complaint (and all other process, except a subpoena) may be served anywhere within the United States.
(e) SUMMONS: TIME LIMIT FOR SERVICE WITHIN THE UNITED STATES. Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F.R.Civ.P. shall be by delivery of the summons and complaint within 7 days after the	**(e) Time to Serve a Summons and Complaint.** **(1)** ***In General.*** A summons and complaint served under Fed. R. Civ. P. 4(e), (g), (h)(1), (i), or (j)(2) by delivery

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summons is issued. If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 7 days after the summons is issued. If a summons is not timely delivered or mailed, another summons will be issued for service. This subdivision does not apply to service in a foreign country.	must be served within 7 days after the summons is issued. If served by mail, they must be deposited in the mail within 7 days after the summons is issued. If a summons is not timely delivered or mailed, a new summons must be issued. **(2)** ***Exception.*** This paragraph **Error! Reference source not found.** does not apply to service in a foreign country.
(f) PERSONAL JURISDICTION. If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.	**(f) Establishing Personal Jurisdiction.** If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service under this Rule 7004 or the applicable provisions of Fed. R. Civ. P. 4 establishes personal jurisdiction over the person of a defendant: (A) in a bankruptcy case; (B) in a civil proceeding arising in or related to a bankruptcy case; or (C) in a civil proceeding under the Code.
(g) SERVICE ON DEBTOR'S ATTORNEY. If the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney by any means authorized under Rule 5(b) F.R.Civ.P.	**(g) Serving a Debtor's Attorney.** If, when served, a debtor is represented by an attorney, the attorney must also be served by any means authorized by Fed. R. Civ. P. 5(b).
(h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—	**(h) Service of Process on an Insured Depository Institution.** Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless— (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

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(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail; (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.	(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.
(i) SERVICE OF PROCESS BY TITLE. This subdivision (i) applies to service on a domestic or foreign corporation or partnership or other unincorporated association under Rule 7004(b)(3) or on an officer of an insured depository institution under Rule 7004(h). The defendant's officer or agent need not be correctly named in the address – or even be named – if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title.	**(i) Service of Process by Title.** This subdivision (i) applies to service on a domestic or foreign corporation or partnership or other unincorporated association under Rule 7004(b)(3), or on an officer of an insured depository institution under Rule 7004(h). The defendant's officer or agent need not be correctly named in the address – or even be named – if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title.

Committee Note

The language of Rule 7004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. The first clause of Rule 7004(b) and Rule 7004(h) have not been restyled because they were enacted by Congress, P.L.

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103-394, 108 Stat. 361, Sec. 4118 (1994). The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, provides no authority to modify statutory language.

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Rule 7007.1. Corporate Ownership Statement	**Rule 7007.1. Corporate Ownership Statement**
(a) REQUIRED DISCLOSURE. Any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, ~~or a governmental unit,~~ shall file ~~two copies of~~ a statement that identifies any parent corporation and any publicly held corporation~~, other than a governmental unit, that directly or indirectly~~ that owns 10% or more of ~~any class of the corporation's equity interests,~~ its stock or states that there ~~are no entities to report under this subdivision~~ is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.	**(a) Required Disclosure.** Any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.
(b) TIME FOR FILING; SUPPLEMENTAL FILING. ~~A party shall file the~~ The corporate ownership statement shall: ~~required under Rule 7007.1(a)~~ (1) be filed with ~~its~~ the corporation's first appearance, pleading, motion, response, or other request addressed to the court~~.~~; and (2) be supplemented whenever the information required by this rule changes ~~A party shall file a supplemental statement promptly upon any change in circumstances that this rule requires the party to identify or disclose~~.	**(b) Time for Filing; Supplemental Filing.** The statement must: (1) be filed with the corporation's first appearance, pleading, motion, response, or other request to the court; and (2) be supplemented whenever the information required by this rule changes.

Committee Note

The language of Rule 7007.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal	**Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal**
(a) FILING THE NOTICE OF APPEAL. (1) In General. An appeal from a judgment, order, or decree of a bankruptcy court to a district court or BAP under 28 U.S.C. § 158(a)(1) or (a)(2) may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002. (2) Effect of Not Taking Other Steps. An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal. (3) Contents. The notice of appeal must: (A) conform substantially to the appropriate Official Form; (B) be accompanied by the judgment~~;~~ ~~—~~or the appealable order~~,~~ or decree~~;~~ ~~—~~from which the appeal is taken ~~or the part of it, being appealed~~; and (C) be accompanied by the prescribed fee. (4) *Merger.* The notice of appeal encompasses all orders that, for purposes of appeal, merge into the identified judgment or appealable order or decree. It is not necessary to identify those orders in the notice of appeal.	**(a) Filing a Notice of Appeal.** (1) ***Time to File.*** An appeal under 28 U.S.C. § 158(a)(1) or (2) from a judgment, order, or decree of a bankruptcy court to a district court or a BAP may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002. (2) ***Failure to Take Any Other Step.*** An appellant's failure to take any other step does not affect the appeal's validity, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal. (3) ***Content of the Notice of Appeal.*** A notice of appeal must: (A) conform substantially to Form 417A; (B) be accompanied by the ~~;~~ ~~—~~or the appealable order~~,~~ or decree~~;~~ ~~—~~from which the appeal is taken; and (C) be accompanied by the prescribed filing fee. (4) ***Merger.*** The notice of appeal encompasses all orders that, for purposes of appeal, merge into the identified judgment or appealable order or decree. It is not necessary to identify those orders in the notice of appeal. (5) ***Final Judgment.*** The notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate

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(5) *Final Judgment.* The notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Rule 7058, if the notice identifies: (A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or (B) an order described in Rule 8002(b)(1). (6) *Limited Appeal.* An appellant may identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, specific identifications do not limit the scope of the notice of appeal. (7) *Impermissible Ground for Dismissal.* An appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into that judgment or appealable order or decree. ~~(4)~~ (8) *Additional Copies.* If requested to do so, the appellant must furnish the bankruptcy clerk with enough copies of the notice to enable the clerk to comply with subdivision (c).	document under Rule 7058, if the notice identifies: (A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or (B) an order described in Rule 8002(b)(1). (6) ***Limited Appeal.*** An appellant may identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, specific identifications do not limit the scope of the notice of appeal. (7) ***Impermissible Ground for Dismissal.*** An appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into that judgment or appealable order or decree. (8) ***Additional Copies.*** If requested to do so, the appellant must furnish the bankruptcy clerk with enough copies of the notice to enable the clerk to comply with (c).

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(b) JOINT OR CONSOLIDATED APPEALS. (1) Joint Notice of Appeal. When two or more parties are entitled to appeal from a judgment, order, or decree of a bankruptcy court and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant. (2) Consolidating Appeals. When parties have separately filed timely notices of appeal, the district court or BAP may join or consolidate the appeals.	**(b) Joint or Consolidated Appeals.** (1) ***Joint Notice of Appeal.*** When two or more parties are entitled to appeal from a bankruptcy court's judgment, order, or decree and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant. (2) ***Consolidating Appeals.*** When parties have separately filed timely notices of appeal, the district court or BAP may join or consolidate the appeals.
(c) SERVING THE NOTICE OF APPEAL. (1) Serving Parties and Transmitting to the United States Trustee. The bankruptcy clerk must serve the notice of appeal on counsel of record for each party to the appeal, excluding the appellant, and transmit it to the United States trustee. If a party is proceeding pro se, the clerk must send the notice of appeal to the party's last known address. The clerk must note, on each copy, the date when the notice of appeal was filed. (2) Effect of Failing to Serve or Transmit Notice. The bankruptcy clerk's failure to serve notice on a party or transmit notice to the United States trustee does not affect the validity of the appeal. (3) Noting Service on the Docket. The clerk must note on the docket the names of the parties served and the date and method of the service.	**(c) Serving the Notice of Appeal.** (1) ***Serving Parties; Sending to the United States Trustee.*** The bankruptcy clerk must serve the notice of appeal by sending a copy to counsel of record for each party to the appeal—excluding the appellant's—and send it to the United States trustee. If a party is proceeding pro se, the clerk must send the notice to the party's last known address. The clerk must note, on each copy, the date when the notice of appeal was filed. (2) ***Failure to Serve the Notice of Appeal.*** The bankruptcy clerk's failure to serve notice on a party or send notice to the United States trustee does not affect the validity of the appeal. (3) ***Entry of Service on the Docket.*** The clerk must note on the docket the names of the parties served and the date and method of service.

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(d) TRANSMITTING THE NOTICE OF APPEAL TO THE DISTRICT COURT OR BAP; DOCKETING THE APPEAL. (1) Transmitting the Notice. The bankruptcy clerk must promptly transmit the notice of appeal to the BAP clerk if a BAP has been established for appeals from that district and the appellant has not elected to have the district court hear the appeal. Otherwise, the bankruptcy clerk must promptly transmit the notice to the district clerk. (2) Docketing in the District Court or BAP. Upon receiving the notice of appeal, the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary.	**(d) Sending the Notice of Appeal to the District Court or BAP; Docketing the Appeal.** (1) ***Where to Send the Notice of Appeal.*** If a BAP has been established to hear appeals from that district—and an appellant has not elected to have the appeal heard in the district court—the bankruptcy clerk must promptly send the notice of appeal to the BAP clerk. Otherwise, the bankruptcy clerk must promptly send it to the district clerk. (2) ***Docketing the Appeal.*** Upon receiving the notice of appeal, the BAP clerk or district clerk must: (A) docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding; and (B) identify the appellant, adding the appellant's name if necessary.

Committee Note

The language of Rule 8003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Original Text Amendments:
12/1/20 in red, 12/1/21 in blue, 12/1/22 in green, and 12/1/23 in pink.

ORIGINAL	REVISION
Rule 8023. Voluntary Dismissal	**Rule 8023. Voluntary Dismissal**
(a) STIPULATED DISMISSAL. The clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due.	**(a) Stipulated Dismissal.** The clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due.
(b) APPELLANT'S MOTION TO DISMISS. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP.	**(b) Appellant's Motion to Dismiss.** An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP.
(c) OTHER RELIEF. A court order is required for any relief beyond the mere dismissal of an appeal—including approving a settlement, vacating an action of the bankruptcy court, or remanding the case to it.	**(c) Other Relief.** A court order is required for any relief beyond the mere dismissal of an appeal—including approving a settlement, vacating an action of the bankruptcy court, or remanding the case to it.
(d) COURT APPROVAL. This rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.	**(d) Court Approval.** This rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.

Committee Note

The language of Rule 8023 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Original Text Amendments:
12/1/20 in red, 12/1/21 in blue, 12/1/22 in green, and 12/1/23 in pink.

ORIGINAL	REVISION
Rule 9036. Notice and Service ~~Generally~~ by Electronic Transmission	**Rule 9036. Electronic Notice and Service**
(a) IN GENERAL. This rule applies ~~W~~whenever these rules require or permit sending a notice or serving a paper by mail or other means.~~, the clerk, or some other person as the court or these rules may direct, may send the notice to or serve the paper on~~ (b) NOTICES FROM AND SERVICE BY THE COURT. (1) *Registered Users*. The clerk may send notice to or serve a registered user by filing the notice or paper ~~it~~ with the court's electronic-filing system. (2) *All Recipients*. For any recipient, the clerk may send notice or serve a paper ~~Or it may be sent to any person~~ by ~~other~~ electronic means that the ~~person~~ recipient consented to in writing, including by designating an electronic address for receipt of notices. But these exceptions apply: (A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk shall send the notice to or serve the paper at that address; and (B) if an entity has been designated by the Director of the Administrative Office of the United	**(a) In General.** This rule applies whenever these rules require or permit sending a notice or serving a document by mail or other means. **(b) Notices From and Service by the Court.** (1) ***Registered Users***. The clerk may send notice to or serve a registered user by filing the notice or document with the court's electronic-filing system. (2) ***All Recipients***. For any recipient, the clerk may send notice or serve a document by electronic means that the recipient consented to in writing, including by designating an electronic address for receiving notices. But these exceptions apply: (A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk must use that address; and (B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the document electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f). **(c) Notices From and Service by an Entity.** An entity may send notice or serve a document in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B).

Original Text Amendments:
12/1/20 in red, 12/1/21 in blue, 12/1/22 in green, and 12/1/23 in pink.

ORIGINAL	REVISION
States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the paper electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f) of the Code. (c) NOTICES FROM AND SERVICE BY AN ENTITY. An entity may send notice or serve a paper in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B). (d) COMPLETING NOTICE OR SERVICE. ~~In either of these events,~~ Electronic ~~service or~~ notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. It is the recipient's responsibility to keep its electronic address current with the clerk. (e) INAPPLICABILITY. This rule does not apply to any ~~pleading or other~~ paper required to be served in accordance with Rule 7004.	**(d) Completing Notice or Service.** Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be notified or served. The recipient must keep its electronic address current with the clerk. **(e) Inapplicability**. This rule does not apply to any document required to be served in accordance with Rule 7004.

Committee Note

The language of Rule 9036 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Original Text Amendments:
12/1/20 in red, 12/1/21 in blue, 12/1/22 in green, and 12/1/23 in pink.

TAB 8

TAB 8A

MEMORANDUM

DATE: August 24, 2022

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

FROM: Catherine T. Struve

RE: Project on electronic filing by pro se litigants

Under the national electronic-filing rules that took effect in 2018, self-represented litigants presumptively must file non-electronically, but they can file electronically if authorized to do so by court order or local rule. In late 2021, in response to a number of proposals submitted to the advisory committees, a cross-committee working group was formed to study whether developments since 2018[1] provide a reason to alter the rules' approach to e-filing by self-represented litigants. This working group includes the reporters for the Appellate, Bankruptcy, Civil, and Criminal Rules advisory committees as well as attorneys from the Rules Committee Support Office and researchers from the Federal Judicial Center (FJC). The working group has convened via Zoom for three discussions. The December 2021 discussion centered on potential research questions for a projected study by the FJC. By March 2022, Tim Reagan, Carly Giffin, and Roy Germano of the FJC had conducted the study and had circulated to the working group a draft of their report. The working group's March 2022 discussion focused on the study's findings. The final version of the report became available in May 2022,[2] and the working group met in August 2022 for further discussion of the study's findings.

This memo sketches possible topics that the advisory committees might discuss in light of the FJC's findings.[3] Part I.A of the memo provides a brief overview of the current rules on

1 For a review of current practices in the state courts, see National Center for State Courts, Self-Represented Efiling: Surveying the Accessible Implementations 3 (2022) (reporting that self-represented state-court litigants "often enjoy the same ability to efile as attorneys in the trial courts that offer electronic filing"), available at https://www.ncsc.org/__data/assets/pdf_file/0022/76432/SRL-efiling.pdf. An appendix to the study provides links to relevant e-filing programs by state. See id. Appendix A.

2 See Tim Reagan et al., Federal Courts' Electronic Filing by Pro Se Litigants (FJC 2022), available at https://www.fjc.gov/content/368499/federal-courts-electronic-filing-pro-se-litigants ("FJC Study").

3 The suggestions gathered in this memo reflect insights contributed by many working-group members. Those members have a variety of views on the issues discussed here, and the suggestions in the memo may not be endorsed by all working-group members. My goal here is to collect possible issues for discussion rather than to report a consensus view of the working group.

electronic filing and on service, while Part I.B summarizes pending proposals to amend the rules with respect to electronic filing by self-represented litigants. Part II outlines possible questions for discussion by the advisory committees as to both filing and service.

I. The current rules, and proposals to amend them

In Part I.A., I briefly summarize the current rules on self-represented electronic filing and on service. Part I.B synopsizes pending proposals to amend the electronic-filing rules.

A. The current rules

Under the rules as amended in 2018, pro se litigants can file electronically only if permitted to do so by court order or local rule. The Civil, Bankruptcy, and Appellate Rules contemplate that courts can require electronic filing by a pro se litigant, so long as they do so by order, or via a local rule that includes reasonable exceptions. The Criminal Rule does not permit a court to require pro se litigants to file electronically; the Committee Note observes that incarcerated defendants will typically lack the opportunity to file (and receive notices) electronically. As to service, requirements for separate service of a filing hinge on whether the filing was made via the court's case management / electronic case filing (CM/ECF) system or otherwise.

1. Filing

As amended in 2018, Civil Rule 5(d)(3) currently reads:

> (3) Electronic Filing and Signing.
>
> > (A) By a Represented Person--Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.
> >
> > (B) **By an Unrepresented Person--When Allowed or Required. A person not represented by an attorney:**
> >
> > > **(i) may file electronically only if allowed by court order or by local rule; and**
> > >
> > > **(ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.**
> >
> > (C) Signing. A filing made through a person's electronic-

> filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.
>
> (D) Same as a Written Paper. A paper filed electronically is a written paper for purposes of these rules.

(Emphasis added.) Substantively similar electronic-filing provisions appear in Appellate Rules 25(a)(2)(B) and Bankruptcy Rules 5005(a)(2) and 8011(a)(2)(B).

The 2018 Committee Note to Civil Rule 5(d) states in part:

> Filings by a person proceeding without an attorney are treated separately. It is not yet possible to rely on an assumption that pro se litigants are generally able to seize the advantages of electronic filing. Encounters with the court's system may prove overwhelming to some. Attempts to work within the system may generate substantial burdens on a pro se party, on other parties, and on the court. Rather than mandate electronic filing, filing by pro se litigants is left for governing by local rules or court order. Efficiently handled electronic filing works to the advantage of all parties and the court. Many courts now allow electronic filing by pro se litigants with the court's permission. Such approaches may expand with growing experience in the courts, along with the greater availability of the systems required for electronic filing and the increasing familiarity of most people with electronic communication. Room is also left for a court to require electronic filing by a pro se litigant by court order or by local rule. Care should be taken to ensure that an order to file electronically does not impede access to the court, and reasonable exceptions must be included in a local rule that requires electronic filing by a pro se litigant. In the beginning, this authority is likely to be exercised only to support special programs, such as one requiring e-filing in collateral proceedings by state prisoners.

A similar passage appears (without the last sentence in the quote above) in the Committee Note to Bankruptcy Rule 5005(a)(2); the Committee Note to Appellate Rule 25(a)(2)(B) briefly observes that that provision parallels the approach taken in Civil Rule 5.

Criminal Rule 49(b)(3) provides:

> (3) Means Used by Represented and Unrepresented Parties.
>
> (A) Represented Party. A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

> **(B) Unrepresented Party. A party not represented by an attorney must file nonelectronically, unless allowed to file electronically by court order or local rule.**

(Emphasis added.) The 2018 Committee Note to Criminal Rule 49(b)(3)(B) explains:

> Subsection (b)(3)(B) requires unrepresented parties to file nonelectronically, unless allowed to file electronically by court order or local rule. This language differs from that of the amended Civil Rule, which provides that an unrepresented party may be "required" to file electronically by a court order or local rule that allows reasonable exceptions. A different approach to electronic filing by unrepresented parties is needed in criminal cases, where electronic filing by pro se prisoners presents significant challenges. Pro se parties filing papers under the criminal rules generally lack the means to e-file or receive electronic confirmations, yet must be provided access to the courts under the Constitution.

2. Service

The Appellate, Bankruptcy, Civil, and Criminal Rules require that litigants serve their filings[4] on all other parties to the litigation. But because notice through CM/ECF constitutes a method of service, the rules effectively exempt CM/ECF filers from separately serving their papers on persons that are registered users of CM/ECF. By contrast, the rules can be read to require non-CM/ECF filers to serve their papers on all other parties, even persons that are CM/ECF users.

A review of Civil Rule 5 illustrates the general approach.[5] Civil Rule 5(a)(1) sets the general requirement that litigation papers "must be served on every party."[6] Civil Rule 5(b)(2)(E) provides that one way to serve a paper is by "sending it to a registered user by filing it with the court's electronic-filing system."[7] Civil Rule 5(d)(1)(B) requires a certificate of service for every filing, except that "[n]o certificate of service is required when a paper is served by

4 The rules provide separately for the service of case-initiating filings. See, e.g., Civil Rule 4 (addressing service of summons and complaint). The discussion here focuses on filings subsequent to the initiation of a case.

5 Bankruptcy Rule 7005 expressly applies Civil Rule 5 to adversary proceedings in a bankruptcy. The footnotes that follow cite provisions in Appellate Rule 25, Bankruptcy Rule 8011 (concerning appeals in bankruptcy cases), and Criminal Rule 49 that are similar to those in Civil Rule 5.

6 See also Appellate Rule 25(b) ("Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review."); Bankruptcy Rule 8011(b) ("Unless a rule requires service by the clerk, a party must, at or before the time of the filing of a document, serve it on the other parties to the appeal."); Criminal Rule 49(a)(1) ("Each of the following must be served on every party: any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper.").

7 See also Appellate Rule 25(c)(2)(A); Criminal Rule 49(a)(3)(A).

filing it with the court's electronic-filing system."[8]

In a case where all parties are represented by counsel,[9] these provisions combine to exempt the litigants from any requirement that they separately serve other litigants; their filings via CM/ECF automatically effect service on all parties. In a case that involves one or more self-represented litigants, however, the situation is more complicated. Service on a self-represented litigant can only be made via CM/ECF if the self-represented litigant is a registered user of CM/ECF – which, as noted in Part I.A.1, occurs only if the litigant receives permission (to use CM/ECF) by court order or local rule.

As for service by a self-represented litigant on a registered user of CM/ECF, one might argue – as a policy matter – that separate service is just as unnecessary as it is when the filer is a registered user of CM/ECF. Because clerk's offices routinely scan paper filings and upload them into CM/ECF, registered users will receive a CM/ECF-generated notice of electronic filing each time a paper filing is uploaded into CM/ECF in one of their cases. However, a number of courts appear to interpret the current rules to require that a person filing by means other than CM/ECF must separately serve the filing, even when the recipient of the filing is a registered user of CM/ECF.[10]

It should be noted that, in its research, the FJC found at least one clerk's office that took a different view of Civil Rule 5(b)(2)(E). Under this office's interpretation, Civil Rule 5(b)(2)(E) exempts paper filers from serving registered users of CM/ECF. The argument is that when a filer submits a filing to the court by a means other than CM/ECF and the court staff then dockets the filing in CM/ECF, the filer has "sen[t the filing] to a registered user by filing it with the court's electronic-filing system" because the filing is eventually uploaded (by the clerk's office) into the court's electronic-filing system. A counter-argument,[11] though, might be that such an argument proves too much: All filings, no matter how submitted, are eventually uploaded into the CM/ECF system, and thus if that interpretation were correct, the drafters of Rule 5(b)(2)(E) could have

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8 See also Appellate Rule 25(d)(1); Criminal Rule 49(b)(1).

9 Civil Rule 5(b)(1) presumptively requires that service on a represented party "must be made on the attorney." See also Appellate Rule 25(b); Criminal Rule 49(a)(2). And Civil Rule 5(d)(3)(A)'s presumptive requirement that "[a] person represented by an attorney must file electronically" guarantees, in practice, that any attorney appearing as counsel of record will be a registered user of CM/ECF. See also Appellate Rule 25(a)(2)(B)(i); Criminal Rule 49(b)(3)(A).

10 See, e.g., Pro Se Handbook for Civil Suits, U.S. District Court, Northern District of Texas, § 6 ("If you and the opposing side are both ECF users, the ECF system will complete the service for you, and a Certificate of Service is not required. If either of you is not an ECF user, or if you learn that service sent through ECF did not reach the person, you must serve the document by other means …."), available at https://www.txnd.uscourts.gov/sites/default/files/documents/handbook.pdf; Electronic Submission For Pro Se Filers, U.S. District Court, Western District of Texas ("Service of pleadings filed in the drop box must be performed by the filing party."), available at https://www.txwd.uscourts.gov/filing-without-an-attorney/electronic-filing-for-pro-se/ .

11 Other possible counter-arguments exist. For example, some rules expressly distinguish between "service by the clerk" and service by "a party." See Appellate Rule 25(b); Bankruptcy Rule 8011(b).

saved eight or nine words by deleting "with the court's electronic-filing system" and instead saying simply, "sending the filing to a registered user by filing it."

B. Current proposals

Pending before the advisory committees are a number of proposals to amend one or more of the electronic filing rules so as to adopt a national rule permitting pro se litigants to file electronically. I will highlight in this section the two most detailed proposals.[12] Sai proposes adoption of nationwide presumptive permission for pro se litigants to file electronically.[13] John Hawkinson, by contrast, proposes that if the requirement of permission by court order or local rule is retained, then the national rules[14] could be amended to address the standard for granting permission.

Sai initially submitted Sai's proposal as a response to the package that became the 2018 electronic filing amendments. Sai has re-submitted the proposal, which includes the following elements:[15]

> 1. Remove the presumptive prohibition on pro se use of CM/ECF, and instead grant presumptive access. This includes CM/ECF access for case initiation filings.
>
> 2. Treat pro se status as a rebuttably presumed good cause for nonelectronic filing.
>
> > a. For pro se prisoners, this is treated as an irrebutable presumption, in the spirit of the FRCrP Committee's notes and for conformity across all the rules.
>
> 3. Require courts to allow pro se CM/ECF access on par with attorney filers, prohibiting any restriction merely for being pro se or a non-attorney, and prohibiting registration fees.
>
> 4. Permit *individualized* prohibitions on CM/ECF access for good cause, e.g. for vexatious litigants, and (in the notes) construe pre-enactment vexatious designation as such a prohibition.

John Hawkinson proposes that Civil Rule 5 be amended to address local court bans on pro se electronic filing, and perhaps to address the standard for granting leave to file

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12 Other suggestions also support a national rule allowing pro se electronic filing and offer policy reasons to adopt such a rule. See, e.g., infra note 40 (citing one such suggestion).
13 I focus here on Sai's suggestion No. 21-CV-J, submitted to the Civil Rules Committee.
14 Mr. Hawkinson's suggestion focuses on Civil Rule 5. See Suggestion No. 20-CV-EE.
15 This is an excerpt from Sai's 2017 proposal.

electronically:

> I recently became aware that some districts by standing order unconditionally bar non-attorney pro se litigants from even seeking electronic filing privileges and routinely deny their motions, a sharp contrast from the prevailing practice nationwide. N.D. Ga. Standing Order 19-01 ¶5; LR App.H I(A)(2), III(A). See Perdum v. Wells Fargo Home Mortg., No. 17-cv-972-SCJ-JCF, ECF No. 61 (N.D. Ga., April 12, 2018) (collecting cases). See also Oliver v. Cnty. of Chatham, 2017 U.S. Dist. LEXIS 90362, No. 4:17-cv-101-WTM-BKE (S.D. Ga., June 13, 2017).
>
> The Committee might recommend language in Rule 5 discouraging such blanket bans, and perhaps even that leave should be freely given (such courts have found a "good cause" standard is not met, although it is unclear why. Oliver at *1). It seems an easier lift than removing the motion requirement, and goes to administrative fairness.

II. Possible discussion topics

This section sketches some topics that the advisory committees might consider at their fall meetings. In II.A, I outline some issues about electronic filing, and in II.B, I sketch questions about service.

A. Electronic filing

On the topic of electronic filing, there are questions both about access to the CM/ECF system and about other electronic methods for submitting filings to the court. There are also questions about whether the best way forward is through rule amendments or whether other measures could increase self-represented litigants' electronic access.

Shifting the rules' default position. As noted in Part I.A.1, the current rules permit, but do not require, the courts to provide self-represented litigants with access to CM/ECF. A court can provide such access either by local rule or by order in a case. Should the rules be amended to provide the opposite default rule – namely, that self-represented litigants may[16] use CM/ECF unless the court otherwise provides (by local rule or order in a case)? In assessing this question, it seems important to consider the current practices in the various types of court. Qualitatively, the FJC study reports that "[m]any courts are leery of letting pro se litigants use CM/ECF, but those that have done so reported fewer problems than expected."[17]

16 None of the pending proposals suggests that self-represented litigants should be *required* to use CM/ECF.

17 FJC Study, supra note 2, at 7.

Quantitatively, the study found that, among the courts of appeals, five circuits[18] presumptively permit CM/ECF access for non-incarcerated self-represented litigants,[19] seven circuits allow it with permission in an individual case, and one circuit has a rule against such access (but has made exceptions in some instances).[20] The FJC Study used two techniques to ascertain what district courts are doing on this question: Researchers (in a separate 2019-2022 study) reviewed the local rules for all 94 districts,[21] and researchers in the FJC Study conducted interviews with personnel in 39 district clerks' offices.[22] The researchers report that, based on the local rules, at least[23] 9.6% of districts "permit nonprisoner pro se litigants to register as CM/ECF users without advance permission" (in existing cases, though typically not to file complaints);[24] 55% of districts "state that nonprisoner pro se litigants are permitted to use CM/ECF to file in their existing cases with individual permission"; 15% state "that pro se litigants may not use CM/ECF"; and 19% fail to "specify one way or the other whether pro se litigants can use CM/ECF."[25] Further along the spectrum, the study found that it is "very unusual for pro se debtors to receive CM/ECF" access in the bankruptcy courts.[26]

A proposed rule amendment that flatly required courts to provide self-represented litigants with access to CM/ECF would confront opposition from stakeholders, given that most courts do not offer blanket permission for CM/ECF use by self-represented litigants and some courts bar such use altogether. A proposal to shift the presumption (that is, to presumptively permit rather than to presumptively disallow CM/ECF access for self-represented litigants)

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18 The five-circuit figure excludes the Ninth Circuit, see FJC Study at 7 nn. 3 & 4. But the FJC Study reports, based on its interview(s) with court staff, that "[i]n fact, the [Ninth Circuit] encourages pro se use of CM/ECF." FJC Study at 13; see also Ninth Circuit Rule 25-5(a).

19 In the interests of simplicity, this discussion of e-filing access focuses on non-incarcerated self-represented litigants. Access policies for incarcerated self-represented litigants present distinct issues.

20 See FJC Study, supra note 2, at 6-7.

21 See id. at 4.

22 See id.

23 Given the timing of the FJC's local-rules study, it may not fully capture courts' adoption of more permissive practices specifically during COVID. For instance, "[e]ffective May 1, 2020, and until further notice," the Northern District of California granted blanket permission for self-represented litigants to register for CM/ECF in existing cases. See https://cand.uscourts.gov/cases-e-filing/cm-ecf/setting-up-my-account/e-filing-self-registration-instructions-for-pro-se-litigants/ . This district is not listed as one that has a local rule granting blanket permission. See FJC Study at 7 n.7.

24 The districts with local provisions providing blanket permission include three that have a large volume of cases involving pro se litigants (the Northern District of Texas, the Northern District of California, see supra note 23, and the Northern District of Illinois) as well as districts with a more moderate volume of such cases (the Western District of Washington, the Western District of Missouri, the District of Kansas, and the Southern District of Illinois) and districts with a smaller volume of such cases (the Western District of Wisconsin, the District of Nebraska, and the District of Vermont). See https://www.uscourts.gov/news/2021/02/11/just-facts-trends-pro-se-civil-litigation-2000-2019#figures_map (showing volume of pro se civil cases filed 2000-2019, by district).

25 FJC Study at 7.

26 Id. at 8.

would allow courts to continue their current practices. Under such a shifted presumption, a court wishing to limit or disallow CM/ECF access for self-represented litigants would have to do so by local rule or court order; this would impose on courts the costs of taking such action, but it might also nudge some courts to reconsider their current reluctance to permit such access.

However, participants in the working group discussions have asked whether it would make sense to adopt a default rule that is out of step with the practices of most courts. If not, that might raise the possibility that the case for switching the default rule is stronger with respect to the courts of appeals, where the practice has already moved farthest in the direction of presumptive access to CM/ECF.[27] On the other hand, the fact that the courts of appeals are already moving to increase access without being required to do so by the national rules might be taken, instead, as a reason that a national rule change is not necessary.

Proscribing outright bans. The FJC study found a number of district courts[28] – and, at least nominally, one court of appeals[29] – that do not permit any self-represented litigants to access CM/ECF. As noted in Part I.A, the current rules permit outright bans, in the sense that the rules permit, but do not require, the courts to grant access by local rule or by order in a case. Mr. Hawkinson proposes that the rules be revised to "discourag[e] such blanket bans, and perhaps even [to provide] that leave should be freely given."[30]

Treating case-initiating filings differently. A number of courts are more restrictive with respect to case-initiating filings. The FJC Study notes courts that permit self-represented litigants access to CM/ECF but only for filings after case initiation,[31] as well as a few districts that are similarly restrictive even as to attorneys' filings.[32] Thus, although one proponent of increased CM/ECF access argues that case-initiating access is important,[33] it seems likely that increasing

27 Participants have suggested that the appellate courts' relative willingness to provide CM/ECF access to self-represented litigants may be connected to the relative simplicity of the dockets on appeal (compared with the dockets in the district courts and bankruptcy courts).

28 The FJC Study observes that "[t]he rules for fourteen district courts state that pro se litigants may not use CM/ECF." Id. at 7. In addition to the 14 districts noted in that passage, the study found three other districts that appear to take the same position. See id. at 16 (noting that despite local provisions nominally permitting access by permission, "[i]n fact, pro se litigants are never granted CM/ECF filing privileges" in the District of Idaho); id. at 27 (reporting that in the Southern District of Georgia, "[p]ro se litigants may not file using CM/ECF"); id. at 43 (reporting that in the District of Utah, "[p]ro se parties may not use CM/ECF.").

29 "The electronic filing guide for [the Sixth Circuit] states that the court does not permit pro se litigants to use CM/ECF, … but some pro se litigants have been granted electronic filing privileges as exceptions to the rule." FJC Study at 7. See id. at 12 ("Pro se litigants have occasionally been granted individual exceptions to this proscription. The court is exploring more expansive permission for pro se electronic filing.").

30 See Hawkinson suggestion, supra note 14.

31 See, e.g., FJC Study at 7 ("Pro se plaintiffs seldom can use CM/ECF to file their complaints.").

32 See id. at 23-24 (discussing Western District of Arkansas); id. at 43 (discussing District of Utah).

33 See Sai's proposal, supra note 13, at 24 (arguing that inability to initiate a case via electronic filing

CM/ECF access for case-initiating filings could meet with particular resistance. A prime concern, here, is the difficulty that can ensue if a person uses CM/ECF to mistakenly create a new record with a new case number.[34] However, as a matter of court practice, an intermediate possibility may exist: a number of courts permit attorneys to file complaints via CM/ECF without opening a new case file; the filing goes into a shell case, and the clerk's office then (if appropriate) opens the new case file and transfers the filing into it.[35]

Treating incarcerated self-represented litigants differently. It is not uncommon for local provisions on self-represented filing to distinguish between incarcerated and non-incarcerated self-represented litigants. As the FJC Study found:

> Prisoners cannot use CM/ECF, because they do not have sufficient access to the internet. Some courts have arrangements with some prisons, generally state rather than federal prisons, for electronic submission of prisoner filings. In some arrangements, electronic submission is mandatory and prisoners are not permitted to file on paper.
>
> Typically, a prisoner presents a filing to the prison librarian, who scans it and emails it to the court. Some prisons accept electronic notices on behalf of the prisoners, and then convert them to paper documents. Many prisons do not, so prisoners must be served with other parties' filings and court filings by regular mail.[36]

In considering possible rule changes, it will be important to consider how to take account of the specific issues arising in carceral settings.[37]

Encouraging alternative means of electronic access. One topic of discussion is whether courts could provide self-represented litigants with benefits akin to those of CM/ECF through electronic-submission avenues that do not carry CM/ECF's projected disadvantages.[38] The FJC

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could impede a litigant's ability to timely file a case or to obtain time sensitive interim relief).

34 See FJC Study at 6.

35 See id.

36 Id. at 8.

37 Among the potential complicating factors for incarcerated litigants' access to courts is the fact that they may be moved among different facilities during the pendency of a case. And even if a particular institution provides an opportunity to *file* documents electronically, it may not similarly facilitate receiving and retrieving notices and documents electronically.

38 During prior discussions of CM/ECF access for self-represented litigants, participants cited – as possible downsides of such access – litigants' lack of competence to use CM/ECF; the burden on clerk's offices of training litigants to use CM/ECF and of addressing filing errors; inappropriate filings; inappropriate docketing practices (wrong event or wrong case) and sharing of credentials. See, e.g., Minutes of April 2017 Meeting of Bankruptcy Rules Committee; Minutes of April 2016 Meeting of Civil Rules Committee; Minutes of April 2015 Meeting of Civil Rules Committee; Minutes of March 2015 Criminal Rules Committee Meeting. Compare FJC Study at 7 (stating that courts that have allowed self-

Study observes that "[s]ome courts … accept submissions by email" and "[a] few accept submissions by electronic drop box, a web portal that allows a user to upload a PDF," but that "[m]any to most courts do not accept such electronic submissions."[39]

An avenue for electronic submission of filings to the court would offer self-represented litigants a number of the advantages offered by CM/ECF access. Litigants would avoid the costs and logistical challenges[40] of printing and mailing the papers filed with the court, and their filings would reach the court more quickly than if they were filed by mail. Advantages would also accrue to court personnel who would spend less time scanning paper filings. And court personnel and litigants who have visual impairments could benefit because files submitted electronically may be more likely to be accessible to those with visual impairments than files created by scanning paper filings.[41]

A perhaps unsettled question is whether an alternative electronic-submission system would automatically offer self-represented litigants the benefit of a later filing deadline. Under the time-computation rules, those using "electronic filing" presumptively may file up to midnight in the court's time zone, whereas those using "other means" of filing must file before the scheduled closing of the clerk's office.[42] If submission via email to a court-provided email address or via upload to a court's electronic drop box were regarded as "electronic filing," then the users of such systems could benefit from that extended filing time. However, it is not entirely certain that all courts would take this view; accordingly, it seems useful for a court adopting such a submission system to clarify by local rule the time-of-day deadline for such electronic submissions.[43]

It should be noted that provision of an alternative method for electronic *submission to the court* will not by itself offer self-represented litigants all of the advantages of CM/ECF participation. Two of those advantages merit separate discussion: electronic noticing, and avoiding the need for separate service on registered CM/ECF users. The CM/ECF system automatically provides registered users with electronic notice (and a free download) of any filings in their cases. A number of courts separately provide self-represented litigants who are

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represented litigants to use CM/ECF "reported fewer problems than expected").

39 FJC Study at 9.

40 Logistical challenges include those faced by filers outside the country, those with a disability, and those who have health concerns about visiting public spaces during the pandemic. See Sai's proposal, supra note 13, at 27; comment of Dr. Usha Jain, Nos. 20-AP-C & 20-CV-J.

41 See infra note 47.

42 See Bankruptcy Rule 9006(a)(4); Civil Rule 6(a)(4); Criminal Rule 45(a)(4). Appellate Rule 26(a)(4) includes a few more tailored approaches for particular filing scenarios, but adopts the same basic idea that electronic filers get the latest deadline – midnight in the relevant time zone.

This feature of the time-computation rules is currently under study. See generally Tim Reagan et al., Electronic Filing Times in Federal Courts (FJC 2022), available at https://www.fjc.gov/content/365889/electronic-filing-times-federal-courts .

43 The time-computation rules permit courts to specify a different time of day via local rule or order in a case. See the rules cited supra note 42.

not users of CM/ECF with the opportunity to register to receive electronic notice of filings in their case.[44] Such an electronic-notice mechanism seems to be an important component of a program to provide self-represented litigants with access equivalent to that furnished by CM/ECF – both because it provides an avenue for notice that may be more timely and effective than service by mail[45] and because the notice recipient receives an opportunity to download an electronic copy of the relevant filing.[46] Among other advantages, such an electronic copy may increase accessibility for readers with visual disabilities, because this electronic copy will likely be more amenable to use by text-to-speech programs than a copy made by scanning a paper received in the mail.[47] On the other hand, it makes sense that the courts providing an electronic-noticing program typically make it optional, not mandatory – because some self-represented litigants could not navigate the electronic-notice-and-download tasks and, for those litigants, hard copies sent by mail are the better option.

As noted in Part I.A.2, because notice through CM/ECF constitutes a method of service, the rules effectively exempt CM/ECF filers from separately serving their papers on persons that are registered users of CM/ECF. To qualify for this exemption the litigant must "send[the paper] to a registered user by filing it with the court's electronic-filing system." For the reasons noted in Part I.A.2, a court might conclude that submission via an alternative means of electronic access (email or upload to a court portal) does not fit within this description. In that view, electronic submission to the court outside of CM/ECF might not exempt a self-represented litigant from the duty to separately serve all other parties (even those that are registered users of CM/ECF). This issue could be addressed by adopting a local rule exempting non-CM/ECF users from separately serving registered CM/ECF users,[48] or by revising the national rules concerning service. I turn to the latter possibility in Part II.B.

Non-rule-based avenues for change. A recurring question during the working group's discussions has been whether the rules themselves are an impediment to increasing access for

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44 See FJC Study at 11. See also, e.g., U.S. District Court, S.D.N.Y., Pro Se (Nonprisoner) Consent & Registration Form to Receive Documents Electronically, available at https://www.nysd.uscourts.gov/sites/default/files/pdf/proseconsentecfnotice-final.pdf .

45 Sai has pointed out that the ability to receive electronic notice of filings is particularly important for litigants who are traveling or who have a disability. See Sai's proposal, supra note 13, at 24-25.

46 See FJC Study at 11 ("CM/ECF electronic notice gives an attorney or a pro se litigant one free look at the filing. If the recipient of the notice does not print or download the document during the one free look, then the recipient will have to pay Pacer fees to look at it again.").

47 As Sai points out, a text-to-speech program cannot read a scanned PDF unless the scanned PDF is first processed using optical character recognition ("OCR") technology; and the resulting OCR-processed file may contain errors that would not be present in the same document if it were in native PDF format. See Sai's proposal, supra note 13, at 28.

48 Local rules, of course, must be "consistent with" the national rules. Civil Rule 83(a)(1); see also Appellate Rule 47(a)(1); Bankruptcy Rule 9029(a)(1); Criminal Rule 57(a)(1). For the reasons discussed in Part I.A.2, perhaps the national service rules might be viewed as ambiguous on the question of what counts as "sending … to a registered user by filing … with the court's electronic-filing system." If so, then a local rule could be viewed as clarifying that ambiguity.

self-represented litigants. With the possible exception of the service issue (discussed in Part II.B), the access issues noted in this memo could be addressed by a court entirely through local provisions, consistent with the current national Rules. A court could offer self-represented litigants access to CM/ECF. Or it could offer self-represented litigants a non-CM/ECF option to email or upload documents plus an option to register to receive electronic notices of others' filings in the case. While the current rules do not nudge the courts in this direction, neither do they impede a court from pursuing this direction if it wishes to do so.

Thus, some participants have asked whether the proposals to increase electronic-filing access are best addressed by measures other than a rule amendment. A helpful approach might be to provide resources and training that could address underlying reasons for reluctance to expand electronic access for self-represented litigants. Resources might include, for example, training modules that could be provided to self-represented litigants on the use of CM/ECF, and anti-malware technology that could be provided to courts to screen electronic files submitted via email or upload. Such matters lie outside the province of the rules committees, but it could be useful for the rules committees to consider making a recommendation that other federal-judiciary actors study these matters – for example, the Judicial Conference Committee on Court Administration and Case Management and perhaps the Judicial Conference Committee on Information Technology, in coordination with any existing working group that is addressing issues facing self-represented litigants.

The need for broad consultation. The public suggestions proposing greater access for self-represented litigants have raised important points about the experience of those who represent themselves in federal court. Further insights on the experience of pro se litigants might be gained by consulting lawyers with experience assisting pro se litigants in federal court.[49] It is likewise important to gain perspective from clerks' office personnel. The interviews conducted by the FJC provide a head start on that task; as proposals are developed, it could also be useful to solicit views from organizations such as the National Conference of Bankruptcy Clerks, the Federal Court Clerks Association, the Administrative Office's Bankruptcy and District Clerk Advisory Groups, and the circuit clerks.

B. Service on registered CM/ECF users

Part I.A.2 observed that because notice through CM/ECF constitutes a method of service, the rules effectively exempt CM/ECF filers from separately serving their papers on persons that are registered users of CM/ECF. By contrast, the rules can be read to require non-CM/ECF filers to serve their papers on all other parties, even persons that are CM/ECF users. It would be useful for the advisory committees to consider whether this difference in treatment is desirable.

Requiring self-represented litigants to make separate service on registered CM/ECF users may impose an unnecessary task. Each filing a self-represented litigant makes by a means other

49 A potential resource, in this regard, is the Federal Courts working group of the Self-Represented Litigation Network, see https://www.srln.org/taxonomy/term/677.

than CM/ECF will eventually be uploaded by the clerk's office into CM/ECF, and at that point all registered CM/ECF users in the case will receive a notice of electronic filing and an opportunity to download the document. As a practical matter, though there may be a lag between the submission of the document and the time when the court clerk uploads it into CM/ECF, it seems plausible to surmise that the document will ordinarily become available to the judge no sooner than it becomes available to registered users via the notice of electronic filing.

The hardship imposed by that additional task (serving registered CM/ECF users) will depend on the circumstances of the case and the litigant. For some litigants, effecting separate service might not be onerous; this would be true if the self-represented litigant is thoroughly conversant with email and has been able to obtain all other litigants' consent to email service. But for self-represented litigants who lack reliable access[50] to or proficiency with email – or who have not been able to obtain their opponent's consent to email service – the separate-service requirement means making additional hard copies of the paper in question and delivering them by non-electronic means. And regardless of the alternate service method (email or paper), the rules require a certificate of service, which is an additional technical requirement that might trip up a self-represented litigant.

Presumably for these reasons, some courts have adopted local provisions eliminating the requirement of separate service on registered users of CM/ECF.[51] A question for the advisory committees is whether it would be useful to amend the national rules to adopt that approach. Such an amendment would provide a national imprimatur for the existing local rules, and would also change the practice in districts that currently require separate service even on registered CM/ECF users. Because some districts have already adopted this practice, there is a reservoir of experience on which the committees could draw in determining whether the practice has any downsides.[52]

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50 For instance, many incarcerated litigants likely lack reliable access to email.

51 See, e.g., D. Ariz. E.C.F. Admin. Policies & Procedures Manual II.D.3 ("A non-registered filing party who files document(s) with the Clerk's Office for scanning and entry to ECF must serve paper copies on all non-registered parties to the case. There will be some delay in the scanning, electronic filing and subsequent electronic noticing to registered users. If time is an issue, non-registered filers should consider paper service of the document(s) to all parties."); S.D.N.Y. Electronic Case Filing Rule 9.2 ("Attorneys and pro se parties who are not Filing or Receiving Users must be served with a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules. Such paper service must be documented by electronically filing proof of service. Where the Clerk scans and electronically files pleadings and documents on behalf of a pro se party, the associated NEF constitutes service.").

52 Personnel in those courts could tell us, for example, how non-CM/ECF users discern which other litigants are and are not registered CM/ECF users. Litigants who file via CM/ECF receive a system-generated notice of electronic filing that says who is being automatically served and who is not. Paper filers will not receive the notice of electronic filing (unless, perhaps, they are registered for electronic noticing). Such filers might instead draw inferences from a party's status as counseled or self-represented, or from the contact information listed on the docket sheet; or they might ask the clerk's office.

If the advisory committees are inclined to consider such amendments, questions about implementation arise. For example, should the exemption extend only to service on registered CM/ECF users, or should it also encompass service on non-CM/ECF users who have registered with the court to receive notices of electronic filing in the case? And, of course, there are drafting questions. As to the latter, I sketch below – purely for purposes of illustration – one possible way to accomplish this type of amendment; but there may well be better ways to implement the idea. The sketch below illustrates a possible amendment to Civil Rule 5:

Rule 5. Serving and Filing Pleadings and Other Papers

* * *

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service <u>on non-users of electronic-filing [and electronic-noticing] system[s]</u> ~~in General~~. A paper is served under this rule <u>on [one who has not registered for the court's electronic-filing system] [one who has not registered for either the court's electronic-filing system or a court-provided electronic-noticing system]</u> by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address--in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) ~~sending it to a registered user by filing it with the court's electronic-filing system or~~ sending it by ~~other~~ electronic means that the person consented to in writing--in ~~either of~~ which event~~s~~ service is complete upon ~~filing or~~ sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing--in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) ~~Using Court Facilities. [Abrogated (Apr. 26, 2018, eff. Dec. 1, 2018.)]~~ **Service on users of the court's electronic-filing [or electronic-noticing] system**. A paper is served under this rule on a registered user of [either] the court's electronic-filing system [or a court-provided electronic-noticing system] by filing it, in which event service is complete upon filing, but is not effective if the filer learns that it did not reach the person to be served.

* * *

(d) Filing.

(1) Required Filings; Certificate of Service.

* * *

(B) Certificate of Service. No certificate of service is required when a paper is served ~~by filing it with the court's electronic-filing system~~ under subdivision (b)(3). When a paper that is required to be served is served by other means:

(i) if the paper is filed, a certificate of service must be filed with it or within a reasonable time after service; and

(ii) if the paper is not filed, a certificate of service need not be filed unless filing is required by court order or by local rule.

* * *

III. Conclusion

The FJC Study has given the advisory committees an invaluable factual basis on which to consider whether amendments to the national rules might usefully address questions of electronic filing, and questions of service, by self-represented litigants. As noted in Part II, an additional question is whether the rulemaking committees might recommend that other groups within the federal judiciary consider fostering increased access through means other than rule amendments. I look forward to learning from the advisory committees' discussion of those possibilities.

Federal Courts'

Electronic Filing by Pro Se Litigants

Federal Judicial Center
2022

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FEDERAL COURTS' ELECTRONIC FILING BY PRO SE LITIGANTS

Tim Reagan, Carly Giffin, and Roy Germano
Federal Judicial Center 2022

We learned from several dozen federal clerks of court and members of their staffs that pro se litigants[1] are sometimes able to file electronically using the federal courts' Case Management/Electronic Case Files (CM/ECF) system, but many courts are hesitant to allow pro se filing in CM/ECF. Prisoners have limited access to the internet at most, so it is seldom feasible for them to use CM/ECF.

Many courts accept filings from pro se litigants, including prisoners, by electronic submission: email, PDF upload, or online form. Like paper submissions, the electronic submissions are docketed as electronic filings by the court's staff. Concerns about malware and cost are among the reasons that courts have not embraced more extensively electronic submission alternatives to CM/ECF.

We conducted this research at the request of the federal rules committees' working group on pro se electronic filing. The most salient rules-related lessons of this research are (1) perhaps paper filers should not be required to serve their filings on parties already receiving electronic service; and (2) because electronic filing is sometimes understood to mean filing using CM/ECF and sometimes understood to mean submitting filings electronically, such as by email, perhaps the rules should clarify their references to electronic filing.

Contents

1. We use the expression "pro se," but we recognize the growing trend to use less jargony expressions, such as "self represented," "unrepresented," "not represented," "uncounseled," "lawyerless," "without an attorney," and "without counsel." The legal community has not yet settled on a preferred alternative to "pro se," and we have declined to weigh in.

Method

Important Distinctions

We kept four distinctions in mind:

1. *Case Initiation.* There is a big difference between using CM/ECF to file in an existing case and using CM/ECF to initiate a case. The former is much more available to pro se litigants than the latter.
2. *Electronic Submission.* There is a difference between electronically submitting something to the court—by email, electronic drop box, or preparation software—and actually using CM/ECF to file it. Submissions are converted into filings by the court's staff after a quality control review.
3. *Prisoners.* Prisoners do not have unrestricted access to the internet, so their ability even to submit things electronically depends upon procedures developed by the prisons.
4. *Case Types.* Appeals, civil cases, criminal cases, and bankruptcy cases present different pro se electronic filing challenges and opportunities.

Interview Questions

There are 190 clerks of court. This includes one for each of the ninety-four district courts and the thirteen courts of appeals. There are only ninety bankruptcy courts, because there is one bankruptcy court for both districts in Arkansas and three territorial districts have bankruptcy divisions, not separate bankruptcy courts. There seven districts with district court clerks who also oversee the districts' bankruptcy courts. We contacted seventy-nine clerks of court, and all but one agreed to participate in this study. We found a loosely structured interview to be an effective method. We spoke with the clerks or other knowledgeable members of their staffs.

Following are the topics that we discussed.

1. *Permitted.* Are pro se litigants permitted to file electronically?
2. *Prisoners.* Are prisoners ever able to submit filings electronically?
3. *Other Filers.* In bankruptcy cases, to what extent can parties appearing without attorneys, such as pro se creditors, use CM/ECF?
4. *Procedures.* What are the procedures that pro se litigants follow to become electronic filers?
5. *Initiating Cases.* Can pro se litigants initiate cases electronically? In some courts, even attorneys do not open cases in CM/ECF directly; they may submit initial documents to the court electronically, but it is the court that actually opens the case and assigns it a case number.

6. *Criminal Cases.* Are criminal cases opened electronically by the U.S. Attorney's office, or are they opened with the submission of a paper indictment or other charging document? Are criminal defendants ever able to file electronically? Few criminal defendants are pro se, they are typically detained, and they usually have assigned stand-by counsel who help them with filing and service.
7. *Service.* Are paper filers required to provide paper service to parties who are receiving electronic service? Paper filings are docketed electronically by the court, so electronic service on other parties occurs as a matter of course. But some courts require separate service.
8. *Email and Fax.* Does the court ever accept filings by email, fax, or electronic drop box?
9. *Signatures.* When the court receives electronic submissions, as by email or fax, what are the court's requirements for signatures?
10. *Drop Box.* Does the court have a physical drop box? Where is it located? When is it available? Physical drop boxes often were removed when the court began using electronic filing, and they often came back because of the COVID-19 pandemic.
11. *Time Stamp.* How do things submitted to a drop box get a time stamp?

Court Selection

From December 2021 through March 2022, we interviewed clerks' offices for five of the thirteen courts of appeals, thirty-nine of the ninety-four district courts, and forty of the ninety-three bankruptcy courts and divisions.

From 2019 through 2022, we studied filing times of day for another project.[2] From a review of court rules for the filing-time project, we were able to classify courts into those that (1) generally permit the use of CM/ECF by pro se litigants, (2) permit pro se use of CM/ECF with permission, (3) forbid pro se use of CM/ECF, and (4) do not clearly state one way or the other whether pro se litigants can seek permission to use CM/ECF.

Among the courts of appeals, five generally permit pro se use of CM/ECF, seven permit it with permission, and one forbids it. We selected one court at random from each group, and we also interviewed the courts of appeals for two unusual circuits: the Ninth, because of its unusual size and complexity, and the Federal, because of its unusual jurisdiction.

There are ten districts that do not have separate bankruptcy clerks of court, including the three territorial courts without separate bankruptcy courts. We interviewed the clerks' offices for four selected at random. In addition, we interviewed the clerks' offices for the two other districts that explicitly authorize pro se use of CM/ECF in the district court, one generally (the District of Vermont) and one with permission (the District of Columbia).

2. Tim Reagan, Carly Giffin, Jessica Snowden, George Cort, Jana Laks, Roy Germano, Marie Leary, Saroja Koneru, Jasmine Elmasry, Nafeesah Attah, Rachel Palmer, Annmarie Khairalla, and Danielle Rich, Electronic Filing Times in Federal Courts (Federal Judicial Center 2022), www.fjc.gov/content/365889/electronic-filing-times-federal-courts.

We interviewed thirty-three district courts where the same clerk does not oversee both district court and bankruptcy cases. We interviewed eighteen selected at random. We interviewed five additional district courts so that we would have interviewed all seven that generally permit nonprisoner pro se use of CM/ECF in civil cases, including one that requires pro se use of CM/ECF unless the judge grants an exception (the Northern District of Texas). We interviewed an additional district court that we initially but erroneously thought generally permitted nonprisoner pro se use of CM/ECF. We interviewed one additional district court so that we would have interviewed four of the fourteen that do not clearly state one way or the other whether pro se use of CM/ECF is permitted. We selected to interview at random two of the thirteen district courts that forbid pro se use of CM/ECF, but one court declined to participate. We interviewed another two with rules forbidding pro se use of CM/ECF, because in the filing-time project we observed pro se use of CM/ECF in 2018.

We interviewed the Eastern District of Washington, because its rules state that pro se electronic filing is possible for prisoners. It turns out to be electronic submission rather than use of CM/ECF. We interviewed the Southern District of Alabama, because its rules state that pro se use of CM/ECF can be ordered. The judges wanted this option, but they have never used it. We decided to interview the District of Arizona, because it is often regarded as a model court with respect to judicial policy initiatives. And we interviewed two district courts because their rules provide for a time-of-day deadline before midnight, a feature relevant to the filing-time project.

We interviewed thirty-four bankruptcy courts where the same clerk does not oversee both district court and bankruptcy cases. We interviewed twenty-one selected at random. We interviewed seven additional bankruptcy courts so that we would have interviewed all eight with rules stating that they permit pro se use of CM/ECF with permission. We interviewed one of the remaining six bankruptcy courts, out of eight total, with rules explicitly forbidding pro se use of CM/ECF.

We interviewed another five bankruptcy courts that use the "electronic self-representation" (eSR) module for electronic submission of bankruptcy petitions. These were not selected precisely at random, because we learned about some using eSR after we made the selections.

Observations

Electronic Filing by Attorneys

Electronic presentation to the court of a document to be included in the case file is faster than regular mail and faster than personal delivery, if the filer has the necessary electronic equipment. Electronic filing has been an option in federal courts for about two decades.

There has long been a distinction between submission of a document to the court and filing it. In the days of paper filing, if a document was obviously suitable for filing, a counter clerk would stamp copies "filed" and add the document to the appropriate case file. Otherwise, the counter clerk would stamp

copies something like "received," and the court would later determine whether it would be included in the case file. A document presented to the court but not immediately accepted for filing was frequently referred to as "lodged" with the court.

With CM/ECF, there is an important distinction between using CM/ECF to immediately add a document to a case file, true e-filing, and otherwise submitting a document to the court, which then perhaps uses CM/ECF to add the document to the case file. The court may do this with a document it receives electronically or with a document it receives on paper.

In most district courts, an attorney opens a civil case directly by filing a complaint in CM/ECF, thereby immediately creating a new case record with a new case number. Attorneys are sometimes interrupted, and they sometimes make mistakes. Failed attempts to create new cases used to result in skipped case numbers. Because skipped case numbers look like sealed cases, courts now typically reuse case numbers for cases that were never fully opened.

In some courts, attorneys may use CM/ECF to file complaints, but they do not create new cases that way. The complaint may be filed in a shell case, and then deputy clerks transfer the new filing to a new case record. A few courts still receive complaints on paper, even from attorneys who will use CM/ECF for later filings in existing cases.

Procedures for filing a bankruptcy petition are similar to procedures for filing a civil complaint.

Criminal cases are typically opened by paper indictment, information, or complaint, which deputy clerks file into new cases. Even if the court accepts filings for new criminal cases electronically, it is typically the court and not the U.S. attorney's office that opens the case in CM/ECF.

In the courts of appeals, it is always members of the court staff who open the cases. When a notice of appeal is filed in a district court, and the filing fee paid to the district court, the staff of the district court electronically transmits the most relevant parts of the record to the court of appeals, and the staff of the court of appeals opens a new case, assigning it a case number. Agency appeals and mandamus actions—original cases in the courts of appeals—can be opened using CM/ECF, but attorneys do not open the cases directly. Similar to how some district courts accept new complaints in shell cases, CM/ECF is used in the courts of appeals to submit an original action electronically, but it is court staff that actually make the new case's electronic record live with a case number.

Once a case is opened, attorneys generally are required to use CM/ECF to file.

Pro Se Filing in the Courts of Appeals

Filing in the courts of appeals is less complicated than filing in the district and bankruptcy courts. It is mostly briefs, with the occasional motion practice. The typical case has an appellant brief, an appellee brief, maybe a reply brief, and a decision. According to their local rules and administrative procedures, five

courts of appeals generally permit pro se litigants to register as CM/ECF users[3] and seven allow them to do so with individual permission.[4] The electronic filing guide for one court states that the court does not permit pro se litigants to use CM/ECF,[5] but some pro se litigants have been granted electronic filing privileges as exceptions to the rule.

Nonprisoner Civil Cases

Based on a review of all local rules,[6] the rules for somewhat more than half of the district courts state that nonprisoner pro se litigants are permitted to use CM/ECF to file in their existing cases with individual permission (55%). At least nine courts permit nonprisoner pro se litigants to register as CM/ECF users without advance permission (9.6%),[7] but they usually can file only in their existing cases. Pro se plaintiffs seldom can use CM/ECF to file their complaints. The rules for fourteen district courts state that pro se litigants may not use CM/ECF (15%).[8] The rules for the other district courts do not specify one way or the other whether pro se litigants can use CM/ECF (19%).

To use CM/ECF, the filer must have an email address and be able to create PDFs. Typically it is the presiding judge who considers pro se requests to use CM/ECF, which typically are presented by formal motion. In some courts, the approval decision is made by the clerk's office, and a less formal application is required. Courts generally avoid giving electronic filing privileges to vexatious litigants.

Many courts are leery of letting pro se litigants use CM/ECF, but those that have done so reported fewer problems than expected. Electronic filing saves court time that otherwise would be spent scanning documents.

Pro se litigants sometimes have mental health issues that might result in filings that depart from customary practice. Even without mental health issues, they sometimes make errors using CM/ECF. Attorneys make errors sometimes as well. But attorney errors are somewhat easier to correct than pro se

3. The courts of appeals for the First, Third, Eighth, Eleventh, and Federal Circuits.

4. The courts of appeals for the District of Columbia, Second, Fourth, Fifth, Seventh, Ninth, and Tenth Circuits.

5. The court of appeals for the Sixth Circuit.

6. A review for another project of all of the courts' local rules and all of the courts' office hours was conducted by Tim Reagan, Carly Giffin, Jessica Snowden, Saroja Koneru, Jasmine Elmasry, Nafeesah Attah, Rachel Palmer, Annmarie Khairalla, and Danielle Rich.

7. The district courts for the Northern District of Illinois, the Southern District of Illinois, the District of Kansas, the Western District of Missouri, the District of Nebraska, the Northern District of Texas (where nonprisoner pro se litigants are typically required to use CM/ECF), the District of Vermont, the Western District of Washington, and the Western District of Wisconsin.

8. The district courts for the Middle District of Alabama, the Northern District of Alabama, the District of Alaska, the Northern District of Georgia, the Northern District of Mississippi, the Southern District of Mississippi, the District of Montana, the District of New Jersey, the Eastern District of North Carolina, the Western District of North Carolina, the District of North Dakota, the Western District of Oklahoma, the Eastern District of Virginia, the District of Wyoming.

errors, because the court does not owe attorneys the same level of forgiveness that it owes pro se litigants. Also, because attorneys are familiar with the rules, their mistakes do not arise from substantial misunderstandings about procedures.

Courts that have transitioned to the Next Generation of CM/ECF (NextGen) do not give litigants CM/ECF filing privileges directly. A litigant first registers with Pacer (the federal courts' Public Access to Court Electronic Records). Then the court links the Pacer account to CM/ECF filing privileges in the court. Typically the court limits the filing privileges to the pro se litigants' existing cases.

Electronic Filing in Civil Cases by Prisoners

Prisoners cannot use CM/ECF, because they do not have sufficient access to the internet. Some courts have arrangements with some prisons, generally state rather than federal prisons, for electronic submission of prisoner filings. In some arrangements, electronic submission is mandatory and prisoners are not permitted to file on paper.

Typically, a prisoner presents a filing to the prison librarian, who scans it and emails it to the court. Some prisons accept electronic notices on behalf of the prisoners, and then convert them to paper documents. Many prisons do not, so prisoners must be served with other parties' filings and court filings by regular mail.

Courts that have adopted electronic communications with prisoners reported a reduction in controversies over the reliability of prison mail.

Some courts currently require, or used to require, prisons to send to the court in batches the original documents that were scanned and submitted electronically for the prisoners. That provides the court with originals in case there is a problem with the scans, and it provides the court with wet signatures.[9]

Criminal Cases

It is theoretically possible for a pro se criminal defendant who is not detained to obtain CM/ECF filing privileges in some district courts. But criminal defendants are often detained. Very few are pro se. Even those that are pro se typically have appointed standby counsel, and one of the things that standby counsel does is assist the defendants with filing.

Pro Se Electronic Filing in Bankruptcy Cases

It is very unusual for pro se debtors to receive CM/ECF privileges.

Several courts offer eSR, which is now easily available to courts using NextGen CM/ECF. This "electronic self-representation" module allows the

9. A wet signature is an original signature made with a writing device (generally with temporarily wet ink) on physical paper. *See generally* Molly T. Johnson, Bankruptcy Court Rules and Procedures Regarding Electronic Signatures of Persons Other than Filing Attorneys (Federal Judicial Center 2013), www.fjc.gov/content/317113/bankruptcy-court-rules-and-procedures-regarding-electronic-signatures-persons-other.

debtor to prepare a bankruptcy petition package on the court's website, including the petition itself, statements, schedules, and the creditor matrix. The package is electronically submitted to the court, and the debtor must provide payment and signature pages separately, either by regular mail or by a visit to the court.

One of eSR's advantages for the court is that the petitions generated with eSR are structurally whole. The petitions are legible, because they are not handwritten. The debtor benefits from eSR's helping the debtor to create the petition in addition to the obvious benefits of avoiding the inconvenience of travel to the court or the delay of regular mail. Some courts are concerned, however, that eSR may make filing a petition too easy, because the debtor receives no advice on whether bankruptcy is the right way to go. Also, eSR does not really provide electronic self-representation, because actual representation would extend beyond the filing of a petition. Subsequent filings cannot be submitted with eSR. Still, some bankruptcies are "one and done," in that the debtor does not file anything after the initial petition package, which includes the petition itself and the necessary schedules and statements.

Many bankruptcy courts allow pro se creditors to register with CM/ECF as limited filers. Alternatively, most courts allow pro se creditors to use the courts' electronic proof of claim (ePOC) portals. CM/ECF filing privileges are more likely to be granted to and used by large businesses that are frequent filers.

Electronic Submission

Forms of electronic submission other than filing in CM/ECF offer many of the benefits of true electronic filing without requiring a pro se litigant to master CM/ECF. Arrangements with prisons for electronic submissions by prisoners are an example. Some courts otherwise accept submissions by email. A few accept submissions by electronic drop box, a web portal that allows a user to upload a PDF. Many to most courts do not accept such electronic submissions.

Electronic submission saves the court the time required to scan paper documents, and it relieves courts of the sometimes physically difficult mail they can get from prisons. Electronic submissions often do require staff time to organize or even sift through PDFs to convert submissions to proper filings. And there are security concerns when the court gets electronic submissions directly from pro se litigants. The court does not have to scan a paper document into an electronic one, but it may need to scan the email for malware.

Although the Administrative Office has developed eSR for bankruptcy petitions, it does not appear to have developed a module for courts to receive other electronic submissions, and costly security requirements have dissuaded some courts from developing their own. Several courts reported that they developed their own electronic drop boxes, typically called the Electronic Document Submission System (EDSS). Courts are also looking at Box.com as an option.

Most courts do not generally accept filings by email or fax, and fax is now a seldom-used method of submission anyway. Many courts have accepted

emergency filings by email with individual special arrangements. During the COVID-19 pandemic, some courts became more lenient with email filings, and some of those courts have become less lenient again as the pandemic eased.

Considering our sampling scheme, we can estimate how many courts have accepted electronic submissions by prisoner or nonprisoner pro se litigants for filing, one way or another, at least occasionally, and perhaps because of the COVID-19 pandemic: 69% of the courts of appeals, 80% of the courts where the same clerk oversees both district court and bankruptcy cases, 50% of the other district courts, and 78% of the other bankruptcy courts.

Physical Drop Boxes

Many courts stopped using drop boxes with the advent of electronic filing. Some began to use them again during the COVID-19 pandemic, when many intake counters closed or reduced their hours.[10] Drop boxes also facilitated social distancing by relieving a filer of a visit to the counter. Some courts that established drop boxes during the pandemic have continued to use them, and some have not.

In a few courts, the drop box is available at all hours, typically because it is outside the building, but in at least one location because the building never closes. Much more commonly, the drop box is available only for a short time before the clerk's office opens and for a short time after it closes, because it is only available during the building's open hours. Although it is typical for a time stamp to be at the drop box, some drop boxes do not have time stamps. If the drop box does not have a time stamp, documents retrieved in the morning typically are dated as received the day before.

Many courts are concerned about the security threat posed by a drop box, especially if it were to be accessible from outside the building's security. Use of drop boxes that do exist appears to be light.

Filing Fees

In many courts, filing fees can be paid electronically using Pay.gov.

Interestingly, many courts no longer accept cash, and those that do often cannot make change. It is sometimes more expensive to maintain bank accounts and transport cash to the bank than the court receives in cash fees.

Bankruptcy courts generally do not accept payment by personal check, debit card, or credit card for bankruptcy petition filing fees. Cashier's check, money order, and sometimes cash are accepted. Some bankruptcy courts accept payments via Pay.gov, but that requires special arrangements with Pay.gov to block credit card and debit card options.

10. Court hours are given in this report for each court in the study based on research done in 2019, before the COVID-19 pandemic.

Signatures

Electronic signatures are a part of using CM/ECF. Documents submitted electronically some other way will not have wet signatures, but they may have images of original signatures.

The bankruptcy courts are much more concerned about original signatures than the district courts and the courts of appeals are. Filings in the district courts and the courts of appeals do not generally have the same immediate impact on the filer and others, aside from an obligation to respond, as the filing of a bankruptcy petition does. In the district courts and the courts of appeals, an impact on others generally requires court action.

During the COVID-19 pandemic, some courts accepted images of original signatures without requiring wet signatures as an emergency measure.

If a wet signature is required, it must be submitted within a certain number of days after an electronic submission. That is generally the requirement for use of eSR. In the district courts, filers are sometimes required only to maintain original wet signatures for a period of time in case they are needed.

Electronic Notice and Service

Some courts permit pro se litigants to register for electronic notice of other parties' filings without having CM/ECF filing privileges. CM/ECF electronic notice gives an attorney or a pro se litigant one free look at the filing. If the recipient of the notice does not print or download the document during the one free look, then the recipient will have to pay Pacer fees to look at it again. If a party is represented by more than one attorney, each attorney may get his or her own one free look.

In the bankruptcy courts, pro se debtors can register for the Bankruptcy Noticing Center's debtor electronic bankruptcy noticing (DeBN).

Some courts do not require paper filers to separately serve other parties who already are receiving electronic notice. In some courts, there still is a separate service requirement on paper, but it may not be enforced. Rules are rules, except when they are not rules. But when rules are not rules, when are rules rules? In some courts, separate service is required, and certificates of service are carefully examined to make sure they reflect service on all parties.

Information About Individual Courts

The following narratives present what we learned from each of the seventy-eight clerks' offices participating in this study (a sample size of 41%).

Courts of Appeals

The Court of Appeals for the First Circuit

This court was selected for this study at random from among the courts of appeals.

The United States Court of Appeals for the First Circuit has six judgeships. The clerk's office in Boston is open from 8:30 to 5:00. 1st Cir. I.O.P. ¶ I.B.

Electronic filing is governed by the court's Rule 25.0. Nonprisoner pro se litigants are permitted to register as filers in CM/ECF. *Id.* R. 25.0(c). "Unless otherwise required by statute, rule, or court order, filing must be completed by midnight in the time zone of the circuit clerk's office in Boston to be considered timely filed that day." *Id.* R. 25.0(d)(3).

Pro se litigants can use CM/ECF without advance permission, but only the clerk's office actually opens cases. Direct appeals begin with the submission of records by the district courts or the Bankruptcy Appellate Panel (BAP) following notices of appeal; the staff in the court of appeals uses those submissions to open cases and assign case numbers. In direct appeals, the filing fee is paid to the district court or to the BAP. Electronic filers can submit initial documents using CM/ECF in petitions for review of agency decisions, mandamus actions, and applications to file successive habeas corpus petitions. The clerk's office uses the electronic submissions to open the cases.

Except on rare occasions, the court does not accept submissions from filers by email or fax. Because of office closures during the COVID-19 pandemic, it established a drop box, which is available when the building is open, a few hours longer than regular court hours. There is a time stamp available at the drop box for filers' use, and the drop box is checked by the court's staff at least twice a day.

There is no procedure for prisoners to file electronically.

The Court of Appeals for the Sixth Circuit

This court of appeals was selected for this study because it is the only one with rules forbidding electronic filing by pro se litigants.

The United States Court of Appeals for the Sixth Circuit has sixteen judgeships. The clerk's office in Cincinnati is open from 8:00 to 5:00.

Electronic filing is governed by the court's Rule 25 and the court's Guide to Electronic Filing [hereinafter ECF Guide], *see* 6th Cir. R. 15. "No unrepresented party may file electronically; unrepresented parties must submit documents in paper format. The clerk will scan such documents into the ECF system, and the electronic version scanned in by the clerk will constitute the appeal record of the court as reflected on its docket." 6th Cir. ECF Guide ¶ 3.3. Pro se litigants have occasionally been granted individual exceptions to this proscription. The court is exploring more expansive permission for pro se electronic filing.

Because of the COVID-19 pandemic, the court began permitting nonprisoner pro se litigants to submit filings by email without advance permission. This resulted in some improper emails, such as an article a pro se litigant thought, in the middle of the night, that the court should read. The court is more comfortable with email submission than CM/ECF filing for pro se litigants because it gives the clerk's office a chance to review submissions before they are docketed. As it is, even attorneys sometimes make mistakes with their filings, incorrect docket entries are locked, and attorneys are notified of the errors so that they can correct them.

There is no provision in the circuit for electronic submission by prisoners. Paper submissions by prisoners are sometimes physically filthy.

Signatures in email submissions must be handwritten and scanned.

Paper filers must provide paper service even to parties receiving electronic service. Case managers scrutinize certificates of service.

Fax submissions are not accepted. Nor does the court have a physical drop box.

One challenge of electronic docketing is electronic notice. Sometimes attorneys' email addresses change, such as when they change firms. The clerk's office has to track down new email addresses for those attorneys. Electronic notice to pro se filers could pose similar problems, although litigants' street addresses also could change. Pro se litigants currently receive notice only by regular mail. A temporary difficulty arose when the Ohio Department of Corrections decided that each piece of mail to a prisoner had to be registered electronically and individually in advance. The problem was remedied by granting the federal courts an exception, although they still had to register as recognized senders.

The Court of Appeals for the Ninth Circuit

This court of appeals was selected for this study because of its unusual size and complexity.

The United States Court of Appeals for the Ninth Circuit has twenty-nine judgeships. The clerk's office in San Francisco is open from 8:30 to 5:00.

Electronic filing is governed by the court's Rule 25-5 and the court's CM/ECF User Guide. Instructions in the Guide for pro se filers imply opportunities for pro se litigants to file electronically.

In fact, the court encourages pro se use of CM/ECF. Pro se litigants can register through Pacer to use CM/ECF, and they are not limited to use of CM/ECF in pending cases. The clerk regards litigants as customers, so pro se litigants should be afforded high-quality customer service.

Prisoners who can submit filings to the district courts electronically, generally with the help of prison librarians, can also submit filings electronically to the court of appeals. During the COVID-19 pandemic, the court began to more generally allow pro se filing by email.

The courts of appeals for the Ninth and Second Circuits are developing a new case-management system to replace CM/ECF. Pro se litigants are not yet given filing privileges in the new system.

Electronic filings made by 11:59 p.m. are docketed as filed that day. 9th Cir. R. 25-5(c)(2).

The Court of Appeals for the Tenth Circuit

This court was selected for this study at random from among the courts of appeals with rules stating that pro se litigants can file electronically with permission.

The United States Court of Appeals for the Tenth Circuit has twelve judgeships. The clerk's office in Denver is open from 8:00 to 5:00.

Electronic filing is governed by the court's Rule 25.3 and the court's CM/ECF User's Manual. A pro se litigant may seek permission to file electronically. 10th Cir. CM/ECF User's Man. ¶¶ II.A.2 and .C.2. The court has delegated to the clerk's office authority to grant electronic filing privileges to pro se litigants. It is on a case-by-case basis, and available only in pending cases. The request can be made by motion or more informally by letter. There are no specific form or content requirements. The court looks at prospective electronic filers' litigation history for evidence of vexatious filing.

Electronic filing privileges have not been granted to criminal defendants or prisoners. But during the COVID-19 pandemic, the court did arrange with a medium-security facility in Wyoming for electronic transmission of a prisoner's filings to the court and electronic transmission to the facility of the court's filings.

The court has a new rule in 2022 that relieves paper filers of the obligation of paper service on parties receiving electronic notice. 10th Cir. R. 25.4(C).

The court does not accept filings by email or fax, except in emergencies. It does have a drop box in its Denver courthouse with a time-stamp machine. The drop box was set up because of COVID-19 closures, but it will remain. It is only available during the court's business hours, but it is available to persons who do not wish to comply with the court's COVID-19 vaccination requirement for entry, and they do not have to go through security.

"Electronic filing must be completed before midnight, Mountain Standard Time, as shown on the Notice of Docket Activity, to be considered timely filed on the day it is due." 10th Cir. CM/ECF User's Man. ¶ II.D.1.

The Court of Appeals for the Federal Circuit

This court of appeals was selected for this study because of its unusual jurisdiction.

The United States Court of Appeals for the Federal Circuit has twelve judgeships. The clerk's office in Washington is open from 8:30 to 4:30.

Electronic filing is governed by the court's Rule 25 and the court's Electronic Filing Procedures [hereinafter ECF Procs.]. The court also has a Guide for Unrepresented Parties [hereinafter Pro Se Guide]. Unrepresented parties may register as CM/ECF users, "but new notices of appeal or petitions for review must be filed in paper or by email." Fed. Cir. ECF Procs. ¶ II.A; *see* Fed. Cir. R. 25(a)(1)(B) (permitting the clerk to allow pro se electronic filing); Fed Cir. Pro Se Guide ¶ I.C.

An appeal is initiated by filing a notice of appeal and paying the filing fee in the district court, which transfers to the court of appeals a partial record: the docket sheet, the notice of appeal, and the order being appealed. The clerk's office for the court of appeals then electronically opens the appeal. Counsel can open agency appeals using CM/ECF; they electronically submit initiating

documents to the clerk's office, which then opens the case. Pro se litigants cannot use CM/ECF to initiate cases, but they can initiate agency appeals by email. The court does not otherwise accept filings by email or fax. Currently, pro se litigants who initiate cases by email have the option to continue as either electronic or paper filers.

The court requires courtesy paper copies of all briefs to be delivered or shipped to the court.

"Papers may be deposited until midnight on weekdays in the night box at the garage entrance . . . ." Fed Cir. Pro Se Guide ¶ I.A. Documents are time stamped for the previous day when the clerk's office retrieves them in the morning.

Although the rules technically require paper filers to serve parties receiving electronic service, this is not enforced. Parties, counseled or otherwise, can agree with each other to service by email.

"Unless a time for filing is ordered by the court, filing must be completed before midnight Eastern Time on the due date to be considered timely." Fed. Cir. R. 26(a)(2); *see* Fed. Cir. ECF Procs. ¶ IV.A.16(a) ("Filers in other time zones must account for any time difference to ensure a filing is completed before midnight (Eastern) on the day the document is due.").

Combined District and Bankruptcy Courts

The District and Bankruptcy Courts for the District of Columbia

This district was selected for this study because its district court rules state that pro se electronic filing is allowed with permission in both civil and criminal cases. It is one of the districts where the district court clerk is also the bankruptcy court clerk.

The United States District Court for the District of Columbia has fifteen judgeships and one office code: Washington (office code 1). The United States Bankruptcy Court for the District of Columbia has one judgeship and one office, also Washington.

The clerk's office is open from 9:00 to 4:00.

Electronic filing in the district court is governed by the court's Civil Rule 5.4 and the court's Criminal Rule 49. "A *pro se* party may obtain a CM/ECF user name and password from the Clerk with leave of Court." D.D.C. Civ. R. 5.4(b)(2); *id.* Crim. R. 49(b)(2). Pro se parties cannot open cases electronically, but they can receive permission from the presiding judge to use CM/ECF in pending cases. The court has not experienced much in the way of abuse of the privilege.

Electronic filing in the bankruptcy court is governed by the court's Rule 5005-4 and the court's Administrative Procedures for Filing, Signing, and Verifying Documents by Electronic Means [hereinafter ECF Procs]. "Pro se debtors and other parties (other than creditors and claimants) not represented by counsel may not file electronically; therefore, the Administrative Procedures do not apply to such filers." Bankr. D.C. Administrative Order Relating to

Electronic Case Filing ¶ 2. Pro se creditors and financial management agents can receive limited electronic filing privileges.

Because of the challenges posed by the COVID-19 pandemic, the courts began to allow submissions of filings by email. That option may extend beyond the pandemic.

Attorneys open civil and bankruptcy cases directly with CM/ECF. Criminal cases are opened by the clerk's office from a paper indictment or complaint. Some criminal complaints may be submitted electronically.

Paper filers do not have to separately serve other parties receiving electronic service, except for filings that initiate contested or adversary matters in the bankruptcy court.

The courts' drop box is available at all hours. If the building is closed, a security officer will respond to a buzzer to allow entry for use of the drop box. There is a time stamp present.

In the bankruptcy court, "The 'last day' set for filing a paper ends at midnight in the Court's time zone, unless otherwise specified, whether the filing is an electronic filing or a filing in paper form." Bankr. D.C. R. 9006-1(b); *see* Bankr. D.C. ECF Procs. ¶ II.A.5 ("The deadline for filing, unless otherwise specifically set, is 11:59:59 P.M. of the due date (Eastern Time).").

The District and Bankruptcy Courts for the District of Idaho

This district was selected for this study at random from among the districts where the district court clerk is also the bankruptcy court clerk.

The United States District Court for the District of Idaho has two judgeships. The United States Bankruptcy Court for the District of Idaho also has two judgeships. Both courts have the following four office codes: Boise (office code 1), Pocatello (office code 4), Coeur d'Alene (office code 2), and Moscow (office code 3). The bankruptcy court also has an office in Twin Falls (office code 8).

The clerk's office is open from 9:00 to 4:00. D. Idaho Civ. R. 77.1; Bankr. Idaho R. 1001.2.

Electronic filing in the district court is governed by the court's Civil Rule 5.1, and electronic filing in the bankruptcy court is governed by the court's Rule 5003.1. Electronic filing in both courts is also governed by the courts' Electronic Case Filing Procedures [hereinafter ECF Procs.]. D. Idaho Civ. R. 5.1(b); Bankr. Idaho R. 5003.1(b). According to them, "If the Court permits, a party to a pending action who is not represented by an attorney may register as a Registered Participant in the Electronic Filing System solely for purposes of the action." Bankr. Idaho ECF Procs. ¶ 3.A.4.

In fact, pro se litigants are never granted CM/ECF filing privileges. The court has a substantial pro se caseload, and it does not have the staff to provide pro se CM/ECF filings with adequate quality control. Pro se creditors may receive limited CM/ECF filing privileges to file their proofs of claim.

Detention facilities have acquired scanners, and paralegals there submit a majority of pro se filing from there electronically. About the only filings that

the court receives by regular mail from there are very long evidentiary documents.

Because CM/ECF registration waives the right to paper service, paper filers do not have to separately serve other parties who are already receiving electronic service.

The courts do not have a physical drop box.

"An electronic document is considered timely if received by the Court before midnight, Mountain Time, on the date set as a deadline, unless the judge specifically requires another time frame." D. Idaho ECF Procs. ¶ 2.B.2.

The District and Bankruptcy Courts for the Western District of Missouri

This district was selected for this study at random from among the districts where the district court clerk is also the bankruptcy court clerk.

The United States District Court for the Western District of Missouri has five judgeships, and it shares two additional judgeships with the Eastern District. The United States Bankruptcy Court for the Western District of Missouri has three judgeships. The courts have five office codes: Kansas City (office code 4), Springfield (office code 6), Jefferson City (office code 2), St. Joseph (office code 5), and Joplin (office code 3).

The clerk's office is open from 9:00 to 4:30. *See* Bankr. W.D. Mo. NextGen CM/ECF Procs. ¶ V.A.

Electronic filing in the bankruptcy court is governed by the court's NextGen CM/ECF Administrative Procedures Manual. Electronic filing by pro se debtors is not permitted.

Electronic filing in the district court is governed by the court's Rule 5.1 and the court's CM/ECF Civil and Criminal Administrative Procedures Manual and User's Guide. Pro se filers may use CM/ECF in civil cases but not in criminal cases. *See* W.D. Mo. R. 5.1. They must initiate cases on paper, but the court approves CM/ECF filing privileges for subsequent filings in active cases. Litigants register through Pacer, and their filings immediately appear on the docket. Most pro se litigants still file on paper, but there are currently a little over a dozen electronic filers. Paper filers cannot opt for electronic notice.

Pro se litigants in active civil cases, not bankruptcy cases, can use the court's electronic drop box: Electronic Document Submission System (EDSS). When a litigant begins to use EDSS, the litigant consents to electronic notice and service going forward. Pro se filers are encouraged to either use EDSS or file on paper, but not both. Scanned signatures are adequate; paper signatures are not required. Approximately two dozen pro se litigants are currently using EDSS. Submissions by email or fax are not otherwise accepted.

The court accepts electronic submissions from prisoners in ten state prisons, and in those prisons electronic submission is mandatory. *See* W.D. Mo. Procedures for the Prisoner Electronic Filing Program. Paper submissions are returned. The court has provided scanners, which the prisoners use themselves. Electronic notices of other filings are sent to the prisons, and librarians

or other staff members print out the notices for the prisoners. In the future, the court would like to be able to receive submissions from federal prisoners electronically.

Paper filers are not required to provide paper service on parties receiving electronic service.

The court has a drop box in the clerk's office, which is checked each morning. Submissions are deemed filed on the previous day.

The District Court for the District of the Northern Mariana Islands, Including Its Bankruptcy Division

This district was selected for this study at random from among the districts where the district court clerk is also the clerk of court for bankruptcy cases.

The United States District Court for the District of the Northern Mariana Islands has one judgeship and one office code: Saipan (office code 1). Bankruptcy cases are heard in the district court's bankruptcy division.

The clerk's office is open from 8:00 to 12:00 and from 1:00 to 4:30.

The court's Administrative Procedures for Electronic Filing and Electronic Service for the United States District Court for the Northern Mariana Islands are included as Appendix A to the court's local rules. *See* D.N.M.I. R. 5.1. Pro se parties may register as e-mail filers. *Id.* app. A § 2. The clerk's office converts the emails to filings, and it does not otherwise accept filings by email or fax. Scanned signatures are adequate.

Permission to file by email is granted by the judge based on a written application. Access to technology and fluency in English are considerations. Many pro se litigants are not fluent in English, and they benefit from interaction with court staff when they file. The clerk's office must be careful not to provide the legal advice that litigants often seek.

Even attorneys do not initiate cases in CM/ECF. The clerk's office opens cases on paper filings.

There is no arrangement for electronic submission by prisoners, who are not located on the island.

Paper filers do not have to separately serve other parties who are receiving electronic notice.

The court does not have a drop box.

"Filing must be completed before midnight local time for the Northern Mariana Islands in order to be considered timely filed that day." D.N.M.I. R. app. A § 3.

The District and Bankruptcy Courts for the District of Vermont

This district was selected for this study because its district court rules state that pro se litigants can file electronically. It is one of the districts where the district court clerk is also the bankruptcy court clerk.

The United States District Court for the District of Vermont has two judgeships and two office codes: Burlington (office code 2) and Rutland (office

code 5). The United States Bankruptcy Court for the District of Vermont has one judgeship and one office, in Burlington.

The clerk's office is open from 8:30 to 5:00.

Electronic filing in the district court is governed by the court's Administrative Procedures for Electronic Case Filing [hereinafter ECF Procs.]. D. Vt. R. 5(b). "A non-prisoner who is a party to a civil action and who is not represented by an attorney may register as an ECF user." D. Vt. ECF Procs. ¶ (E)(2); *see also id.* ¶ (Q). Rarely to never have electronic filing privileges been denied or abused. It is possible to register as an ECF user and file on paper but receive electronic service of other parties' filings. There are no provisions for electronic submissions to the court by prisoners.

All cases in the district court are initiated on paper.

In bankruptcy cases, "The Clerk accepts documents by e-mail for filing. The Court prefers attorneys file documents via CM/ECF, rather than e-mailing them to the Clerk for filing, and requires non-attorneys who wish to file documents electronically to transmit their documents to the Clerk via e-mail." Bankr. Vt. R. 5005-4(a)(1). Only once has a pro se debtor ever requested CM/ECF privileges.

Paper filers do not have to separately serve other parties who are receiving electronic notices.

The courts do not accept filings by fax, and they do not have a drop box. The courts never closed during the COVID-19 pandemic.

In the district court, "All electronic transmissions of documents must be completed prior to midnight, Eastern Time, in order to be considered timely filed that day. D. Vt. ECF Procs. ¶ (H).

The District Court for the District of the Virgin Islands, Including Its Bankruptcy Division

This district was selected for this study at random from among the districts where the district court clerk is also the clerk of court for bankruptcy cases.

The United States District Court for the District of the Virgin Islands has two judgeships and two office codes: Charlotte Amalie, St. Thomas (office code 3), and Christiansted, St. Croix (office code 1). The district court has a bankruptcy division.

The clerk's office is open from 8:00 to 5:00.

Electronic filing is governed by Civil Rule 5.4. Electronic filing in bankruptcy cases is governed by the court's Bankruptcy Rule 1002-2 and the court's Electronic Case Filing Procedures [hereinafter ECF Procs.].

Pro se litigants may receive permission to use CM/ECF, but once they become represented by counsel their electronic filing privileges must be terminated. D.V.I. Civ. R. 5.4(b)(2). Permission is granted by the presiding judge on a motion filed in the case, and it is typically granted. Litigants register for CM/ECF through Pacer, complete a Pro Se ECF Registration Form, and then receive training with the clerk's office or online. They typically get the hang of it. It would be possible for a pro se debtor to request CM/ECF privileges, but

the court has few pro se debtors, and none has requested electronic filing privileges.

Attorneys open civil cases directly, but pro se plaintiffs file their complaints on paper. The clerk's office scans and electronically dockets pro se complaints. The clerk's office opens criminal cases from paper indictments, informations, and complaints.

The court does not have an arrangement with a prison facility for electronic submission of prisoner filings.

Paper filers do not have to serve other parties already receiving electronic service.

The court's two locations have drop boxes, which are used during court closures. They are available when the building is open.

In emergencies, the court can accept pro se filings by email. The court does not accept filings by fax.

"Unless otherwise ordered by the Court, a filing must be completed before 11:59 p.m. U.S. Virgin Islands time in order to be considered timely filed that day." *Id.* Civ. R. 5.4(c)(4); *see* D.V.I. Bankr. R. 1002-2.F ("Filing a document electronically must be completed by midnight local time on the applicable deadline for filing."); *see also* D.V.I. Bankr. ECF Proc. 5.

District Courts

The District Court for the Northern District of Alabama

This court was selected for this study at random from among the district courts with rules stating that pro se electronic filing is not permitted.

The United States District Court for the Northern District of Alabama has eight judgeships and seven office codes: Birmingham (office code 2), Huntsville (office code 5), Gadsen (office code 4), Tuscaloosa (office code 7), Anniston (office code 1), Florence (office code 3), and Jasper (office code 6).

The clerk's office is open from 8:30 to 4:30.

Electronic filing is governed by two documents, one for civil cases and one for criminal cases: Administrative Procedures for Filing, Signing, and Verifying Pleadings and Documents in the District Court Under the Case Management/Electronic Case Files System [hereinafter ECF Procs.]. "Pro se litigants shall [conventionally] file paper originals of all complaints, pleadings, motions, affidavits, briefs, and other documents which must be signed or which require either verification or an unsworn declaration under any rule or statue." N.D. Ala. Civ. ECF Procs. ¶ III.B (omitting the word "conventionally"); N.D. Ala. Crim. ECF Procs. ¶ III.B (including the word "conventionally"). The court has not granted any exceptions to the proscription on use of CM/ECF by pro se litigants.

Generally, paper filers are required to serve paper copies of their filings on other parties, even parties receiving electronic service. On occasion, a sophisticated pro se litigant has been excused by the presiding judge from paper service on parties receiving electronic service. Pro se litigants themselves may opt

for electronic service, but they often also request paper copies of individual documents, perhaps because they have not saved their one free look.

The court does not accept filings by email or fax. For security reasons, neither does it have a drop box.

"Pleadings or documents will be deemed timely filed on any particular date if filed prior to midnight on that date unless otherwise limited by order of this court." N.D. Ala. Civ. ECF Procs. ¶ II.A.4; N.D. Ala. Crim. ECF Procs. ¶ II.A.3.

The District Court for the Southern District of Alabama

This court was selected for this study because its rules provide for requiring electronic filing by pro se litigants.

The United States District Court for the Southern District of Alabama has three judges and two office codes: Mobile (office code 1) and Selma (office code 2).

The clerk's office is open from 10:00 to 3:00.

Electronic filing is governed by the court's General Rule 5(b) and the court's Administrative Procedure for Filing, Signing, and Verifying Documents by Electronic Means in the United States District Court for the Southern District of Alabama [hereinafter ECF Procs.]. "Any party not represented by an attorney must file conventionally unless specifically allowed by the Clerk's Office or required by court order to file electronically." S.D. Ala. ECF Procs. ¶ I.B.4; *see id.* ¶ III.B ("Pro se filers may . . . register for electronic filing, subject to approval by the Clerk's Office in its discretion."). According to the court's Pro Se Litigant Handbook, "A judge may order that you use CM/ECF to understand what is happening with your case and to file documents. . . . You may also request that the Court grant you filing privileges on the CM/ECF system." *Id.* at 20.

Pro se use of CM/ECF is not common. The judges wanted to be able to order pro se electronic filing, but it does not appear that any has done so. Permission is granted by the clerk's office upon an oral request. It is not possible for prisoners to use CM/ECF.

Attorneys can use CM/ECF to open civil cases. The clerk's office cleans up errors and provides for the reuse of case numbers for cases that were never completely opened. As in other courts, criminal cases are opened by the clerk's office based on paper filings. It has not been the case that a pro se litigant has been able to use CM/ECF to open a case. It is theoretically possible for a pro se criminal defendant to be granted electronic filing privileges, but that has never happened. Pro se defendants have appointed standby counsel.

It may be the case that paper filers technically are required to do paper service on other parties, but in practice paper service on parties receiving electronic service is not necessary. Pro se filers given CM/ECF privileges must understand that the court will not provide them with paper service.

The court does not accept filings by email or fax. Before moving to its new location, the court did have a nighttime drop box, available at all hours, with

a time stamp machine. It was checked every court day. A drop box has not yet been established at the courthouse that the court moved to in 2018.

There is an interest in expanding electronic filing by pro se litigants and ensuring consistency in how the privilege is granted.

"Generally, a document will be deemed timely if electronically filed prior to midnight on the deadline fixed by court order or applicable rule or statute." S.D. Ala. ECF Procs. ¶ II.A.5.

The District Court for the District of Arizona

This court was selected for this study because it is often regarded as a model court with respect to judicial policy initiatives.

The United States District Court for the District of Arizona has thirteen judgeships and three office codes: Phoenix (office code 2), Tucson (office code 4), and Prescott (office code 3).

The clerk's office is open from 8:30 to 4:30.

Electronic filing is governed by the court's Electronic Case Filing Administrative Policies and Procedures Manual [hereinafter ECF Procs.]. *See* D. Ariz. Civ. R. 5.5(a); *id.* Crim. R. 49.3.

> *Pro Se Filers.* Unless otherwise authorized by the court, all documents submitted for filing to the Clerk's Office by parties appearing without an attorney must be in legible, paper form. The Clerk's Office will scan and electronically file the document.
>
> A pro se party seeking leave to electronically file documents must file a motion and demonstrate the means to do so properly by stating their equipment and software capabilities in addition to agreeing to follow all rules and policies referred to in the ECF Administrative Policies and Procedures Manual. If granted leave to electronically file, the pro se party must register as a user with the Clerk's Office and as a subscriber to PACER within five (5) days.
>
> A pro se party must seek leave to electronically file documents in each case filed. If an attorney enters an appearance on behalf of a pro se party, the attorney must advise the Clerk's Office to terminate the login and password for the pro se party.

D. Ariz. ECF Procs. § II.B.3.

The court's judges consistently require permission for pro se use of CM/ECF to be by formal motion.

The court's website has an e-Pro Se page that helps pro se litigants fill out complaints, but the complaints are submitted on paper. This option is not available to prisoners. Electronic submission is available at a limited number of state prisons, including the two largest. The court does not otherwise accept filings by email or fax.

Civil cases in this court are not initiated directly by attorneys; complaints are filed in a shell case, and then the clerk's office uses those filings to open new cases.

Paper filers need not serve other parties who receive electronic service.

The court has drop boxes in Phoenix and Tucson, which it set up because of the COVID-19 pandemic. The drop boxes are available from about half an

hour before court hours to about half an hour after court hours. Submissions are retrieved at least twice a day, and they are date stamped when retrieved.

The District Court for the Eastern District of Arkansas

This court was selected for this study because it has a filing deadline relevant to another study.

The United States District Court for the Eastern District of Arkansas has five judgeships and five office codes: Little Rock (Central Division, office code 4, the main courthouse), Jonesboro (Northern Division, office code 3, a clerk's office and courtroom in a federal building), and Helena (Delta Division, office code 2, a courtroom but no clerk's office).

The clerk's office is open from 8:00 to 5:00.

The Eastern and Western Districts of Arkansas share a single set of local rules. Electronic filing in the Eastern District is governed by the Eastern District's CM/ECF Administrative Policies and Procedures Manual for Civil Filings [hereinafter Civ. ECF Procs.] and the court's CM/ECF Administrative Policies and Procedures Manual for Criminal Filings [hereinafter Crim. ECF Procs.]. "A person not represented by an attorney is generally not allowed to electronically file and must submit paper for filing. Electronic filing is only permitted by court order." E.D. & W.D. Ark. R. 5.1; *but see* E.D. Ark. Civ. ECF Procs. ¶ I.B ("Pro se parties shall not be permitted to file electronically."); E.D. Ark. Crim. ECF Procs. ¶ I.B (same). According to the clerk, pro se filings must be made by mail or hand delivery. There is no drop box.

The court has a heavy caseload of prisoner petitions, but also a substantial number of pro se filings by nonprisoners.

"If a document is filed prior to midnight, it shall be docketed on that day. However, time sensitive filings, which are electronically filed on the last day of any given deadline, shall be filed by 5:00 p.m., unless otherwise ordered by the Court." E.D. Ark. Civ. ECF Procs. ¶ III.A.3; E.D. Ark. Crim. ECF Procs. ¶ III.A.3. In practice, "time sensitive" means having a due date, so the 5:00 rule applies quite generally. It was established when the court discontinued use of a drop box at the advent of electronic filing as a matter of equity for attorneys, who can file electronically after hours, and pro se litigants, who cannot.

The District Court for the Western District of Arkansas

This court was selected for this study at random from among the district courts.

The United States District Court for the Western District of Arkansas has three judgeships and six office codes: Fayetteville (office code 5), Hot Springs (office code 6), Fort Smith (office code 2), Texarkana (office code 4), Harrison (office code 3), and El Dorado (office code 1).

The clerk's office is open from 8:00 to 5:00.

The Eastern and Western Districts of Arkansas share a single set of local rules. Electronic filing is governed by the court's Administrative Policies and Procedures Manual for Civil and Criminal Filings [hereinafter ECF Procs.].

"A person not represented by an attorney is generally not allowed to electronically file and must submit paper for filing. Electronic filing is only permitted by court order." E.D. & W.D. Ark. R. 5.1 "All case initiating documents (*e.g.*, civil complaint, notice of removal, criminal complaint, indictment, information, etc.), any pleading or document that adds a party or criminal count (*e.g.*, amended complaint, third-party complaint, superseding indictment, etc.) must be filed conventionally." W.D. Ark. ECF Procs. ¶ III.A.1.a. Electronic submissions, such as by email or on disc, are accepted. *Id.* "Pro se parties may request permission from the presiding judge to submit documents for filing to a designated email address on a case-by-case basis." *Id.* ¶ I.B.

CM/ECF privileges have been granted to pro se litigants quite rarely. The court believes that pro se use of CM/ECF would only work for a sophisticated party without a history of vexatious filing.

There are no procedures for receiving filings by email from prisons; email and fax filings in general are permitted on rare occasions with the judge's permission. Paper filings received from pro se litigants are scanned and shredded.

The court sometimes uses drop boxes at some of its facilities when the clerk's office is closed, such as because of the COVID-19 pandemic. Documents retrieved in the morning are time stamped for the previous day.

"A document will be deemed timely filed if CM/ECF generates an NEF prior to midnight, Central Time, on the date it is due. However, the assigned Judge may order that the document must be filed by a specific time." W.D. Ark. ECF Procs. ¶ III.A.3.

The District Court for the Eastern District of California

This court was selected for this study at random from among the district courts.

The United States District Court for the Eastern District of California has six judgeships and five office codes: Sacramento (office code 2), Fresno (office code 1), Yosemite (office code 6), Bakersfield (office code 5), and Redding (office code 3).

The clerk's office is open from 9:00 to 4:00.

Electronic filing is governed by the court's Rules 133(a) and (b) and by its CM/ECF User Manual. *See also* E.D. Cal. R. 400(a) ("Local Rules 100 to 199 and 300 to 399 are fully applicable in criminal actions in the absence of a specific Criminal Rule directly on point."). "Any person appearing pro se may **not** utilize electronic filing except with the permission of the assigned Judge or Magistrate judge." E.D. Cal. R. 133(b)(2). Pro se use of CM/ECF is rare. Permission typically is reviewed by the magistrate judge assigned to the case. Considerations are capable and responsible use.

The procedure for a pro se litigant to become an e-filer has grown more challenging with NextGen CM/ECF.

For prisoners, there is an arrangement with the state prison system for prison librarians to scan and submit by email initiating documents. *See* Stand-

ing Order, *In re Procedural Rules for Electronic Submission of Prisoner Litigation Filed by Plaintiffs Incarcerated at Participating Penal Institutions* (E.D. Cal. Feb. 24, 2016, effective Mar. 1, 2016); Standing Order, *In re Procedural Rules for Electronic Submission of Prisoner Litigation Filed by Plaintiffs Incarcerated at Corcoran and Pleasant Valley State Prisons* (E.D. Cal. Sept. 24, 2014). This option is not currently available for later filings in the case. Over time, the prisons will consider whether the burdens of scanning and emailing are outweighed by the burdens of handling regular mail. Electronic submission of complaints has not opened litigation floodgates.

The court has made arrangements with the California Department of Corrections and Rehabilitation to accept service by email on behalf of prison defendants. This has proved to be much faster than waiting for service by the U.S. marshal.

There are few pro se filings by federal prisoners.

The court does not otherwise accept filings by email, and it does not accept filings by fax. Because of the COVID-19 pandemic, the court established drop boxes at its main offices when the buildings were closed. A difficultly with drop boxes is that court staff cannot review a filing for compliance while the filer is in the building.

"A document will generally be deemed filed on a particular day if filed before midnight (Pacific Time) on that business day." E.D. Cal. R. 134(b).

The District Court for the District of Colorado

This court was selected for this study at random from among the district courts.

The United States District Court for the District of Colorado has seven judgeships and one office code: Denver (office code 1).

The clerk's office is open from 8:00 to 5:00.

Electronic filing is governed by the court's Civil Rule 5.1(a), the court's Electronic Case Filing Procedures for (Civil Cases) [hereinafter Civ. ECF Procs.], and the court's Electronic Case Filing Procedures for the District of Colorado (Criminal Cases) [hereinafter Crim. ECF Procs.]. Nonprisoner pro se parties may use CM/ECF in civil cases after training and the court's approval. D. Colo. Civ. R. 5.1(b)(3); D. Colo. Civ. ECF Procs. ¶ 2.2(b). Before NextGen CM/ECF, parties would request registration from the court. Now they register with Pacer and make a request to the court for a link between their Pacer account and the court's filing system. Approval comes from the clerk's office; judicial approval is not necessary. Approval requires a pending case, so initiating documents are not filed by pro se litigants in CM/ECF.

Attorneys must use CM/ECF, and they initiate civil cases directly. Criminal cases are opened by the clerk's office based on paper indictments. It has probably not been the case that a pro se criminal defendant used CM/ECF. The local rules do not contemplate that.

At the beginning of the COVID-19 pandemic, the court put out a drop box when the intake counter was closed, but it removed the drop box when the

counter opened again. The court also set up an email address for pro se parties to submit filings electronically, and the court is likely to retain this option. Court staff members are pleased to not have to scan or touch the filings that come in this way. The court gave up fax communications years ago.

A few years ago, the court established an arrangement with a state prison for electronic submissions from prisoners. That relationship ended, but now the court has a relationship with another state prison. The court provided the scanner. The prison does not accept electronic notices on behalf of prisoners. Paper filers must serve even parties receiving electronic service.

The clerk's office likes receiving filings electronically. Pro se users of CM/ECF often appreciate immediate confirmation that their filings are part of the court record.

"Unless otherwise ordered, an electronically filed pleading or document shall be filed no later than 11:59:59 p.m. (Mountain Time) on the day required." D. Colo. Civ. R. 77.1; *id.* Crim. R. 56.1; *see also* D. Colo. Civ. ECF Procs. ¶ 4.2(a) (similar); D. Colo. Crim. ECF Procs. ¶ 4.2(a) (similar).

The District Court for the District of Delaware

This court was selected for this study at random from among the district courts.

The United States District Court for the District of Delaware has four judgeships and one office code: Wilmington (office code 1).

The court's office hours are 8:30 to 4:00. D. Del. R. 77.1. The court never closed during the pandemic, and the office hours never changed.

Electronic filing is governed by the court's Administrative Procedures Governing Filing and Service by Electronic Means [hereinafter ECF Procs.]. D. Del. R. 5.1(a). With the court's permission, pro se parties may file using CM/ECF. D. Del. ECF Procs. ¶ N.

Pro se CM/ECF filing privileges are obtained by motion to the presiding judge. Applicants are required to read the court's electronic filing tips and create a Pacer account. Judges almost always grant electronic filing privileges to pro se litigants. The court typically relates multiple cases with the same pro se litigant. Electronic filing privileges terminate when the case is over, or because of problem filings.

Since 2017, pro se prisoners can file by email. There is a scanner in the principal federal prison in Delaware. No other litigants are permitted to file by email. Prisoners can initiate cases by email; nonprisoner pro se litigants cannot. Nor can attorneys.

The court does not have a drop box.

In civil cases, only members of the Delaware bar may submit court filings. In criminal cases, attorneys in good standing with other bars may apply for filing privileges.

> Aside from initial pleadings, all electronic transmissions of documents (including, but not limited to, motions, briefs, appendices, and discovery re-

> sponses) must be completed by 6:00 p.m. Eastern Time, in order to be considered timely filed and served that day. All electronic transmissions of initial pleadings must be completed prior to midnight Eastern Time, in order to be considered timely filed that day.

D. Del. ECF Procs. ¶ F.

The District Court for the Northern District of Florida

This court was selected for this study at random from among the district courts with rules that do not state whether pro se electronic filing is permitted.

The United States District Court for the Northern District of Florida has four judgeships and four office codes: Pensacola (office code 3), Tallahassee (office code 4), Panama City (office code 5), and Gainesville (office code 1). The Panama City intake counter has been closed since it was destroyed by a hurricane.

The clerk's office is open from 8:00 to 4:30 in Pensacola and from 8:30 to 5:00 in Tallahassee.

Electronic filing is governed by the court's Rule 5.4.

Pro se electronic filing is permitted with a judge's permission, but permission has only been granted once, several years ago.

Attorneys open civil cases directly; criminal cases are opened by the clerk's office from paper indictments, informations, or complaints.

Paper filers are required to serve even parties receiving electronic service. The court is looking into whether that rule can be adjusted for prisoners, and the court is interested in cooperating with state and federal facilities for electronic submission of filings.

The court does not accept filings by email or fax, and it only uses drop boxes when the court is closed because of things like the COVID-19 pandemic.

"A filing is made on a date if it is made prior to midnight on that date in local time at the place of holding court in the division where the case is pending." N.D. Fla. R. 5.4(E).

The District Court for the Southern District of Georgia

This court was selected for this study at random from among the district courts.

The United States District Court for the Southern District of Georgia has three judgeships and six office codes: Savannah (office code 4), Augusta (office code 1), Brunswick (office code 2), Waycross (office code 5), Statesboro (office code 6), and Dublin (office code 3).

The clerk's office is open from 8:30 to 5:00.

Electronic filing is governed by the court's General Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means [hereinafter ECF Procs.]. S.D. Ga. R. 5.5.

Pro se litigants may not file using CM/ECF. Filings are accepted by email only in special circumstances ordered by a judge, and not by fax.

Attorneys submit complaints in CM/ECF to a shell case, and after a review the clerk's office uses a shell-case filing to open a civil case. Criminal cases also are opened by the clerk's office, from paper indictments and complaints.

The court used a drop box when the counter was closed because of the COVID-19 pandemic, but it does not use one now.

> The Notice of Electronic Filing reflects the date and time the electronic transmission of a document is completed. Accordingly, a document will be deemed timely filed if the Notice of Electronic Filing reflects a time *prior* to midnight on the due date. However, the assigned judge may order that a document be filed by a certain time, which then becomes the filing deadline.

S.D. Ga. ECF Procs. ¶ II.A.1.c.

The District Court for the Northern District of Illinois

This court was selected for this study because its rules state that pro se litigants can file electronically.

The United States District Court for the Northern District of Illinois has twenty-two judgeships and two office codes: Chicago (office code 1) and Rockford (office code 3).

The clerk's office is open from 8:30 to 4:30.

The court has a general order on Electronic Case Filing. N.D. Ill. Gen. Ord. 16-0020 (Nov. 16, 2004). "A party to a pending civil action who is not represented by an attorney and who is not under filing restrictions imposed by the Executive Committee of this Court, may register as an E-Filer solely for purposes of the case." *Id.* IV(B)(1). "Parties who are in custody are not permitted to register as E-Filers." *Id.* IV(B)(3).

The court is in the process of converting to NextGen CM/ECF. The court permits a nonprisoner pro se litigant to register as a CM/ECF filer in the litigant's existing case after successfully completing an online training module. They are allowed two attempts to complete the training successfully. No judicial approval is required. CM/ECF filing privileges have never been granted to a pro se criminal defendant.

Pro se litigants who are not filing electronically can sign up to receive electronic notice of other parties' filings.

The districts in Illinois have an arrangement with the state prisons for mandatory electronic submission of filings by pro se prisoners. (Electronic submission is not mandatory when a prison is on lockdown.) The court provides the scanners, which scan and email the submissions for filing. Prisoners still receive service of other parties' filings by regular mail. The filers' scanned signatures are adequate.

Paper filers do not have to serve other parties already receiving electronic service.

The court has never accepted filings by fax, but during the COVID-19 pandemic it began to accept filings from pro se litigants by email. The emails must be sent to a designated email address, the subject line and the email text must

contain certain information, and the filing must be in PDF form. The court is considering a move to Box.com.

The Chicago courthouse has a drop box available at all hours in the building lobby, and it is accompanied by a time stamp. The building housing the Rockford courthouse is not open overnight, but it does open a bit before the clerk's office and closes a bit later. The drop box there also has a time stamp.

An aspiration of the court's is a way for pro se litigants to submit digital exhibits.

"Filing must be completed before midnight Central Time in the Northern District of Illinois in order to be considered timely filed that day." N.D. Ill. Gen. Ord. 16-0020 V(G).

The District Court for the Southern District of Illinois

This court was selected for this study because its rules state that pro se litigants can file electronically.

The United States District Court for the Southern District of Illinois has four judgeships and two office codes: East St. Louis (office code 3) and Benton (office code 4).

The clerk's office is open from 9:00 to 4:30.

Electronic filing is governed by the court's Electronic Filing Rules. "Pro se filers *may*, but do not have to utilize the ECF system." *Id.* R. 1. CM/ECF privileges are granted by motion to the chief judge. About 90% of the motions are granted. The court typically has four or five active pro se users of CM/ECF.

The court has an arrangement with several of the state's prisons for electronic submission of prisoner filings. The prisons also accept electronic notice of other parties' filings on behalf of the prisoners, but the notices do not include the actual filings. Those still have to be mailed to the prisoners.

Aside from the arrangement with prisons, the court does not accept filings by email or fax. Earlier in the COVID-19 pandemic, while members of the clerk's staff were working at home, the court accepted pro se filings by email.

Scanned signatures are acceptable.

Criminal cases are opened by the clerk's office on paper filings. It would theoretically be possible for a pro se criminal defendant who is not detained to be granted CM/ECF filing privileges, but it has not happened.

The court does not have an after-hours drop box at either of its locations.

"Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day, unless a specific time is set by the court." S.D. Ill. ECF R. 3.

The District Court for the Southern District of Indiana

This court was selected for this study at random from among the district courts.

The United States District Court for the Southern District of Indiana has five judgeships and four office codes: Indianapolis (office code 1), Evansville (office code 3), Terre Haute (office code 2), and New Albany (office code 4).

The clerk's office is open from 8:30 to 4:30.

Electronic filing is governed by the court's Electronic Case Filing Policies and Procedures Manual [hereinafter ECF Procs.]. The court's local rules acknowledge the possibility of pro se electronic filing: "**Electronic Filing by an Unrepresented Person.** If authorized to file electronically pursuant to Fed. R. Civ. P. 5(d)(3)(B), the person's electronic signature . . . ." S.D. Ind. R. 5-3(e). Pro se litigants rarely seek permission from the presiding judge to use CM/ECF. It is theoretically possible for a pro se criminal defendant who is not detained to get CM/ECF privileges.

The court now permits pro se litigants to file by email. General Order, *In re Email Submissions to the Court*, No. 1:22-mc-1 (S.D. Ind. Jan. 14, 2022, D.E. 2). The court converts email submissions to filings. Faxes are not accepted. Pro se litigants can file complaints by email, but not using CM/ECF.

All four courthouses have drop boxes. In Indianapolis and Evansville, each drop box is outside the courthouse in a federal building, outside security and available when the building is open, with somewhat more expanded hours than the clerk's office. Submissions are automatically time stamped.

The court's General Order 2014-1 established an "E-Filing Program" for state prisoners. The program is in place in all of Indiana's state prisons except for the one private prison. There is no similar program for federal prisoners.

Prison librarians scan documents and submit them to the court for filing. The court serves complaints on defendants. Notices of electronic filing are sent to prison librarians. Defendants are required to mail copies of documents that they file to the prisoners.

Prison librarians periodically mail batches of originals to the court, where they are held for three months and then shredded. This permits rescanning if an original scan is bad.

"A document due on a particular day must be filed before midnight local time of the division where the case is pending." S.D. Ind. R. 5-4(a).

The District Court for the District of Kansas

This court was selected for this study because its rules state that pro se litigants can file electronically.

The United States District Court for the District of Kansas has six judgeships and five office codes: Kansas City (office code 2), Wichita (office code 6), Topeka (office code 5), Junction City (office code B), and Leavenworth (office code 3).

The clerk's office is open from 9:00 to noon and from 12:30 to 4:30.

Electronic filing is governed by the court's Rules 5.4.2 through 5.4.13, the court's Criminal Rules 49.1 through 49.13, and the court's Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in the United States District Court for the District of Kansas [hereinafter ECF Procs.], one set of procedures for civil cases and another set of procedures for criminal cases. "A party [in a civil case] who is not represented by an attorney may register as a Filing User in the Electronic Filing System." D. Kan.

R. 5.4.2(d); *see* D. Kan. Civ. ECF Procs. ¶ I.C.5.a. Registration requires a wet signature. Pro se litigants are not permitted to use CM/ECF to open cases; their CM/ECF privileges are limited to the existing case or cases for which they have registered for privileges. A CM/ECF registration form may accompany the complaint. Many pro se litigants register to receive electronic notices without doing electronic filing. They understand that the court cannot provide them with technical assistance using their own equipment.

Pro se litigants are permitted to email or fax filings to the court. Other parties are not, except in extraordinary circumstances. Filers by email or fax must follow up with wet signatures.

Prisoners in state facilities transmit filings to the court through the prison librarian, who scans the filings and emails them to the court. The prison receives electronic notice of other parties' filings, but the court also sends paper copies to the prisoners. Persons in federal facilities and local jails must file on paper.

"A party to a criminal action who is not represented by an attorney may not register as a Filing User in the Electronic Filing System unless the court permits." D. Kan. Crim. R. 49.2. Pro se use of CM/ECF in a criminal case may have never come up. Criminal cases are opened by flash drive from the U.S. attorney's office.

Paper filers are supposed to serve on paper even other parties who receive electronic service, but this requirement is not enforced and probably at least frequently not followed.

Drop boxes were removed several years ago.

"Filing must be completed before midnight central time to be considered timely filed that day." D. Kan. R. 5.4.3(e); *id.* Crim. R. 49.3; *see* D. Kan. Civ. ECF Procs. ¶ II.A.5; *id.* Crim. ECF Procs. ¶ II.A.4.

The District Court for the District of Maine

This court was selected for this study because we thought that its rules state that pro se litigants can file electronically, but we misread the rules. Pro se litigants can receive permission to submit filings electronically.

The United States District Court for the District of Maine has three judgeships and two office codes: Portland (office code 2) and Bangor (office code 1).

The clerk's office is open from 8:00 to 4:30.

Electronic filing is governed by the court's Rule 5(c) and the court's Administrative Procedures Governing the Filing and Service by Electronic Means, D. Me. R. app. IV. "A non-prisoner who is a party to a civil action and who is not represented by an attorney may register to receive service electronically and to electronically transmit their documents to the Court for filing in the ECF system." *Id.* app. IV, ¶ (b)(2); *see id.* ¶ (o) ("Non-prisoner pro se litigants in civil actions may register with ECF or may file (and serve) all pleadings and other documents in paper."); *see also* D. Me. Information for Pro Se Parties at 8 ("By registering to file electronically you are also consenting to be served electronically . . . ."). Pro se litigants approved for CM/ECF registration

are permitted to submit filings to a court email address. The court then scans and electronically dockets the submissions. This policy has been in place since the court began using CM/ECF. The "/s/" format for a signature is now acceptable.

Until the COVID-19 pandemic, registration for email submission happened after the complaint was filed on paper. During the pandemic, some litigants were granted permission to email their complaints.

Prisoners still file on paper.

The court has very rarely received and accepted filings by fax.

The court has a drop box at each location, which filers can access when the building is open. There is not a time stamp there. During the COVID-19 pandemic closure, filers were instructed to write the date and time of the deposit on the envelope containing the filing.

"All electronic transmissions of documents must be completed prior to midnight, Eastern Time, in order to be considered timely filed that day." D. Me. R. app. IV, ¶ (f).

The District Court for the District of Massachusetts

This court was selected for this study because it has a filing deadline relevant to another study.

The United States District Court for the District of Massachusetts has thirteen judgeships and three office codes: Boston (office code 1), Springfield (office code 3), and Worcester (office code 4).

The clerk's office is open from 8:30 to 4:30.

Electronic filing is governed by the court's Rule 5.4 and the court's CM/ECF Case Management/Electronic Case Files Administrative Procedures [hereinafter ECF Procs.]. *See* D. Mass. R. 5.4(b). Nonprisoner pro se parties may register as CM/ECF filers after training and with the court's permission. D. Mass. ECF Procs. ¶ E.2. The court gets about five dozen requests a year, and a substantial majority of the requests are granted. The court does not have procedures for prisoners to submit filings electronically.

On at least one occasion, the court granted electronic filing privileges to a criminal defendant. It took a bit of research to configure the user's account to make it work.

Complaints must be filed in paper form by pro se litigants. The court does not accept filings by fax or email. It is exploring the possibility of creating a way for pro se litigants to use the court's website to upload a complaint that the court can convert into a filing.

The court is interested in exploring software that asks a litigant questions and then generates a text document that the litigant can edit before filing. The court is also contemplating a kiosk where a pro se litigant could scan and upload a filing.

Filing must be complete by 6:00 p.m. on the date due. D. Mass. R. 5.4(d); D. Mass. ECF Procs. ¶ K. The 6:00 rule was established when the court began using CM/ECF. The court does not have physical drop boxes. During the early

months of the COVID-19 pandemic, the court used drop boxes when the court's hours were curtailed.

The District Court for the District of Minnesota

This court was selected for this study at random from among the district courts.

The United States District Court for the District of Minnesota has seven judgeships and four office codes: Minneapolis (office code 4), St. Paul (office code 3), Duluth (office code 5), and Fergus Falls (office code 6). Cases other than petty offense cases generally are assigned 0 as the office code; infractions on federal property generally are assigned C as the office code.

The clerk's office is open from 8:00 to 4:30.

Electronic filing is governed by the court's Rule 5.1 and the court's civil and criminal Electronic Case Filing Procedures Guides [hereinafter ECF Procs.]. D. Minn. R. 5.1. "Pro se filers (including prisoners) cannot open new cases electronically; they must submit the initiating documents in paper." D. Minn. Civ. ECF Procs. at 7. Nonprisoner pro se parties may apply for permission to use CM/ECF to file other documents in civil cases. D. Minn. Civ. ECF Procs. at 3; D. Minn. Crim. ECF Procs. at 3. Permission is granted by the clerk's office. The court does not generally allow pro se litigants who are not CM/ECF filers to register for electronic notices; judges have ordered a few exceptions. The court has a pro se mailing program that automatically prints out filings by the court, such as judicial orders, with mailing labels for pro se litigants who are paper filers.

The court began granting CM/ECF filing privileges to pro se litigants in 2009, and about 350 pro se litigants have used CM/ECF since then. Some have signed up and then later realized what they got themselves into. For example, some were surprised that they were no longer receiving paper notices. Some pro se CM/ECF filers went back to paper filing. Since the court began using NextGen CM/ECF, the more complicated method for signing up to use CM/ECF—registering as a Pacer user first—weeded out some of the technically unsophisticated.

On one occasion, a pro se criminal defendant sought permission to use CM/ECF. The clerk's office consulted the presiding judge, who denied the request, because the defendant had standby counsel.

The court would like to receive electronic submissions from prisoners, but explorations of that possibility were interrupted by the COVID-19 pandemic.

Attorneys open their civil cases on CM/ECF directly. The clerk's office opens criminal cases, typically from paperless submissions. Some matters, such as pen registers, can be opened directly by the U.S. attorney's office.

Aside from documents opening criminal cases, the court does not accept filings by email or fax.

Paper filers are supposed to serve all other parties, even those receiving electronic service, but that may not always happen.

All four court locations have intake counters. The court only uses a drop box when the counter is closed for weather or the COVID-19 pandemic. Most paper filing comes in by mail.

A document will be deemed to be filed on time if filed electronically before midnight or filed conventionally before 4:30 p.m. on the day that it is due, unless the presiding judge orders otherwise. D. Minn. Civ. ECF Procs. at 2; D. Minn. Crim. ECF Procs. at 2.

The District Court for the District of Nebraska

This court was selected for this study at random from among the district courts. Its rules state that pro se electronic filing is permitted.

The United States District Court for the District of Nebraska has three judgeships and three office codes: Omaha (office code 8), Lincoln (office code 4), and North Platte (office code 7).

The clerk's office is open from 8:00 to 4:30.

Electronic filing is governed by the court's General Rule 1.3, Civil Rule 5.1, and Criminal Rule 49.1. Pro se parties in pending civil cases may register as CM/ECF filers. *Id.* Gen. R. 1.3(b)(1). A pro se party with a pending case can request a login and password in Pacer, and this happens fairly frequently in this court. If a pro se party does not have a pending case, the request is denied. The unsuccessful filing request typically is a mistaken effort to obtain Pacer access. Pro se parties cannot initiate cases electronically; only at the counter, by mail, or using the court's drop box.

Pro se criminal defendants have occasionally been granted CM/ECF filing privileges by presiding judges on a case-by-case basis.

There is no procedure in this district for electronic submissions from prisoners. A document scanned in prison would not provide the court with an original signature.

The court does not generally accept filings by email or fax, but an exception was granted to a litigant with vision issues when CM/ECF vision accommodations were not working.

Paper filers are required to serve their filings on other parties, even parties receiving electronic service, and the court typically does not intervene if it sees service was by email. Parties can work out service among themselves, and motions for failure to serve are rare.

During closures for the COVID-19 pandemic, the court established drop boxes, which have been available during building hours, slightly more expansive than clerk hours. There are time stamps at the drop boxes.

The court maintains a miscellaneous case record for pro se filings that do not appear to relate to pending cases. It creates a record of the filings, which often are meant for other courts.

"A document is considered timely filed if filed before midnight Central Standard Time (or Central Daylight Time, if in effect). However, the assigned judge may order a document filed by a time certain." D. Neb. Civ. R. 5.1(d); *id.* Crim. R. 49.1(d).

The District Court for the Northern District of New York

This court was selected for this study at random from among the district courts.

The United States District Court for the Northern District of New York has five judgeships and seven office codes: Albany (office code 1), Syracuse (office code 5), Plattsburgh (office code 8), Binghamton (office code 3), Utica (office code 6), Watertown (office code 7), and prisoner petitions (office code 9).

The clerk's office is open from 9:00 to 4:00.

The clerk's office is open from 10:00 to 3:00.

Electronic filing is governed by the court's Administrative Procedures for Electronic Case Filing [hereinafter ECF Procs.]. *See* N.D.N.Y. R. 5.1.1; N.D.N.Y. Gen. Order No. 22, *Procedural Order on Electronic Case Filing* (Dec. 10, 2021). Nonprisoner pro se parties may be granted permission by the court to file using CM/ECF. N.D.N.Y. ECF Procs. ¶ 12.1. The motion is reviewed by the magistrate judge assigned to the case. The clerk recommends that the motion be considered after the Rule 16 conference so that the court can assess whether the litigant can handle electronic filing.

The judges were reluctant to allow pro se use of CM/ECF, because they expected a lot of inaccurate filings, but experience has been positive. Electronic filing privileges are infrequently requested.

The court has recently used Microsoft Teams to give litigants a virtual visit to the clerk's office for guidance on how to file. This is expected to be especially useful at the smaller locations where each absence by a member of the clerk's staff can hinder customer service.

Pro se parties cannot open cases in CM/ECF. Attorneys do not open cases directly; they make filings in a shell case.

Pro se filing fees can be paid by cash or check at the counter or by check through the mail.

There is no provision for electronic submissions by prisoners.

Drop boxes at the courthouses are available a few more hours than the counters are. The larger courthouses added them because of the COVID-19 pandemic, but the drop boxes are expected to remain beyond that. There is a time stamp at each box.

The court is exploring the development of an electronic drop box which would require malware scanning.

Paper filers are required to serve even parties otherwise receiving electronic service.

"A document will be deemed timely filed if electronically filed prior to midnight Eastern Time." N.D.N.Y. ECF Procs. ¶ 4.3.

The District Court for the Southern District of Ohio

This court was selected for this study at random from among the district courts.

The United States District Court for the Southern District of Ohio has eight judgeships and three office codes: Columbus (office code 2), Cincinnati (office code 1), and Dayton (office code 3).

The clerk's office is open from 9:00 to 4:00.

Electronic filing is governed by the court's CM/ECF Procedures Guide [hereinafter ECF Procs.]. *See* S.D. Ohio R. 1.1(e). "After making a first appearance, non-incarcerated pro se parties may seek leave of Court to file electronically (e-file) with CM/ECF." S.D. Ohio ECF Procs. § 1.2. The litigant must have a scanner, a printer, and an email address. Electronic filing privileges are revoked on the very rare occasion of repeated improper filings. Pro se litigants may not use CM/ECF to initiate cases.

The court has arrangements with Ohio's five largest state prisons for electronic submission of filings by pro se prisoners. The court provides the prisons with scanners, and the court replaces and updates the scanners regularly. Originally, prison officials would mail the originals to the court so the authenticity of the scans could be verified, but originals are no longer mailed. A big advantage of electronic submission is the elimination of uncertainty about materials delayed or lost in the mail. Prisoners retain the option to file by mail.

The court does not otherwise accept filings by email or fax. Because of the court's shutdown for a few months in 2020 accommodating the COVID-19 pandemic, the court established drop boxes at each of its locations. Even when the court was shut down, there was at least one person in the clerk's office who checked the drop box regularly throughout the day. When the court reopened, the drop box remained useful for persons not adhering to vaccination or mask requirements.

Paper filers are still required to serve other parties on paper, even parties receiving electronic service. Pro se paper filers may request electronic notice.

"Filing must be completed before midnight Eastern Time Zone in order to be considered timely filed that day." S.D. Ohio R. 5.1(e); *see* S.D. Ohio ECF Procs. § 1.1 ("A document will be deemed timely filed if electronically filed prior to midnight on the due date, unless the assigned Judicial Officer has ordered the document to be filed by an earlier time on that date.").

The District Court for the Western District of Oklahoma

This court was selected for this study because although its rules state that pro se electronic filing is not permitted, we observed in the filing-time project pro se electronic filing in 2018.

The United States District Court for the Western District of Oklahoma has six judgeships, and it shares an additional judgeship with the Eastern and Northern Districts. The Western District has one office code: Oklahoma City (office code 5).

The clerk's office is open from 8:30 to 4:30.

Electronic filing is governed by the court's Civil Rule 5.1, the court's Criminal Rule 49.1, and the court's Electronic Filing Policies & Procedures Manual [hereinafter ECF Procs.]. The court's electronic procedures specify that pro se

parties may not file electronically. W.D. Okla. ECF Procs. ¶ I.A.1. Some pro se parties, however, have been granted permission by the presiding judge to use CM/ECF, and we observed in a study of 2018 filings permission granted to two plaintiffs in four cases.

Civil cases are opened by electronic submission to the court's new cases mailbox. The court converts the submissions to filed and docketed complaints; at the same time, the court seeks filing fees from the filers. On very rare occasions, pro se parties have been granted permission by presiding judges to submit filings by email, and the submissions would go to the new cases mailbox. Criminal cases are initiated with paper filings, which are scanned and docketed by the clerk's office. The court does not accept filings by fax.

There are no provisions for electronic submissions by prisoners.

Paper filers are obligated to serve other parties, even those receiving electronic service when the court converts paper filings to electronic filings.

The court has a drop box available during building hours. It is rarely used. It is checked every morning, and anything there is deemed filed the night before.

Unless otherwise ordered, a filing must be complete by midnight central time on the day that it is due to be considered filed on time. W.D. Okla. ECF Procs. ¶ II.A.1.f.

Possible things to think about for the future include providing prisoners with access to computers for word processing so that their filings are legible. Provisions for electronic submission would enhance efficiency and mitigate angst caused by delay.

The District Court for the District of Oregon

This court was selected for this study at random from among the district courts.

The United States District Court for the District of Oregon has six judgeships and has four office codes: Portland (office code 3), Eugene (office code 6), Pendleton (office code 2), and Medford (office code 1).

The clerk's office is open from 8:30 to 4:30 Monday through Thursday and from 9:30 to 4:30 on Friday.

Electronic filing is covered by the court's Civil Rule 5-2, the court's Criminal Rule 49, and the court's CM/ECF User Manual. "A *pro se* party who is not incarcerated may apply to the assigned judge for permission to become a Registered [CM/ECF] User . . . ." D. Or. Civ. R. 5-1(a)(2); *id.* Crim. R. 49-4(b). The pro se party must have suitable technical equipment, including the ability to make PDFs. CM/ECF users must show that they have read the rules and completed Pacer training. It is possible for a pro se litigant to receive electronic notices and not electronic filing privileges. Most pro se litigants file on paper. A more user-friendly CM/ECF would make it easier for pro se litigants to use it.

The court has arrangements with two of the state's fourteen prisons—the two with the highest rates of litigation—for electronic submission of pro se

prisoner filings. The court provides the scanners. The prisons accept electronic notices on behalf of the prisoners and print them out for the prisoner litigants. It would be very expensive for the court to provide scanners to all fourteen prisons. Some of the prisons have more than one library, so to provide fair access a scanner would have to be provided to each.

According to the court's Standing Order 2021-1, *In re Inmate Electronic Filing Program* (Jan. 8, 2021), electronic submission is mandatory where available, prisoners are expected to retain originals in case production is later ordered, and the electronic submission procedures cannot be used for discovery requests.

On one occasion, the court granted CM/ECF privileges to a criminal defendant. It was not an especially positive experience, because the filer's not following rules resulted in substantial time spent by the court's staff to untangle and correct filing mistakes.

When the clerk's counter closed because of the COVID-19 pandemic, the court accepted pro se filings by email. The court discontinued that as soon as the counter reopened. Because email submissions are easier to make than paper submissions, the court received even more improper and difficult-to-organize submissions. Fax is a valid way to communicate with the court, but not to submit filings.

The court has a drop box with a time stamp machine at the drop box.

Paper filers must serve other parties, even those receiving electronic service, with some exceptions in social security cases.

"The filing deadline for any document is 11:59 p.m. (Pacific Time) on the day the document is required to be filed." D. Or. Civ. R. 5-3(b).

The District Court for the Eastern District of Pennsylvania

This court was selected for this study at random from among the district courts.

The United States District Court for the Eastern District of Pennsylvania has twenty-two judgeships and two office codes: Philadelphia (office code 2) and Allentown (office code 5).

The clerk's office used to be open from 8:30 to 5:00. Because of reduced foot traffic, the hours are now from 9:00 to 3:00.

Electronic filing in both civil and criminal cases is governed by the court's Civil Rule 5.1.2, *see id.* Crim. R. 1.2, Electronic Case Filing System (ECF) Attorney User Manual for Civil Cases, and Electronic Case Filing System (ECF) Attorney User Manual for Criminal Cases. "Upon the approval of the judge, a party to a case who is not represented by an attorney may register as an ECF Filing User in the ECF System solely for purposes of the action." E.D. Pa. Civ. R. 5.1.2.4(b). Pro se litigants who move for CM/ECF filing privileges tend to be very savvy technologically, and they rarely make mistakes. They must file their complaints on paper or by email.

The court established an email address for pro se litigants to submit filings at the beginning of the COVID-19 pandemic. The court does not accept filings

by fax. The court accepts PDFs, Word documents, and photos of documents in email submissions, and the court converts the submissions to PDFs. It wants to make access to electronic submission as broad as possible. Anyone who provides the court with an email address—even if they are filing on paper—can receive electronic notices of other parties' filings.

The court has tried to make filing as accessible as possible, and it has been pleasantly surprised by how few problems it has encountered. The broader access to the court has been worth the occasional nonsense submission. Individual abusers can be disciplined, but this is rarely necessary.

The court has had some discussions, but it has not yet established relationships with state prisons for electronic submission of prisoner filings. The court sometimes receives prisoner filings by email: either from family members or from prison social workers. The court is pleased to provide such broad access to electronic submission. The prisoner is mailed a paper notice that the court received by email a filing on behalf of the prisoner, and the prisoner is asked to return a signed statement confirming that the submission was a genuine filing on behalf of the prisoner.

The court accepts electronic signatures, copies of signatures, and even typed signatures in email submissions. The court requests a more reliable signature when there is a question whether the filing came from the litigant.

It is probably not the case that a criminal defendant has ever used the court's CM/ECF, but the court has received email filings from criminal defendants after release.

Each office has a drop box available at all hours. The one in Allentown was added during the COVID-19 pandemic. To submit a document after hours, the filer buzzes for entry into the building, and a security guard lets the filer in to submit the filing.

The District Court for the Western District of Pennsylvania

This court was selected for this study at random from among the district courts.

The United States District Court for the Western District of Pennsylvania has ten judgeships and three office codes: Pittsburgh (office code 2), Erie (office code 1), and Johnstown (office coded 3).

The clerk's office is open from 8:30 to 4:30.

Electronic filing is governed by the court's Civil Rule 5.5, the court's Criminal Rule 49, the court's Electronic Case Filing Policies and Procedures, and the court's Guide to Working with CM/ECF [hereinafter ECF Guide].

"A party who is not represented by counsel may file papers with the clerk in the traditional manner, but is not precluded from filing electronically." W.D. Pa. ECF Guide at 6. Pro se litigants can register for CM/ECF filing privileges the same way that attorneys can: through Pacer. The court grants pro se litigants CM/ECF filing privileges if they complete training, read the court's policies, and have sufficient technical resources. CM/ECF privileges are granted by the clerk's office, and they can be granted before a case is filed.

Civil cases are opened electronically by uploading a complaint to a shell case, and the clerk's office uses the complaint to open a new case record. Pro se litigants can open cases the same way that attorneys can. Criminal indictments are opened by submission of a paper indictment, but criminal complaints are now opened electronically. It would be theoretically possible for a pro se criminal defendant to use CM/ECF, but they typically are detained, and there are no arrangements with any facility for electronic submissions by prisoners.

The court does not accept filings by fax. It accepts sealed filings by email. Because of the COVID-19 pandemic, the court has from time to time allowed other filings by email on a don't-let-this-happen-again basis. The court does not have a drop box.

Paper filers are not required to do paper service on parties receiving electronic service.

The court expects to expand electronic filing options, such as by allowing attorneys to open civil cases and perhaps establish agreements with prison facilities for electronic submissions.

"Electronic filing must be completed before midnight Eastern Time in order to be considered timely filed that day." W.D. Pa. ECF Guide at 10–11.

The District Court for the District of Puerto Rico

This court was selected for this study at random from among the district courts.

The United States District Court for the District of Puerto Rico has seven judgeships and one office code: San Juan (office code 3).

The clerk's office is open from 8:30 to noon and from 1:00 to 4:45.

Electronic filing is governed by the court's CM/ECF Manual, currently under revision. "Unrepresented parties (*pro se*) shall not file pleadings or other papers electronically unless allowed to do so by court order." D.P.R. R. 5(a)(1). It has been a very rare event for the presiding judge to approve pro se use of CM/ECF.

Filing by email is not permitted. There is no provision for electronic submission by prisoners. There is a transfer facility on the island, but no prison, so prison mail must come from quite a distance away.

Paper filers do not need to serve parties receiving electronic service.

The court has a drop box, with a time stamp, that is available a little bit beyond court hours. It is seldom used. Many pro se filers are not fluent in English, so they benefit from personal contact with court staff.

"Deadlines expire prior to midnight of a pleading's or document's due date, unless otherwise ordered by the Court." D.P.R. CM/ECF Man. ¶ II.B.7.a.

The District Court for the Middle District of Tennessee

This court was selected for this study at random from among the district courts.

The United States District Court for the Middle District of Tennessee has four judgeships and three office codes: Nashville (office code 3), Columbia (office code 1), and Cookeville (office code 2).

The clerk's office is open from 8:00 to 5:00.

Electronic filing is governed by the court's Rule 5.02 and the court's Administrative Practices and Procedures: Electronic Case Filing [hereinafter ECF Procs.]. "A party to an action who is not represented by an attorney may, with the Court's permission, register as a [CM/ECF] Filing User solely for purposes of that action." M.D. Tenn. ECF Procs. § 7. The request is made by formal motion to the presiding judge.

Pro se parties cannot initiate cases in CM/ECF; they can do that by submitting paper documents to the clerk's office. Attorneys do not open cases; they file complaints into a shell case, and the clerk's office opens the case.

Pro se filers must pay filing fees in cash—exact change—or money orders.

Paper filers are required to serve even other parties otherwise receiving electronic service.

The court does not accept filings by email or fax. There is a drop box outside the building that is available at all hours. Submissions are retrieved first thing in the morning and time stamped for the previous work day.

"In order for a document to be considered timely filed on a deadline date, the filing must be completed on the deadline date before midnight (local time at the Court's location)." M.D. Tenn. ECF Procs. § 6.

The District Court for the Eastern District of Texas

This court was selected for this study at random from among the district courts.

The United States District Court for the Eastern District of Texas has eight judgeships and six office codes: Sherman (office code 4), Marshall (office code 2), Tyler (office code 6), Beaumont (office code 1), Lufkin (office code 9), and Texarkana (office code 5).

The clerk's office is open from 8:00 to 5:00.

Electronic filing is governed by the court's Rules CV-5 and CR-49. In civil cases, "[w]ith court permission, a *pro se* litigant may register as a Filing User in the Electronic Filing System solely for purposes of the action." *Id.* R. CV-5(a)(2)(B). A pro se litigant cannot initiate a case electronically, but the litigant can seek permission to file subsequent documents electronically at the time that the complaint is filed. The presiding judge decides. Electronic filing by pro se litigants is seldom denied, but it is also seldom requested. Suitable equipment is required.

Some judges allow pro se litigants to receive electronic notices without CM/ECF filing privileges. A motion is required.

To minimize the need for travel and contact during the COVID-19 pandemic, the court issued General Order 20-05, which allowed pro se litigants to submit documents to the court for filing by email and fax as well as by regular mail. "It is not necessary to mail the original paper to the Court after it is

emailed or faxed. It is, however, important for pro se parties to retain the original signed copy of the paper and present it to the Court upon request." *Id.* The order has now expired, and the court deactivated the email address. Some pro se filers were scanning very large or irrelevant documents, and the court is unlikely to allow email filing in the future.

Prisons in Texas have not been interested in setting up electronic submission possibilities for prisoners.

Theoretically it would be possible for a pro se criminal defendant to file electronically if not detained, but that combination is quite rare.

Paper filers do not have to serve their filings on parties receiving electronic service, but they do have to submit a certificate of service.

The court discontinued physical drop boxes when it started accepting electronic filing.

"Filing must be completed before midnight Central Time in order to be considered timely filed that day." E.D. Tex. R. CV-5(a)(3)(D).

The District Court for the Northern District of Texas

This court was selected for this study because its rules state that pro se litigants can file electronically.

The United States District Court for the Northern District of Texas has twelve judgeships and seven office codes: Dallas (office code 3), Fort Worth (office code 4), Amarillo (office code 2), Lubbock (office code 5), Abilene (office code 1), Wichita Falls (office code 7), and San Angelo (office code 6).

The clerk's office is open from 8:30 to 4:30. Offices other than Dallas, Fort Worth, and Wichita Falls close for an hour at noon.

Electronic filing is governed by the court's ECF Administrative Procedures Manual. N.D. Tex. R. 3.1. The court's Pro Se Handbook for Civil Suits instructs pro se litigants as follows: "you must file a Complaint on paper but must file any other pleading, motion, or other paper by electronic means, unless you have been excused from this requirement for cause by the presiding judge." *Id.* § 4.G; *see* N.D. Tex. R. 5.1(e). This rule has been in place for several years. Some pro se litigants file on paper. Pro se electronic filers have the same burden as attorneys to retain originals signed by another party until a year after the case is over.

One challenge for pro se litigants using CM/ECF is that CM/ECF gives them one free look at other parties' filings, but after that they have to pay Pacer fees, and log in separately to Pacer, to see the documents if they have not saved them. Attorneys face the same challenge, but they typically acclimate to it.

When a pro se litigant files something on paper, the court's staff converts it to an electronic filing, and parties who are CM/ECF users receive electronic service.

All prisoners file on paper. The court has explored arrangements with state and federal facilities for electronic submission of prisoner filings to the court, but nothing has yet been approved. One possibility explored but not yet

adopted was a dedicated fax machine that would convert scans directly to electronic submissions to the court, and then the court's staff would docket the submissions in CM/ECF.

The court's website has a page on Emergency Filing Procedures that describes how emergency filings may be emailed to the court after hours when CM/ECF is unavailable for any reason. The court does not accept filings by fax. It no longer uses physical drop boxes, except when the court is briefly closed, such as for an annual staff development gathering.

"A pleading, motion, or other paper that is filed by electronic means before midnight central time of any day will be deemed filed on that day." N.D. Tex. R. 6.1; *id.* Crim. R. 45.1.

The District Court for the District of Utah

This court was selected for this study at random from among the district courts.

The United States District Court for the District of Utah has five judgeships and three office codes: Central Region (office code 2), Northern Region (office code 1), and Southern Region (office code 4). The court's only intake counter is in Salt Lake City.

The clerk's office is open from 8:30 to 4:30.

Electronic filing is governed by the court's CM/ECF and E-Filing Administrative Procedures Manual [hereinafter ECF Procs.]. D. Utah Civ. R. 5-1(a). For some time, pro se parties could seek permission from the court to submit filings by email. *See* D. Utah ECF Procs. ¶ I.A.4. Judicial permission is no longer required. On the court's website is an "Email Filing and Electronic Notification Form for Unrepresented Parties." Pro se parties can register for email filing and electronic notification or judge electronic notification. Scanned signatures in email filings are sufficient. Pro se parties may not use CM/ECF. The court does not accept filings by fax.

The court does not currently have anything set up to receive electronic submissions from prisoners. Nothing precludes pro se criminal defendants from registering as email filers.

Attorneys do not open civil cases directly on CM/ECF; they email the complaint and the civil cover sheet to the clerk's office, which then opens the case. Criminal cases are opened on paper indictments. Informations are usually received by email.

Attorneys do not have electronic access to sealed filings. Filings in sealed cases, such as criminal cases before the defendants have appeared, must be emailed to the court. CM/ECF can be used to file sealed filings in cases not otherwise sealed, but the filers will not be able to see the filings on CM/ECF.

Paper and email filers do not have to serve other parties who are already receiving electronic service.

The court does not have a drop box. The assistant marshals asked the court to stop using one when the court moved to its new building.

Concerns about allowing pro se litigants to use CM/ECF include proper use of event codes, proper formatting of PDFs, and adherence to redaction requirements.

The District Court for the Eastern District of Virginia

This court was selected for this study because although its rules state that pro se electronic filing is not permitted, we observed in the filing-time project pro se electronic filing in 2018.

The United States District Court for the Eastern District of Virginia has eleven judgeships and four office codes: Alexandria (office code 1), Richmond (office code 3), Norfolk (office code 2), and Newport News (office code 4).

The clerk's office is open from 8:30 to 5:00.

Electronic filing is governed by the court's Electronic Case Filing Policies and Procedures. E.D. Va. Civ. R. 1(A); *id.* Crim. R. 1(A). Pro se litigants are prohibited from filing documents electronically. E.D. Va. Electronic Case Filing Policies and Procedures at 12; E.D. Va. Pro Se Reference Handbook at 7. On some occasions, judges have granted exceptions to this rule and allowed pro se litigants to use CM/ECF. Their permissions are set so that they can file only in their cases.

Filing by email or fax is not permitted.

More expansive opportunities for electronic filing by pro se litigants would save court staff a lot of time spent scanning documents.

Attorneys in this district can open cases directly in CM/ECF.

Paper filers are required to serve other parties on paper, even parties receiving electronic service. Case managers scrutinize certificates of service.

The courthouses have drop boxes outside the clerk's offices but inside the buildings. The buildings are open until 6:30, but members of the public generally are not admitted after 5:00, closing time for the clerk's office. Sometimes a security officer will allow someone access to the drop box after 5:00. At the drop box is a time stamp and a telephone connection to the clerk's office. The drop boxes were put in place to mitigate personal contact during the COVID-19 pandemic.

The District Court for the Eastern District of Washington

This court was selected for this study because its rules state that pro se electronic filing is possible for prisoners.

The United States District Court for the Eastern District of Washington has four judgeships and three office codes: Spokane (office code 2), Yakima (office code 1), and Richland (office code 4).

The clerk's office is open from 9:00 to 4:30.

Electronic filing is governed by the court's ECF Administrative Procedures [hereinafter ECF Procs.]. E.D. Wash. Civ. R. 3(b)(1). "Self-represented filers (pro se) may, but are not required to, electronically file documents and register in the System." E.D. Wash. ECF Procs. ¶ III.B.3.

> A non-prisoner who is a party to a civil action and who is not represented by an attorney may file a motion to obtain a ECF Filing Authorization on a form prescribed by the clerk's office. Only after the court has granted such a motion may a pro se party attempt to register for ECF.

Id. ¶ IV.A.2.a. Electronic filing privileges are granted by the presiding judge on a case-by-case basis for pending cases.

> A prisoner who is a party to a civil action, is not represented by an attorney and resides in a correction facility that participates in the prison electronic filing initiative is required to adhere to the procedures established in General Orders 15-35-1 and 16-35-1, absent a court order to the contrary.

Id. ¶ IV.A.3.a. All state prisoners must present pro se filings to their prison librarian, who scans them and submits them electronically to the court. The librarian receives electronic notice of other parties' filings and prints them out for the pro se prisoners. There is no federal facility in the state, and county jails do not participate in the electronic submission program.

The court does not receive original signatures this way, but neither does the court retain original signatures with paper filings.

Paper service by paper filers is not required on parties who have agreed that electronic service is enough.

"At this time, pro se filers are not permitted to electronically file new cases. Only prisoners assigned to facilities participating in the prison electronic filing initiatives are permitted to file new cases electronically." E.D. Wash. ECF Procs. ¶ V.B.2.

The court has a pro se criminal defendant who is not detained, who does not have standby counsel, and who has been granted use of CM/ECF.

The court does not accept filings by email or fax, aside from electronic submissions by prisoners. The court uses a physical drop box only when the court is closed, such as because of COVID-19.

"Unless otherwise ordered by the court, filing deadlines shall be Midnight Pacific Time on the day the documents are required to be filed." E.D. Wash. ECF Procs. ¶ II.E.

The District Court for the Western District of Washington

This court was selected for this study because its rules state that pro se litigants can file electronically.

The United States District Court for the Western District of Washington has seven judgeships and two office codes: Seattle (office code 2) and Tacoma (office code 3).

The clerk's office is open from 9:00 to 4:00.

Electronic filing is governed by the court's Electronic Filing Procedures for Civil and Criminal Cases [hereinafter ECF Procs.]. *See* W.D. Wash. Civ. R. 5(d). Pro se parties may register to use CM/ECF, but they may not initiate cases electronically. W.D. Wash. R. 5(d); W.D. Wash. ECF Procs. §§ I.A, III.B. The litigant registers as a Pacer user, and then the court grants the user filing

privileges for a specific case. The pro se user cannot use CM/ECF to file complaints the way that attorneys can, because the privileges are tied to an existing case number. Pro se litigants can, however, email their complaints to the court. The court has allowed pro se use of CM/ECF since the beginning, and privileges have seldom been revoked.

One challenge with pro se electronic filing is that the filings sometimes include personal information that should be sealed. The court staff could catch that before filing when documents were presented on paper. Now corrections are made after filing.

The court has established a Prisoner E-Filing Initiative for prisoners to submit filings to the court electronically. W.D. Wash. ECF Procs. § III.B. All prisoners in Washington's state facilities submit filings to the court electronically. Prison librarians scan and email the filings. Prison librarians also receive electronic notices for the prisoners and convert them into paper documents. There is no such process for federal or local facilities. Before the E-Filing Initiative, there were complaints about prison mail, and electronic submissions mitigate that issue.

Criminal cases are opened by the court staff on paper filings. On a couple of occasions, judges have granted pro se criminal defendants CM/ECF filing privileges.

Aside from submissions from prisoners and other pro se complaints, the court does not accept filings by email.

There is a drop box at each of the court's intake counter locations. The drop boxes are available when the buildings are open, and they facilitate social distancing. There is a date stamp at each.

This is one of the courts that no longer accepts cash for filing fees.

"Unless otherwise ordered by the court, filing deadlines shall be 11:59 PM Pacific Time on the day the pleadings are to be filed." W.D. Wash. ECF Procs. § I.B.

The District Court for the Western District of Wisconsin

This court was selected for this study at random from among the district courts. It is one of the district courts with rules stating that pro se litigants can file electronically.

The United States District Court for the Western District of Wisconsin has two judgeships and one office code: Madison (office code 3).

The clerk's office is open from 8:00 to 4:30.

Electronic filing is governed by the court's Electronic Filing Procedures for the United States District Court for the Western District of Wisconsin. The procedures define filing user as "a lawyer or pro se party who has a registered username and password to file documents electronically in this court." *Id.* § I. The court's pro se guide explicitly tells pro se litigants, "You can file your documents electronically." W.D. Wis. Guide for Litigants Without a Lawyer at 38.

Nonprisoner pro se litigants do not need special permission to register as CM/ECF users in existing cases, just an email address and an ability to create PDFs. Their obligation to retain originals is the same as attorneys'.

Pro se litigants are not permitted to use CM/ECF to open cases, however. Nor are criminal defendants permitted to use CM/ECF; there are too many background features and schedules that would be adversely affected if something was filed incorrectly.

Some of the prisons have a way for a pro se litigant to present a filing to a prison librarian who will scan and email the filing to the court. The court generally does not otherwise accept filings by email or fax. The court would be amenable to procedures that allowed prisoners to file electronically pro se from the prisons.

The court does not have a drop box. It had one briefly during a COVID-19 shutdown.

Bankruptcy Courts

The Bankruptcy Court for the Northern District of Alabama

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the Northern District of Alabama has five judgeships and four office codes: Birmingham (office code 2), Decatur (office code 8), Tuscaloosa (office code 7), and Anniston (office code 1). *See* Bankr. N.D. Ala. R. 1071-1. Each office has an intake counter.

The clerk's office is open from 8:00 to 4:00.

Electronic filing is governed by the court's Administrative Procedures for Filing, Signing, Retaining, and Verification of Pleadings and Papers in the Case Management/Electronic Case Filing (CM/ECF) System. Bankr. N.D. Ala. R. 5005-4. The court does not permit pro se use of CM/ECF. Pro se creditors can use the court's electronic proof of claim (ePOC) portal.

During the COVID-19 pandemic, the court accepted filings by email and suspended the requirement for original signatures. But the court is again accepting pro se filings only on paper. When it accepted filings by email, the court sometimes received improper submissions, such as redundant pleadings or legal questions.

The court no longer accepts cash for filing fees, and it does not have a drop box. In an emergency, a party can contact the court by telephone and make special arrangements for filing.

The court is considering use of the electronic self-representation (eSR) module used by some other courts for the electronic submission of pro se bankruptcy petitions to the court, but the court does not have a very large pro se debtor caseload.

The Bankruptcy Court for the Central District of California

This court was selected for this study because it is one of the bankruptcy courts that has an electronic self-representation (eSR) portal.

The United States Bankruptcy Court for the Central District of California has twenty-one judgeships and five office codes: Los Angeles (office code 2), Riverside (office code 6), Santa Ana (office code 8), San Fernando Valley (office code 1), and Santa Barbara (Northern Division, office code 9).

The clerk's office is open from 9:00 to 4:00. Bankr. C.D. Cal. Ct. Man. § 1.1.

Electronic filing is governed by the court's Rule 5005-4 and the court's CM/ECF Procedures, which are section 3 of the Court Manual.

On rare occasions, the court has permitted electronic filing by pro se litigants. In one case, the litigant already had successfully filed electronically in the district court with the district court's permission, and the presiding bankruptcy judge granted the litigant permission to file electronically in a bankruptcy case.

The court's website offers an Electronic Self-Representation (eSR) Bankruptcy Petition Preparation System for Chapter 7 and Chapter 13. Originally, the court offered eSR only for chapter 7 cases, because chapter 13 cases are much more likely to fail without attorney representation. During the COVID-19 pandemic, when the courthouse was closed, the court began to allow the use of eSR for chapter 13 cases, and it kept the chapter 13 option with cooperation of the local bar in linking chapter 13 debtors with attorneys. The court tries to balance the promotion of electronic tools for pro se litigants with the encouragement of qualified legal representation.

Using eSR requires registration with an email address and a password. It results in a petition that is submitted electronically to the court. Filing requires the additional preparation of local forms and payment, which are returned in person or by mail. The local forms for chapter 13 cases are more complex than the local forms for chapter 7 cases. The court no longer accepts cash, and it does not accept personal checks or credit cards from pro se debtors.

When pro se debtors submit petitions either in person or using eSR, they are asked to provide identification, but they are not required to. It is permissible for family members or close friends to assist debtors' use of eSR, but the court is vigilant against the use of eSR by professional filing assistants, who often have words like "legal," "paralegal," or "notary" in their email addresses.

Once a case is open, the court will accept pro se filings by email.

Four of the five courthouses—all except Santa Ana—have physical drop boxes in the building lobbies outside the clerk's offices. The court discontinued the use of drop boxes after September 11, 2001, but it resumed their use when the courts were closed for the COVID-19 pandemic. The drop boxes are available after court hours, but only until the building closes to the public. Documents are date stamped when retrieved by the court's staff. Documents retrieved first thing in the morning, before the clerk's office opens, are stamped with the previous day's date.

The court also uses an Electronic Drop Box, and its website states the following:

> The Electronic Drop Box (EDB) is a tool available to self-represented litigants that enables them to upload court documents for filing electronically in bankruptcy cases and adversary proceedings pending in this District. Once you are determined to be eligible to use the Electronic Drop Box, the court will provide you with a link to upload your documents. After the court reviews the uploaded document it will be filed with the court.

"Filing must be completed before midnight, Pacific Standard or Daylight Saving Time, whichever is then in effect, to be considered timely filed that day." Bankr. C.D. Cal. Ct. Man. § 3.3(b).

The Bankruptcy Court for the District of Delaware

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the District of Delaware has eight judgeships and one office code: Wilmington (office code 1).

The clerk's office is open from 8:00 to 4:00. Bankr. Del. R. 5001-2(a).

Electronic filing is governed by the court's Rule 5005-4 and the court's Administrative Procedures for Electronically Filed Cases. "[T]he District Court's standing order dated October 2, 2014, requiring that all electronic filings be submitted by 6:00 p.m. Eastern Time will not apply to filings that are made in the Bankruptcy Court." *Id.* R. 1001-1(f). Filings in bankruptcy cases are much more of a twenty-four-hour enterprise.

Pro se litigants are not permitted to file electronically. During the court's COVID-19 closure, the court established a web page that allowed a pro se filer to initiate a case online; the website emailed the petition to the clerk's office. Only one filer took advantage of that process, and the court discontinued it when the office opened again.

There is a twenty-four-hour drop box in the lobby of the commercial building where the court sits. There is a time stamp at the drop box. Filings are retrieved every morning.

A big challenge for permitting debtors to file petitions online is proof of identity. Payment is also a challenge, because once the petition is filed, the debtor's personal checks and credit cards are no longer usable.

The Bankruptcy Court for the Middle District of Georgia

This court was selected for this study because it has rules stating that pro se litigants can file electronically with permission.

The United States Bankruptcy Court for the Middle District of Georgia has three judgeships and six office codes: Macon (office code 5), Albany (office code 1), Valdosta (office code 7), Athens (office code 3), Columbus (office code 4), and Thomasville (office code 6). There are intake counters in Macon and Columbus. The Thomasville location closed several years ago.

The clerk's office is open from 8:30 to 5:00.

Electronic filing is governed by the court's Rule 5005-4 and the court's Clerk's Instructions, especially "II. Filing Information and Requirements." Pro se parties whom the clerk determines file frequently can register as CM/ECF users. Bankr. M.D. Ga. R. 5005-4(a)(2). Judges have granted permission in approximately two cases. In those cases, the debtors were able to use CM/ECF to file their petitions. One of the debtors overused the privilege and tried to file excessive appeals. Most requests are declined after determining that the debtors are unsuitable candidates.

The court is considering the use of the electronic self-representation (eSR) module used by some other courts for the electronic submission of pro se bankruptcy petitions to the court, but the court is concerned about the technical sophistication required to use it. The court is also concerned about the amount of staff time that might be required to fix faulty submissions.

Pro se creditors can receive limited CM/ECF privileges, or they can use the court's electronic proof of claim (ePOC) portal.

The court has traditionally accepted filings be email if travel to the court would be a hardship or regular mail would be too slow. During the COVID-19 pandemic, the court began accepting filings by email more generally. A concern with email submissions is identification verification.

The court does not have a drop box.

Paper filers are not required to serve other parties receiving electronic service.

The Bankruptcy Court for the District of Hawaii

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the District of Hawaii has one judgeship and one office code: Honolulu (office code 1).

The clerk's office is open from 8:30 to noon and from 1:00 to 4:00.

Electronic filing is governed by the court's Rule 5005-4. "The clerk may authorize [individuals other than attorneys] to be ECF Users with full or limited participation in the CM/ECF system, including an unrepresented individual." *Id.* R. 5005-4(b)(1). Creditors and pro se litigants have limited CM/ECF menus. Pro se litigants' electronic filing privileges are limited to the cases for which they receive permission, and the privileges expire at the end of their cases. The single bankruptcy judge in the district delegated approval responsibilities to the clerk's office; pro se CM/ECF filing privileges are obtained by written application. Pro se litigants cannot open cases electronically.

Pro se litigants who file on paper have to serve on paper only parties who do not receive electronic service. Certificates of service are supposed to detail who gets service electronically and who gets service on paper.

The court transitioned to NextGen CM/ECF in November 2021, and NextGen makes granting electronic filing privileges to pro se litigants more complicated.

Electronic filing is regarded as a privilege. An attorney's electronic filing privileges were revoked when the attorney opened a case that was not supported by a signed petition.

On rare occasions, the judge has granted permission for some litigants to submit filings to the court by email or fax. The court does not have a drop box.

"Filing must be completed by 11:59 p.m. Hawaiian Standard Time as recorded by the court's CM/ECF server in order to be considered timely filed that day." Bankr. Haw. R. 5005-4(c)(3).

The Bankruptcy Court for the Central District of Illinois

This court was selected for this study because it has rules stating that pro se litigants can file electronically with permission.

The United States Bankruptcy Court for the Central District of Illinois has three judgeships and three office codes: Peoria (office code 1), Springfield (office code 3), and Urbana (office code 2).

The clerk's office is open from 8:00 to 5:00.

The district court's local rules govern cases in the district's bankruptcy court. Electronic filing is governed by the district court's Civil Rules 5.2 through 5.9 and by the bankruptcy court's Administrative Procedures for the Case Management/Electronic Case Filing System. "Pro se parties are not required to register for electronic filing but may apply to the court for leave to file electronically." C.D. Ill. Civ. R. 5.2. One pro se debtor has requested and received CM/ECF filing privileges in the past several years.

The court also accepts electronic submissions through its Electronic Documents Submission System (EDSS). Pro se debtors can submit both petitions and later filings this way. The court allows the "/s/" format for signatures. Payment of the filing fee would have to be delivered to the court promptly, but all users have requested fee waivers or installments.

The COVID-19 pandemic showed how important electronic forms of communication are. The court borrowed code from another court to set up its EDSS, which took several hours to install and test.

Pro se creditors can be granted limited filing privileges in CM/ECF after training, or they can use EDSS. Pro se creditors can also use the court's electronic proof of claim (ePOC) portal.

The court does not accept filings by email or fax.

The court has a drop box at each of its locations, just inside the front door on the ground floor. The intake counter is on the second floor, so the drop box helps to maintain social distancing.

The court still accepts cash at the counter, but exact change is required. Cash should not be put in the drop box.

"A document filed electronically by 11:59 p.m. central standard time will be deemed filed on that date." C.D. Ill. Civ. R. 5.7(A)(3); *id.* Crim. R. 49.6(B)(4).

The Bankruptcy Court for the Northern District of Indiana

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the Northern District of Indiana has three judgeships and four office codes: Hammond (office code 2), Fort Wayne (office code 1), South Bend (office code 3), and Lafayette (office code 4). The clerk has an intake counter at all four locations.

The clerk's office is open from 9:00 to 4:00.

Electronic filing is governed by the court's Seventh Amended Order Authorizing Electronic Case Filing, *In re Electronic Case Filing* (Jan. 14, 2022) [hereinafter ECF Order]. Pro se debtors are not permitted to use CM/ECF. Pro se creditors, especially frequent filers, can receive limited CM/ECF privileges.

The court does not accept filings by email or fax. It uses drop boxes only when the staff is not present for some occasional reason. The court will accommodate requests for emergency filings.

Paper filers do not have to separately serve parties already receiving electronic service.

Currently, about 2% of the court's cases have pro se debtors. Because of the low number of pro se filings, the court does not have a formal program to assist pro se filers, but neither does it discourage them. Access to representation may be more important than ease of pro se filing given the long-term consequences of a bankruptcy petition. Making pro se filing easier without also ensuring debtors have a sufficient opportunity to determine if bankruptcy is really the right choice may not be the best approach. The court's local practice and procedures committee has looked into this question on several occasions and concluded that programs sponsored by the various county bar associations and legal service organizations adequately balance these concerns, so no formal court-sponsored program is necessary.

"Filing in the Northern District of Indiana must be completed before midnight in South Bend, Indiana, where the court's ECF server is located, to be considered filed that day." ECF Order ¶ 7.

The Bankruptcy Court for the District of Kansas

This court was selected for this study because it has rules stating that pro se litigants can file electronically with permission.

The United States Bankruptcy Court for the District of Kansas has four judgeships and three office codes: Kansas City (office code 2), Wichita (office code 6), and Topeka (office code 5).

The clerk's office is open from 9:00 to 4:00.

Electronic filing is governed by the court's Rule 5005.1 and the court's Administrative Procedures for Filing, Signing, and Verifying Pleadings and Documents by Electronic Means [hereinafter ECF Procs.], which is appendix 1-01 to Rule 5005.1. "If the court permits, a party to a pending action who is not represented by an attorney may register as a Filing User in the Electronic Filing System solely for purposes of the action." Bankr. Kan. ECF Procs. ¶ II.B. In

practice, pro se debtors have not been granted CM/ECF filing privileges, but some pro se creditors have been granted limited CM/ECF filing privileges.

The court accepts filings from pro se debtors by email as well as by regular mail, and this includes the bankruptcy petition. The court's "How to File" webpage under "Filing Without an Attorney" provides an email address for each of the three court offices.

For creditors, the court offers several KASBFastFile options for uploading filings without the need for a CM/ECF account: electronic proof of claim (ePOC), electronic reaffirmation agreement (eReaf), and electronic request for notice.

During the COVID-19 pandemic, the court relaxed requirements for wet signatures. A local rule amended on March 17, 2022, keeps in place some relaxation. D. Kan. Bankr. R. 9011.4. A copy of a handwritten signature is sufficient for pro se debtors. For a filing by an attorney that includes someone else's signature, an electronic signature using something like DocuSign suffices if the attorney vouches for the authenticity of the signature. DocuSign signatures are not sufficient for pro se parties.

Paper (or email) filers do not have to separately serve other parties already receiving electronic service.

The court does not have a drop box, but it does have a mail slot at each location that is available when the building is open. Also, if a filer were to knock on the door and there was someone in the office, a filing would be accepted.

The court accepts cash, but exact change is required.

"Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day." Bankr. Kan. ECF Procs. ¶ III.D.

The court is considering use of the electronic self-representation (eSR) module used by some other courts for the electronic submission of pro se bankruptcy petitions to the court. The court would like to see improvements in electronic noticing so that all parties can receive electronic notices instantaneously. A way for pro se debtors to pay filing fees electronically also would be helpful.

The Bankruptcy Court for the Eastern District of Kentucky

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the Eastern District of Kentucky has two judgeships and six office codes: Lexington (office code 5), Covington (office code 2), London (office code 6), Pikeville (office code 7), Frankfort (office code 3), and Ashland (office code 1). The court relinquished its space in Frankfort to the district court and now hears Frankfort cases in Lexington, about forty-five minutes away. The court's intake counter is in Lexington.

The clerk's office is open from 9:00 to 3:00.

Electronic filing is governed by the court's Rule 5005-4 and the court's Administrative Procedures Manual [hereinafter ECF Procs.]. The court does not permit either debtors or other parties appearing pro se to use CM/ECF. Because of the COVID-19 pandemic, the court set up an email address for electronic submissions by pro se parties. The court is very pleased with how this has worked and plans to keep this option. Counter traffic has dropped substantially since virtual filing was adopted.

Virtual filings received after the clerk's office closing time of 3:00 p.m. generally are regarded as received on the following day. Paper originals are required within two weeks, and they will include wet signatures. For filing fees, the court accepts cash and money orders, but not electronic payments. There is a bank in the same building as the court, which facilitates both payment by money order and depositing of cash by the court. The court does not make change.

The court is considering the use of the electronic self-representation (eSR) module used by some other courts for the electronic submission of pro se bankruptcy petitions to the court. The court has adopted the courts' electronic submission modules for proofs of claim, requests for service, and reaffirmation agreements. These submission modules provide for electronic signatures.

The court otherwise does not generally accept filings by email or fax. The court does not have a drop box.

Use of CM/ECF by attorneys, which is required, generally constitutes waiver of separate service, so paper servers do not generally have to separately serve parties receiving electronic service. Bankr. E.D. Ky. ECF Procs. § V.

The court is very interested in expanded opportunities for electronic submissions.

The Bankruptcy Court for the Eastern District of Louisiana

This court was selected for this study because it is one of the bankruptcy courts that has an electronic self-representation (eSR) portal.

The United States Bankruptcy Court for the Eastern District of Louisiana has two judgeships and one office code: New Orleans (office code 2).

The clerk's office is open from 8:30 to 4:30.

Electronic filing is governed by the court's Rule 2014-1(D) and the court's Administrative Procedures Manual.

The court does not allow pro se use of CM/ECF. Pro se debtors can submit petitions electronically using the court's online tool: Electronic Self-Representation (eSR) Bankruptcy Petition Preparation System for Chapter 7 and Chapter 13. Within ten days of submission, the debtor must provide in paper form a signed declaration, a Social Security statement, and a credit counseling form as well as payment of the filing fee. The case is opened upon initial submission, but it is dismissed if not completed. Users of eSR can receive electronic notice of other parties' filings; pro se debtors who do not use eSR cannot.

Pro se creditors can file claims using the court's electronic proof of claim (ePOC) portal.

Pro se debtors can file emergency petitions by fax (or email during the COVID-19 pandemic) outside of the court's operating hours, but then must file the originals by noon on the next court day.

When the court closed because of the COVID-19 pandemic, it established a drop box with a time stamp available. When the court reopened, the drop box was available only for persons declining to comply with the building's vaccination and testing requirements. When those requirements were lifted, the drop box was removed.

The Bankruptcy Court for the District of Massachusetts

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the District of Massachusetts has five judgeships and three office codes: Boston (office code 1), Worcester (office code 4), and Springfield (office code 3).

The clerk's office is open from 8:30 to 5:00.

Electronic filing is covered by the court's Electronic Filing Rules [hereinafter ECF R.], Bankr. Mass. R. app. 8; *see id.* R. 9036-1, and the court's ECF User Manual.

Pro se parties are not permitted to file using CM/ECF, but to accommodate the COVID-19 pandemic the court now accepts filings from pro se litigants by email and fax. If an emailed petition does not come with a request for a fee waiver or installment payments, then the court issues a notice of deficiency and payment can follow. A scanned signature is required within thirty days, and an original must be produced if requested.

The court uses drop boxes only when the court is closed for some reason, such as during the COVID-19 pandemic.

"[W]here the Court orders that filing must be completed by a specific date but does not specify the time, entry of the document into the ECF System must be completed before 4:30 Eastern Standard (or Daylight, if applicable) Time in order to be deemed timely filed." Bankr. Mass. ECF R. 3(c)(2).

The Bankruptcy Court for the Eastern District of Missouri

This court was selected for this study at random from among the bankruptcy courts. It is one of the bankruptcy courts that has an electronic self-representation (eSR) portal.

The United States Bankruptcy Court for the Eastern District of Missouri has three judgeships and three office codes: St. Louis (office code 4), Cape Girardeau (office code 1), and Hannibal (office code 2). The court's only intake counter is in St. Louis.

The clerk's office is open from 8:30 to 4:30.

Pro se debtors can file petitions using the court's eSR module. This facilitates the filing of a petition, statements, schedules, and the creditor matrix, but not any filings after a case's opening. Users of eSR must submit a signed dec-

laration and payment separately, and the petition is not filed until that happens. The court has had two dozen users since it began offering eSR in April 2021. On a few occasions, someone began to use it, but they did not go all the way through to complete the petition.

The court does not otherwise accept filings by email or fax, except in the occasional emergency.

The court accepts cash as a payment option, retaining that option to promote access to justice. But exact change is required. The court lets debtors know this in advance.

Pro se debtors may not register for CM/ECF filing privileges. Institutional and professional pro se creditors may receive limited CM/ECF filing privileges; other pro se creditors can use the court's electronic proof of claim (ePOC) portal.

Paper filers must file certificates of service showing service on other parties, even if the other parties receive electronic service.

The eSR portal facilitates the filing of a petition, but not anything else. An electronic drop box for later filings would be cost prohibitive, because of the security protections it would have to include. It would be an easier option for a court with more cases, and that difference presents an access-to-justice issue.

It is not common for debtors to proceed pro se in this court. The local bar has worked hard to make representation affordable.

"All documents filed by an attorney shall be filed electronically in accordance with the procedures for electronic case filing set forth in the Procedures Manual." Bankr. E.D. Mo. R. 5005.A; *see* Bankr. E.D. Mo. Procs.

The Bankruptcy Court for the District of Nebraska

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the District of Nebraska has two judgeships and two office codes: Omaha (office code 8) and Lincoln (office code 4).

The clerk's office is open from 8:00 to 4:30.

Electronic filing is governed by the court's Rule 5005-1.A.

The court is not in a big hurry to implement the electronic self-representation (eSR) module for submission of bankruptcy petitions used by some other courts. Pro se creditors can receive limited CM/ECF privileges for specific filings.

The court's local rules permit fax submissions of filings in an emergency. Bankr. Neb. R. 5005-1.B. Email submissions are accepted on a very limited basis.

Because of the COVID-19 pandemic, the court established a drop box, which is available when the federal building is open. There is a time stamp at the drop box. The filing fee cannot be submitted there; it must be mailed.

The Bankruptcy Court for the District of New Jersey

This court was selected for this study because it is one of the bankruptcy courts that has an electronic self-representation (eSR) portal.

The United States Bankruptcy Court for the District of New Jersey has eight judgeships and three office codes: Newark (office code 2), Camden (office code 1), and Trenton (office code 3).

The clerk's office was open from 8:30 to 4:00 before the COVID-19 pandemic. Now the counter has limited hours: from 10:00 to 2:00. (Until March 21, 2022, the court's counter hours were further limited to Tuesday through Thursday.) Many members of the court's staff frequently work remotely now.

Electronic filing is governed by the court's Rule 5005-1. The court does not permit pro se litigants to use CM/ECF.

The court, however, is one of the courts that offers pro se debtors a way to submit their petitions electronically: a web page dedicated to Submitting a Bankruptcy Package Electronically (eSR). After the debtor submits the petition, the debtor receives an email requesting additional documents, including the social security number declaration, which is filed separately and restricted from public view.

The filing fee must be paid conventionally, either in person or by mail. Only money orders and certified checks are accepted; the court has not accepted cash for more than fifteen years.

The courthouses have drop boxes that are available outside of the clerk's office hours, but only when the buildings are open. Entry to the buildings requires proof of COVID-19 vaccination or a recent negative test. (The wearing of a face mask also was required until March 16 of this year.) Sometimes members of the clerk's staff have met debtors outside the building to receive documents. Although the counter has limited hours, counter service is available outside those hours by appointment.

The predecessor to eSR was called Pathfinder; New Jersey was a pilot court for that project. It was discontinued when the court moved to NextGen CM/ECF because of incompatibility. The court adopted eSR when the NextGen-compatible eSR module was developed.

A great benefit of eSR is that court staff members do not have to decipher handwriting. But sometimes there is a lot of back and forth with a debtor to get the papers prepared properly. Sometimes face-to-face contact is more efficient than remote contact.

The Bankruptcy Court for the District of New Mexico

This court was selected for this study at random from among the bankruptcy courts. It is one of the bankruptcy courts that has an electronic self-representation (eSR) portal.

The United States Bankruptcy Court for the District of New Mexico has two judgeships and one office code: Albuquerque (office code 1).

The clerk's office is open from 8:30 to 4:00.

Electronic filing is governed by the court's Rule 5005-2. Pro se parties may be granted permission to use CM/ECF. *See id.* R. 5005-3.

Electronic submission of bankruptcy petitions by chapter 7 pro se debtors is possible using the court's eSR portal, but that is used only rarely. The local bar is concerned about eSR's impact on their practice. A user of eSR must separately submit a paper signature page and pay the filing fee.

The court developed an electronic drop box (EDB) for use by pro se litigants, with the permission of the presiding judge. The clerk's office reviews the electronic submissions and transfers them to the case record. Scanned signatures are accepted.

Since the beginning of the COVID-19 pandemic, the court has accepted personal checks for filing fees, because of the difficulties during the pandemic of getting money orders. The court accepts cash, but it discourages cash payments because of the difficulties sometimes of making change. The court accepts debit card payments, but not credit card payments, from pro se debtors.

Paper filers are not required to separately serve other parties receiving electronic service.

The bankruptcy court and the district court jointly used a drop box during the COVID-19 pandemic closure, but they do not use it now that the courts are open again.

Interest in joining the local bankruptcy bar is mitigated by low bankruptcy filing rates. The U.S. trustees' decision to start doing section 341 creditor meetings by Zoom has made out-of-state attorneys more interested in practicing in New Mexico.

"Unless otherwise ordered, any paper filed electronically must be filed before midnight local time to be considered timely filed that day." Bankr. N.M. R. 5005-2(b).

The Bankruptcy Court for the Southern District of New York

This court was selected for this study because it has a filing deadline relevant to another study.

The United States Bankruptcy Court for the Southern District of New York has nine judgeships and three office codes: Manhattan (office code 1), Poughkeepsie (office code 4), and White Plains (office code 7).

The clerk's office is open from 8:30 to 5:00. Bankr. S.D.N.Y. R. 5001-1.

"This Court has authorized the limited use of the [electronic filing system] by non-attorneys who obtain a limited-access account." Bankr. S.D.N.Y. Procedures for the Filing, Signing, and Verification of Documents by Electronic Means ¶ I.A.2; *see id.* ¶ I.B. This does not include pro se debtors. With a very large caseload, the court already has to manage CM/ECF accounts for more than twenty thousand attorneys.

Because of the COVID-19 pandemic, the court has accepted filings using an online uploader. Scanned signatures are treated as originals. The court is exploring using the electronic self-representation (eSR) portal used by some other courts for the electronic submission of pro se bankruptcy petitions to

the court, but because eSR only provides a way to submit the petition, other electronic submissions would have to be received a different way. The court is concerned that having to use two different methods to file would be confusing. The court is looking for the best way to expand electronic submission.

Cash, cashier's checks, and money orders are accepted for filing fees. The challenge with using Pay.gov is disabling payment methods, such as credit cards, that the court does not accept from pro se debtors.

The courthouses have drop boxes. In Manhattan, documents can be left in the district court night box, which is available at all hours. There are time stamps at the drop boxes.

Because email notification does not always constitute service, paper filers generally must still serve other parties with their filings, even if the other parties receive electronic service.

Unless an earlier deadline is set, filings are due at midnight on the day due. But motion replies generally must be received by 4:00 p.m. three days before the hearing. Bankr. S.D.N.Y. R. 9006-1(b).

The Bankruptcy Court for the Western District of New York

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the Western District of New York has three judgeships and two office codes: Buffalo (office code 1) and Rochester (office code 2).

The clerk's office is open from 8:00 to 4:30.

Electronic filing is governed by the court's Amended Administrative Procedures for Filing, Signing and Verifying Pleadings and Papers Electronically [hereinafter ECF Procs.]. "Parties proceeding *pro se* . . . will not be permitted to file electronically and must follow all filing requirements of the Bankruptcy Rules and Local Rules." *Id.* § 1.A.3. Even individual creditors appearing pro se must file on paper. Institutional creditors can receive limited CM/ECF filing privileges.

Over the past five years, the percentage of cases that are pro se has ranged from 2% to 4%.

There are drop boxes with time stamps at the clerk's two locations, in buildings that open a little earlier and close a little later than the clerk's offices do. The drop boxes are infrequently used. The clerk's offices never closed altogether for the COVID-19 pandemic. A filer who comes to the court usually comes to the counter.

"Filings are considered timely if received by the Court before midnight on the date set as a deadline, unless the presiding Judge specifically requires an earlier filing, such as by the close of business." Bankr. W.D.N.Y. ECF Procs. § 3.D.2.

The Bankruptcy Court for the Western District of North Carolina

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the Western District of North Carolina has two judgeships and five office codes: Charlotte (office code 3), Statesville (office code 5), Shelby (office code 4), Asheville (office code 1), and Bryson City (office code 2).

The clerk's office is open in Charlotte from 8:30 to 12:30 and from 1:30 to 4:30.

The court's Rule 5005-1 governs electronic case filing. *See also* Administrative Order Adopting Electronic Case Filing Procedures, *In re Order in Aid of Case Administration: Electronic Case Filing Procedures* (Feb. 2, 2001).

The only time that the court ever accepted pro se filings electronically was by email earlier in the COVID-19 pandemic.

The Bankruptcy Court for the Northern District of Oklahoma

This court was selected for this study at random from among the bankruptcy courts with rules stating that pro se electronic filing is not permitted.

The United States Bankruptcy Court for the Northern District of Oklahoma has two judgeships and one office code: Tulsa (office code 4).

The clerk's office is open from 8:30 to 4:30, except that it closes at 3:00 on Tuesdays.

Electronic filing is governed by the court's CM/ECF Administrative Guide of Policies and Procedures [hereinafter ECF Procs.], the first appendix to the court's local rules. "Generally, parties proceeding pro se will not be authorized to file electronically." *Id.* ¶ III.B.

Pro se debtors cannot receive notices electronically. The court does not use the Bankruptcy Noticing Center for service of orders and notices on pro se debtors, because the BNC is not required to notify the court when notices are returned as undeliverable. The court does use the BNC for pro se creditors.

The court plans to use the electronic self-representation (eSR) module used by some other courts for the electronic submission of pro se bankruptcy petitions to the court, but setting that up is not currently a high priority.

Creditors can use the court's electronic proof of claim (ePOC) portal. Creditors who file many transfers of claims pro se may be granted limited CM/ECF privileges.

Paper filers must serve even parties receiving electronic service.

The court does not have a drop box. The counter did not close during the COVID-19 pandemic. The Department of Homeland Security advised against a drop box outside the courthouse building.

"Filing must be completed before midnight Central Time in order to be considered timely filed that day." Bankr. N.D. Okla. ECF Procs. ¶ II.B.

The Bankruptcy Court for the Western District of Oklahoma

This court was selected for this study because it has rules stating that pro se litigants can file electronically with permission.

The United States Bankruptcy Court for the Western District of Oklahoma has three judgeships and one office code: Oklahoma City (office code 5).

The clerk's office is open from 8:30 to 4:30.

Electronic filing is governed by the court's Administrative Guidelines for Electronic Case Filing, appendix A of the court's Rules, Bankr. W.D. Okla. R. 1001-1.E, 5005-1.A, and the court's CM/ECF Style Guide. "Pro se parties and bankruptcy petition preparers will not be Registered [CM/ECF] Participants, unless permitted by the Court." Bankr. W.D. Okla. R. app. A § 5.A.

In practice, pro se debtors do not use CM/ECF. Until recently, the court did not use the electronic self-representation (eSR) portal that some other courts use; instead, it developed during the COVID-19 pandemic its own Electronic Document Submission System (EDSS). The court developed three pages of EDSS administrative procedures. Only pro se filers can use EDSS. A scanned signature is sufficient, but the original must be retained for one year beyond final resolution of the case. Electronic submissions are faster for debtors than regular mail, and they do not require taking time off work to visit the courthouse.

In practice, EDSS submissions frequently require work by the court's staff to put in order. Documents may not be in the correct sequence, and file sizes may be excessive.

The court recently decided to offer eSR as an option for filing pro se petitions, and the court will continue to accept subsequent pro se filings in EDSS. Most pro se debtors still file on paper.

Filing fees can be paid using Pay.gov, and they must be paid by midnight or the filing will not be docketed.

Filers without CM/ECF filing privileges cannot receive electronic notices through CM/ECF, but they can through the Bankruptcy Noticing Center's debtor electronic bankruptcy noticing (DeBN). Few do.

Paper and EDSS filers must serve other parties, even those receiving electronic service.

The court does not accept filings by fax. There is a drop box outside the clerk's office, which is seldom used. There used to be a time stamp at the drop box, but there is not one there now.

"The deadline for filing, unless otherwise specifically set, is midnight of the due date, Central Time." Bankr. W.D. Okla. R. app. A § 4.G.

The Bankruptcy Court for the District of Oregon

This court was selected for this study because it has rules stating that pro se litigants can file electronically with permission. It is one of the bankruptcy courts that has an electronic self-representation (eSR) portal.

The United States Bankruptcy Court for the District of Oregon has five judgeships and two office codes: Portland (office code 3) and Eugene (office code 6).

The clerk's office is open from 9:00 to 4:30.

Electronic filing is governed by the court's Rule 5005-4 and the court's Administrative Procedures for Electronically Filing Case Documents [hereinafter ECF Procs.]. Parties other than attorneys, trustees, and creditors "may also be eligible to request a login for possible ECF participation upon approval of the chief bankruptcy judge." Bankr. Or. ECF Procs. ¶ II.A.

On very few occasions, presiding judges have granted CM/ECF privileges to pro se debtors. One was a former attorney. Another previously clerked for a court. For one chapter 11 debtor, it was easier to let the debtor use CM/ECF so that the court's staff did not have to figure out how to docket the filings.

The court has several alternatives to paper submission of bankruptcy petitions. The court uses the eSR module. Some users find it intimidating. The court also has a Public Document Upload (PDU) page that can be used both for the petition and for later filings. PDU submissions are often out of order or complex, with large documents broken into separate uploads. The court accepts submissions by fax, but not by email.

Written signatures are not required for uploaded submissions. Submission entails an agreement that the submitter is the filer and has signed the documents. Faxes must include copies of written signatures, but the original signatures do not need to be submitted.

Pro se debtors not using CM/ECF do not get electronic notice. The court does not use the Bankruptcy Noticing Center's debtor electronic bankruptcy noticing (DeBN).

Creditors can receive limited CM/ECF privileges, or they can use the court's electronic proof of claim (ePOC) portal.

The court brought back the drop box during the COVID-19 pandemic. It is available when the building is open. It does not have a time stamp. Documents are retrieved each morning.

"Electronic filing must be completed before midnight Pacific time to be considered filed on that day." Bankr. Or. R. 5005-4(f)(1).

The Bankruptcy Court for the Eastern District of Pennsylvania

This court was selected for this study at random from among the bankruptcy courts. It is one of the bankruptcy courts with rules stating that pro se litigants can file electronically with permission.

The United States Bankruptcy Court for the Eastern District of Pennsylvania has five judgeships and two office codes: Philadelphia (office code 2) and Reading (office code 4).

The clerk's office is open from 8:00 to 4:30 in Reading and from 8:30 to 5:00 in Philadelphia.

Electronic filing is governed by the court's Rules 5005-1 through 5005-8 and by the district court's Rule 5.1.2, Bankr. E.D. Pa. R. 8011-1. According to

Rule 5005-3(c), the court may grant pro se parties permission to use CM/ECF in their cases. In practice, pro se bankruptcy petitions are always filed on paper. The court has considered electronic submission, but it is concerned about legal issues, including issues related to original signatures. A challenge for electronic submission is the heavy use of mobile devices for access to the internet, and filers may have more access to a phone camera than to a scanner.

Creditors and trustees who are not attorneys can apply to use CM/ECF.

The court does not accept filings by email or fax. There is a drop box in the building with hours somewhat longer than the court's. Documents are scanned at the drop box and time-stamped on the spot.

"The electronic filing of a document must be completed before midnight prevailing Eastern Time, to be timely filed on that day." Bankr. E.D. Pa. R. 5005-2(f).

The Bankruptcy Court for the Middle District of Pennsylvania

This court was selected for this study because it has rules stating that pro se litigants can file electronically with permission.

The United States Bankruptcy Court for the Middle District of Pennsylvania has two judgeships and three office codes: Harrisburg (office code 1), Wilkes-Barre (office code 5), and Williamsport (office code 4). (The district court also has offices in Scranton and Lewisburg.)

The clerk's office is open from 9:00 to 4:00 in Harrisburg and Wilkes-Barre. Bankr. M.D. Pa. R. 5001-1.

Electronic filing is governed by the court's CM/ECF Administrative Procedures. They and the court's local rules state that pro se parties may be given permission by the court to file electronically. *See id.* ¶ I.C. "The Filing must be completed before midnight Eastern Standard Time to be considered timely filed that day." *Id.* ¶ III.B.

> **Rule 5005-1** *Filing and Transmittal of Papers.*
>
> (a) *Electronic Filing and Signing.*
>
> (1) *By a Represented Entity.* An entity represented by an attorney must file documents by using the Court's Electronic Case Filing system ("ECF" or "CM/ECF") in accordance with the CM/ECF Administrative Procedures available on the court's website (www.pamb.uscourts.gov). However, nonelectronic filing may be allowed for good cause, or as otherwise provided for by these rules;
>
> (2) *By a Self-Represented Individual.*
>
> (A) *Using the Electronic Document Submission System ("EDSS").* A self-represented individual may file documents (other than proofs of claim) electronically using the EDSS. . . .
>
> (B) *Using the Court's Electronic Case Filing ("CM/ECF") system.* An individual not represented by an attorney:
>
> (i) may file electronically using CM/ECF only if allowed by court order or through compliance with the conditions authorizing same as set forth in the CM/ECF Administrative Procedures adopted by this District; and

> (ii) may be required to file electronically only by court order or as otherwise provided for in the CM/ECF Administrative Procedures adopted by this District.

Bankr. M.D. Pa. Bankr. R. 5005-1.

Although the court has received a few requests for use of CM/ECF by pro se debtors, the requests have always been denied. The risk of error is considered too great. A pro se debtor with a law degree was once given permission to read documents in CM/ECF but not file them.

The court created an Electronic Document Submission System (EDSS). Submissions are converted into electronic filings by the court's staff. Scanned signatures are regarded as sufficient, but originals must be retained for up to seven years. Payment must follow within a week. The court does not use Pay.gov. Most pro se debtors use EDSS now. Because EDSS allows for the filing of all documents, the court does not intend to use the electronic self-representation (eSR) portal that some other courts use. For electronic notifications, pro se debtors can sign up for the Bankruptcy Noticing Center's debtor electronic bankruptcy noticing (DeBN).

The court does not accept filings by email. Fax is still an option for after-hour filings and emergency petitions, but EDSS has displaced the use of fax in practice.

Creditors can use the court's electronic proof of claim (ePOC) portal. Some file on paper.

Because of security concerns, the court does not have a drop box.

The Bankruptcy Court for the Western District of Pennsylvania

This court was selected for this study because it has rules stating that pro se litigants can file electronically with permission.

The United States Bankruptcy Court for the Western District of Pennsylvania has four judgeships and three office codes: Pittsburgh (office code 2), Erie (office code 1), and Johnstown (office code 7).

The clerk's office is open from 9:00 to 4:30. Bankr. W.D. Pa. R. 1002-1(b).

Electronic filing is governed by the court's Rules 5005-1 through 5005-14 and 5005-21. "The Court may grant a *pro se* party to a pending action permission to apply for registration as a Filing User, subject to attending CM/ECF System training provided by the Clerk." *Id.* R. 5005-2(c). The court's debtors are seldom pro se, and it is possible that none has ever sought CM/ECF filing privileges.

Creditors and other unrepresented parties can register as limited users of CM/ECF. Pro se creditors can also file claims using the court's electronic proof of claim (ePOC) portal.

The court uses an Electronic Document Submission System (EDSS), an electronic drop box. Attorneys can use the electronic drop box to submit declarations of emergency filing at case initiation, but they have to use CM/ECF after that.

Pro se debtors can initiate cases using EDSS. The scanned signature is adequate, but filers must retain originals. The court also posted on its COVID-19 web page a link to a fillable "Emergency Petition" that has a submit button at the bottom.

Submissions otherwise by email and fax are not allowed, but the court still receives them, and if they are proper filings the court will accept them. The court has drop boxes with time stamps in Pittsburgh and Erie.

Paper filers do not have to separately serve parties receiving electronic service.

The court is interested in the Bankruptcy Noticing Center's debtor electronic bankruptcy noticing (DeBN), but the court has not set that up yet.

The Bankruptcy Court for the District of Rhode Island

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the District of Rhode Island has one judgeship and one office code: Providence (office code 1).

The clerk's office is open from 9:00 to 4:00.

Electronic filing is governed by the court's Rule 5005-4 and the court's Electronic Filer User Manual.

The only pro se debtors who have used CM/ECF are attorneys who already had electronic filing privileges and who were representing themselves in bankruptcy cases.

At the beginning of the COVID-19 pandemic, the court set up a Self Represented Party Electronic Drop Box (EDB). They acquired the code from another court and set it up in a month or two. The court also began accepting filing fees through Pay.gov.

The court's website provides an email address for submission of an application to use the EDB. The application includes a copy of identification, and there is a separate application for the petition and for later documents. When the court's staff approves the application, the debtor receives by email a unique link for uploading documents for filing. Original paper documents, including wet signatures, must follow within two weeks.

EDB is not used to receive electronic notices of others' filings. Debtors can sign up for the Bankruptcy Noticing Center's debtor electronic bankruptcy noticing (DeBN).

As a small court, with only one judge, they decided not to offer the electronic self-representation (eSR) module used by some other courts for the electronic submission of pro se bankruptcy petitions to the court, because it would be too resource intensive.

Creditors can receive limited CM/ECF privileges, or they can use the court's electronic proof of claim (ePOC) portal.

The court can receive emergency filings by email or fax, but it has been years since anyone has used fax.

The court has had a drop box for a few decades, but after the Oklahoma City bombing, it was moved inside the building. It is useful when the clerk's office is closed for weather or pandemic. It does not have a time stamp. Users of the drop box must contact the court to let them know when they have deposited something.

Paper filers do not have to serve parties otherwise receiving electronic service.

"The deadline for filing, unless otherwise specifically set, is 11:59 P.M. (E.S.T.)." Bankr. R.I. R. 5005-4(f).

The Bankruptcy Court for the District of South Carolina

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the District of South Carolina has three judgeships and three office codes: Columbia (office code 3), Charleston (office code 2), and Greenville (office code 6). The Spartanburg court (office code 7) recently moved to Greenville.

The clerk's office is open from 9:00 to 5:00 in Columbia.

Electronic filing is governed by the court's Rule 5005-4.

Pro se debtors are not permitted to use CM/ECF. Pro se creditors can register as limited filers in CM/ECF. Most creditors are pro se.

Because of the COVID-19 pandemic, the court has been accepting pro se debtor submissions by email or fax. Original signatures must follow on paper. The court has looked at the electronic self-representation (eSR) module used by some other courts for the electronic submission of pro se bankruptcy petitions to the court, but that does not allow for the electronic submission of filings after the petition. When the court receives a bankruptcy petition by email or fax, it issues a notice to pay the filing fee. The court still accepts cash.

Walk-in filings are accepted in Columbia. There are drop boxes in the other two locations; the office staff mails submissions to Columbia. There is a drop box in the Columbia clerk's office for use when the office only has a skeleton crew, or by filers who wish to avoid personal contact. Materials submitted in drop boxes are retrieved immediately, so there is no need for a time stamp.

The Bankruptcy Court for the District of South Dakota

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the District of South Dakota has two judgeships and four office codes: Sioux Falls (office code 4), Rapid City (office code 5), Aberdeen (office code 1), and Pierre (office code 3).

The clerk's office is open from 8:00 to 5:00.

Electronic filing is governed by the court's Electronic Case Filing Administrative Procedures [hereinafter ECF Procs.]. Bankr. S.D. R. 5005-4, 7001-1. "A debtor not represented by an attorney shall either mail documents to the Clerk or deliver them in person to the Clerk's office . . . ." Bankr. S.D. R. app.

1A. The clerk cannot recall a pro se debtor who was able to file electronically. Filings cannot be submitted by email or fax. Petition fees must be paid by cash, cashier's check, or money order.

Paper service by paper filers is not required for persons receiving electronic service.

The court offered a drop box during the COVID-19 pandemic, but it was seldom used. Filers in divisions not staffed can leave filings with the district court.

The court is interested in the electronic self-representation (eSR) module used by some other courts, with which pro se debtors can submit petitions to the court electronically, and the District of South Dakota is watching the District of North Dakota's exploration of that resource.

"Unless the Court sets a different deadline, filing must be completed before midnight (Central Standard Time or Central Daylight Time, whichever is in effect) on the last day to file to be considered timely filed with respect to any such filing deadline." Bankr. S.D. ECF Procs. ¶ VI.D.

The Bankruptcy Court for the Eastern District of Tennessee

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the Eastern District of Tennessee has four judgeships and five office codes: Chattanooga (office code 1), Knoxville (office code 3), Greenville (office code 2), Winchester (office code 4), and Johnson City (office code 5).

The clerk's office is open from 8:00 to 4:30.

Electronic filing is governed by the court's Rule 5005-4.

It does not appear that a pro se debtor has ever filed using CM/ECF. Pro se creditors can register for limited use of CM/ECF. They receive a very limited menu of filing options.

The court does not accept filings by email or fax, and it does not have a drop box. Earlier during the COVID-19 pandemic, the court accepted filings by fax, but it does not now. When the court converted to NextGen CM/ECF recently, it accepted filings from attorneys by email during a period when the system was down. The court is considering the use of the electronic self-representation (eSR) module used by some other courts for the electronic submission of pro se bankruptcy petitions to the court.

Filing fees can be paid by cashier's check, money order, or cash, with exact change. Attorneys can use Pay.gov.

"An electronic filing is timely if it is entered into ECF before midnight of the due date, [Eastern Time]." Bankr. E.D. Tenn. R. 5005-4(f).

The Bankruptcy Court for the Western District of Tennessee

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the Western District of Tennessee has four judgeships and two office codes: Memphis (office code 2) and Jackson (office code 1).

The clerk's office is open from 8:30 to 4:00.

Electronic filing is governed by the court's Electronic Case Filing Guidelines. *See* Bankr. W.D. Tenn. R. 1001-1(b), 1001-2(7). The court does not permit electronic filing by pro se litigants. Nor does the court accept any filings by email.

Each courthouse has a drop box.

The Memphis courthouse is in leased space. The drop box serves only the court, and it is only available when the building is open. The building opens about one-and-a-half hours before the court does, and it closes about two hours later than the court does. It also has Saturday morning hours. Materials retrieved from the drop box are marked received on the business day that they are retrieved. During the COVID-19 shutdown, the drop box was the only way to file hard copies in person.

The Jackson courthouse is in a federal building that also houses the district court, and the drop box there serves the building, not just the bankruptcy court. It also is only available when the building is open. It was reopened during the COVID-19 pandemic after being closed for some time because of security concerns related to issues such as anthrax. The drop box facilitates contact-free filing.

Two important challenges posed by allowing pro se litigants to file electronically—an advancement that also would provide many benefits—are (1) establishing a procedure for retention of original documents, especially signatures, by pro se litigants, and (2) establishing a form of payment, because pro se litigants are currently not permitted to pay the initial filing fee with a personal check or a credit card, just cash, money order, or cashier's check.

A procedure that probably would work well would involve online forms that generate PDFs. There is some concern about developing procedures for electronic filing by pro se litigants, even by modeling what some other courts do, ahead of the development of national standards and procedures.

The Bankruptcy Court for the Eastern District of Texas

This court was selected for this study at random from among the bankruptcy courts. It is one of the bankruptcy courts that has an electronic self-representation (eSR) portal.

The United States Bankruptcy Court for the Eastern District of Texas has two judgeships and six office codes: Sherman (office code 4), Tyler (office code 6), Beaumont (office code 1), Lufkin (office code 9), Marshall (office code 2), and Texarkana (office code 5).

The clerk's office is open from 8:00 to 4:00. Bankr. E.D. Tex. External Operating Procedures ¶ II.A.

Electronic filing is governed by the four Texas districts' Administrative Procedures for the Filing, Signing, and Verifying of Documents by Electronic

Means in Texas Bankruptcy Courts [hereinafter Tex. Bankr. ECF Procs.]. Bank. E.D. Tex. R. 1001-1(b)(4), 5005-1. Electronic submission of bankruptcy petitions by pro se debtors is possible using the court's eSR portal, which the court adopted early during the COVID-19 pandemic. Because the court is using NextGen CM/ECF, it was just a matter of turning on that option.

Pro se litigants are not permitted to make subsequent filings using either eSR or CM/ECF, but the court does have an electronic drop box. Within two days of a debtor's submitting a petition using eSR, the debtor must upload a copy of a signed declaration, a Social Security statement, and government identification. A wet signature is due within two weeks.

The court worked with Pay.gov to establish an electronic payment option that supports only the types of payment permitted by the court. This court accepts pro se payments by debit card or ACH.

The court does not have a physical drop box, because of security concerns. Before the court established an electronic drop box, the court accommodated the pandemic with an email option, but the electronic drop box gives the court greater control over what can be submitted, such as by requiring PDFs.

"A document is filed on a particular day if the transmission of the document is completed prior to midnight in the Central time zone." Bankr. Tex. ECF Procs. ¶ III.F.

The Bankruptcy Court for the Eastern District of Virginia

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the Eastern District of Virginia has six judgeships and four office codes: Richmond (office code 3), Norfolk (office code 2), Alexandria (office code 1), and Newport News (office code 4).

The clerk's office is open from 9:00 to 4:00.

Electronic filing is governed by the court's Rule 5005-2 and the court's CM/ECF Attorney Users' Guide. The court has very recently adopted NextGen CM/ECF.

It is possible for a pro se debtor to make a formal motion to use CM/ECF, and the motion receives careful screening by the presiding judge to determine whether the debtor has sufficient technical ability. These motions are rarely granted.

The court plans to adopt an electronic proof of claim (ePOC) portal for pro se creditors. Pro se creditors sometimes receive limited CM/ECF privileges.

Even attorneys do not currently open cases directly in CM/ECF. Petitions are filed in a shell case.

The court temporarily accepted filings by email during the COVID-19 pandemic.

The court has drop boxes, which it established during the COVID-19 pandemic and which the court plans to keep. They are available when the buildings are open, a little beyond counter hours. At each drop box is an electronic

time stamp and a telephone connection to the clerk's office. Filing fees paid in cash must be delivered directly to the counter rather left in a drop box.

The Bankruptcy Court for the Western District of Virginia

This court was selected for this study at random from among the bankruptcy courts. It is one of the bankruptcy courts that has an electronic self-representation (eSR) portal.

The United States Bankruptcy Court for the Western District of Virginia has three judgeships and three office codes: Lynchburg (office code 6), Roanoke (office code 7), and Harrisonburg (office code 5).

The clerk's office is open from 8:00 to 4:30.

Electronic filing is governed by the court's Rule 5005-4 and the court's Amended Administrative Procedures for Filing, Signing, Retaining and Verification of Pleadings and Papers in the Case Management/Electronic Case Filing (CM/ECF) System. *See* Bankr. W.D. Va. R. 1002-1.D.

The court does not permit pro se debtors to use CM/ECF, but it is thinking about it for the future. Institutional pro se creditors can register as limited filers in CM/ECF.

Pro se debtors have very successfully used the court's eSR portal. Because the program is designed so that all questions must be answered before the petition can be submitted, the court receives complete and legible petitions. A filing fee and a wet signature must follow. Most are mailed. Only the Roanoke location accepts cash.

During the COVID-19 pandemic, the court has allowed pro se debtors to submit their filings to the court by email. Fax submissions would be permitted, but they have not happened. Because email submission of a petition includes only a photocopy of a signature, the court will not continue the email option once the pandemic is over.

The court does not have drop boxes.

The court's biggest challenge with respect to eSR is getting the word out that it is an option for pro se debtors.

The Bankruptcy Court for the Northern District of West Virginia

This court was selected for this study because it is one of the bankruptcy courts that has an electronic self-representation (eSR) portal.

The United States Bankruptcy Court for the Northern District of West Virginia has one judgeship and four office codes: Martinsburg (office code 3), Clarksburg (office code 1), Wheeling (office code 5), and Elkins (office code 2).

The clerk's office in Wheeling is open from 8:30 to noon and from 1:00 to 4:00. The clerk's office in Clarksburg is open Tuesdays through Thursdays from 9:30 to 3:00 but closed for lunch.

Electronic filing is governed by the court's Rule 5005-4. The rule states that pro se parties may file electronically using the Clerk's Pro Se Party E-Filing

Program. *Id.* R. 5005-4(b). The court may require electronic filing for pro se parties so long as that would not create a hardship or denial of access to the court. *Id.* R. 5005-4(a)–(b). This program allows a pro se litigant to use CM/ECF to electronically submit a filing to the court. After a review and proper classification, the court administrator converts the submission to a public docket entry. Pro se litigants do not use CM/ECF to create docket entries.

The court's website has an Electronic Self-Representation (eSR) Bankruptcy Petition Preparation System for Chapter 7. The petition is filed after the debtor submits to the court in paper form, by mail or in person, (1) a declaration of electronic filing, which includes the debtor's wet signature, (2) a certificate of credit counseling, and (3) a copy of identification, such as a driver's license. The court accepts payment by money order, cashier's check, or credit card. Payment can be made through the court's website pursuant to an order to pay the fee in installments.

Pro se filers must serve on other parties motions that initiate contested matters or adversary complaints, but for other filings service is complete upon filing if the other parties receive electronic service. Parties who receive electronic service of filing might not be inclined to enforce a requirement of separate service by paper filers.

Email filing in general would only be permitted in an emergency, followed by prompt submission of originals, including original signatures. The court does not have a drop box.

A document is timely if filed before midnight on the day that it is due. Bankr. N.D. W. Va. R. 5005-5(b)(1).

The Bankruptcy Court for the District of Wyoming

This court was selected for this study at random from among the bankruptcy courts.

The United States Bankruptcy Court for the District of Wyoming has one judgeship and one office code: Cheyenne (office code 2).

The clerk's office is open from 8:30 to noon and from 1:00 to 4:00.

Electronic filing is governed by the court's Rule 5005-2.

The court had about two dozen pro se debtors in 2021. In earlier years, it would have been one hundred or so. Pro se debtors typically file their petitions on paper and do not again interact with the court: "one and done."

Pro se debtors occasionally email or fax their petitions. Faxed petitions are converted into emails. The court accepts electronic submissions of petitions so long as the filing fee is addressed. If the petition includes an application for a waiver or an installment plan, then there is no problem. Otherwise the submission must be followed by payment, and the court may ask for an emailed copy of a money order or cashier's check. Rule 5005-1 provides for email or fax submissions with clerk permission, and originals are required seven days later.

What the court is most concerned about with electronic submissions is payment. The court does not use Pay.gov because of the credit card option.

Pro se debtors can arrange with the Bankruptcy Noticing Center for debtor electronic bankruptcy noticing (DeBN), and in a few cases the debtors have been granted electronic noticing in CM/ECF.

Because pro se debtors' interaction with the court after the petition is filed is so limited, there is not much motivation to enhance electronic filing and noticing.

The court does not use an electronic proof of claim (ePOC) portal for pro se creditors. They use CM/ECF.

There is a drop box available when the building is open. It does not have a time stamp; when members of the court's staff retrieve documents in the morning, they time-stamp the documents for the previous day.

Electronic Self Representation Confirmation Letter

This is an automatically generated email. Please do not reply to this message.

Electronic Self Representation
United States Bankruptcy Court (Central District of California)

Dear _____,

This email confirms the electronic receipt of the bankruptcy petition submitted to the Court as of the date of this email. Please note that the bankruptcy petition has NOT been filed and has NOT been assigned a case number, until the items listed below are received by the Bankruptcy Court. The Court will file this submission if it contains all that we require to file a bankruptcy case. Please note that the minimum items listed below must be received by the Bankruptcy Court within 10 days of the date of this confirmation email. These items must be either hand-delivered or mailed to the court.

To determine where you must submit the items listed below, please visit the Court Locator section of our website. The specific location of where to file for bankruptcy is determined by the zip code of a debtor's residential address.

You may view or print your submitted bankruptcy petition paperwork by logging in to the Electronic Self-Representation (eSR) Bankruptcy Petition site with the password you previously created. The information that you enter in the bankruptcy petition cannot be changed once it is submitted to the Court.

FILING FEE. Payable to "U.S. Bankruptcy Court," the full amount of the filing fee must be MAILED or HAND-DELIVERED by one of the following methods:

- Cashier's check issued by an acceptable financial institution, or
- U.S. Postal money order

NOTE: If you are applying for a fee waiver [CHAPTER 7 CASES ONLY] or fee installments, you must hand-deliver the remaining documents in person to the court.

LIST OF MINIMUM ITEMS REQUIRED WITHIN 10 DAYS:

1. A signed Declaration Regarding Electronic Filing (Self-Represented Individual) [SEE ATTACHED PDF]
2. A signed Statement About Your Social Security Numbers (Form 121) [SEE ATTACHED PDF]
3. A photocopy of your government-issued photo identification such as your driver's license or passport.
4. Copy of the Certificate of Credit Counseling for each Debtor(s) (or printed copy of electronic version).

NOTE: The electronically submitted petition will expire within 10 days of the date of this confirmation email. If you do not provide the items listed above before the expiration date, your case information will be removed from the system and you will not receive a bankruptcy case number.

Additional items may be submitted either by mail or through the Electronic Drop Box. In order to submit documents that do not require a signature or don't include a fee, you may request access to the Court's Electronic Drop Box: https://www.cacb.uscourts.gov/request-access-electronic-drop-box.

Complete, print and sign these additional required documents:
1. Statement of Related Cases F 1015-2.1.STMT.RELATED.CASES
2. Disclosure of Compensation of Bankruptcy Petition Preparer (Form B2800) (if applicable)
3. Bankruptcy Petition Preparer's Notice, Declaration and Signature (Form 119) (if applicable)
4. Verification of Master Mailing List of Creditors (F 1007-1.MAILING.LIST.VERIFICATION)
5. Declaration By Debtor(s) as to Whether Income Was Received From An Employer Within 60 Days of the Petition Date [Include Paystubs (if applicable)]
6. Initial Statement About an Eviction Judgment Against You (Form 101A) (if applicable)
7. Statement About Payment of an Eviction Judgment Against You (Form 101B) (if applicable)
8. Chapter 13 Plan [For Chapter 13 Cases Only]

DISMISSAL OF BANKRUPTCY CASE:

If the petition filing fee is not received within 10 days from the date of filing, your case will be dismissed. Additionally, if any of the required documents are not received by the Court by the deadline, your case will be dismissed.

ONCE YOUR CASE HAS BEEN FILED BY THE COURT:

The official time of filing is when a document is entered and docketed in the case management/electronic case filing system (CM/ECF), regardless of the filing method (in person, electronically through CM/ECF, through eSR or EDB, or placed in a physical drop box).

Once your case has been filed and issued a case number, a Notice of Bankruptcy Case Filing with your bankruptcy case number will be handed, mailed, or emailed to you. The case number is proof of your official bankruptcy filing. You may access the Court's automated Voice Case Information System (VCIS) 24 hours/7 days a week, toll free at (866) 222-8029.

You may request electronic notification for orders and court-generated notices by visiting the Debtor's Electronic Bankruptcy Noticing (DeBN) page and completing a request form: https://www.cacb.uscourts.gov/debtor-electronic-bankruptcy-noticing-debn.

FREE OR LOW COST ASSISTANCE:

If you cannot afford an attorney, the Court offers Help Desks at each court location with volunteer attorneys who may assist you. Visit the Court's Don't Have an Attorney web page for a complete listing of court resources. For information on low cost assistance in a chapter 13 case, view the following link to see the Chapter 13 Panel information: https://www.cacb.uscourts.gov/local-and-county-bar-associations-lawyer-referral-options.

SURVEY:

Please participate in a brief survey to share your experience using eSR. Your responses will be anonymous. You may reach the eSR survey at the following link: https://www.surveymonkey.com/r/CW2W363

Did you access any of the Court's Help Desks for free legal assistance? If so, please participate in a survey regarding your experience, using the following link: https://www.surveymonkey.com/s/CACBSelfHelp

Regards,
The eSR Team

Access the Bankruptcy Court in Person or Using Remote Access

eSR
electronic Self-Representation

To file petitions electronically, use eSR. eSR is a free online tool for self-represented debtors to use to prepare the bankruptcy forms.

How to find an attorney or access free/low cost help:

Find an attorney at www.cacb.uscourts.gov
Local and County Bar Associations & Lawyer Referral Options

Intake Appointment Scheduling System

This service provides debtors the ability to schedule online appointments with our Intake offices at each Division.

For appointments with the Self Help Desk, please visit our For Debtors page and locate the information under "Free or Low Cost Bankruptcy Help".

Pay.gov

Free online payment for copies, certified copies and installment payments after the first installment. Visit Online Payments for Self-Represented Litigants for details.

eDB

To submit non-fee documents electronically, use the Electronic Drop Box. The Electronic Drop Box is for self-represented litigants only.

https://www.cacb.uscourts.gov/request-access-electronic-drop-box

To file documents by mail, send to:

(Mail to the division assigned, based on the bankruptcy case. See website for additional details.)

U.S. Bankruptcy Court
Attention: Intake Department
255 E Temple St.
Los Angeles, CA 90012

U.S. Bankruptcy Court
Attention: Intake Department
411 West Fourth Street
Santa Ana, CA 92701

U.S. Bankruptcy Court
Attention: Intake Department
3420 Twelfth Street
Riverside, CA 92501

U.S. Bankruptcy Court
Attention: Intake Department
1415 State Street
Santa Barbara, CA 93101

U.S. Bankruptcy Court
Attention: Intake Department
21041 Burbank Boulevard
Woodland Hills, CA 91367

Have a question?

Call toll free
(855) 460-9641

www.cacb.uscourts.gov

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9am-4pm PST

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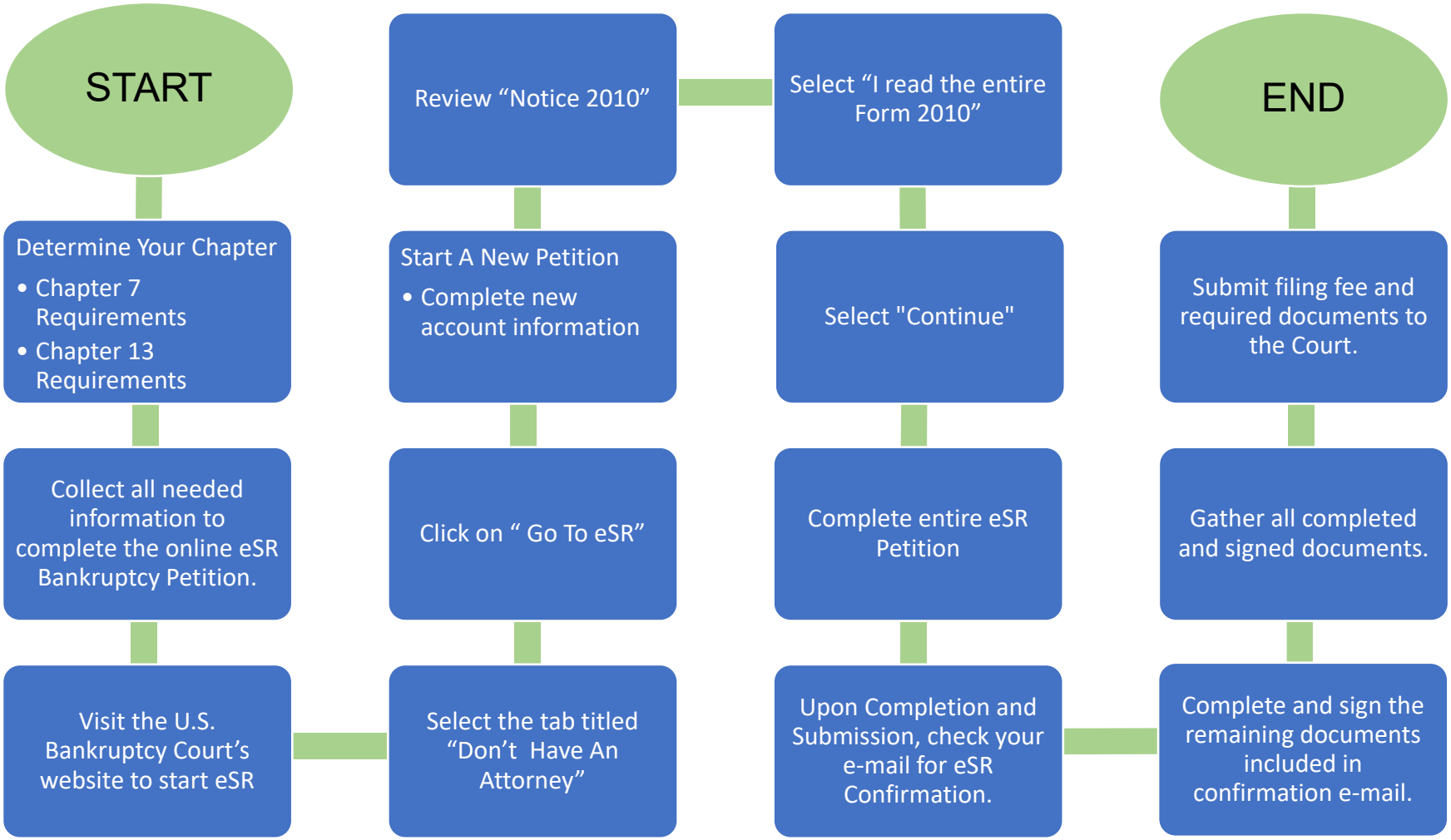
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

HOW TO PREPARE A PETITION USING eSR



Thomas F. Eagleton U.S. Courthouse
111 S. 10th Street, 4th Floor
St. Louis, MO 63102

(314) 244-4500
www.moeb.uscourts.gov
Office Hours: Mon – Fri, 8:30 AM – 4:30 PM

Consent Tab 1

Consent Tab 1A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 22-BK-B – OFFICIAL FORMS 309E2 AND 309F2

DATE: AUG. 13, 2022

We have received a suggestion from Mark J. Wolfson, a partner in Foley & Lardner LLP in Tampa, Florida, suggesting that the two versions of Forms 309 that provide notice of a chapter 11 bankruptcy case under subchapter V (309E2 for individuals or joint debtors, and 309F2 for corporations and partnerships) be modified to include the deadline imposed by Fed. R. Bankr. P. 1020(b) for parties in interest to object to a debtor's designation of a chapter 11 case as a subchapter V case.

Rule 1020 was amended in 2020 (Interim Rule 1020) following the enactment of the Small Business Reorganization Act of 2019 ("SBRA"), Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Rule 1020(a) previously allowed the debtor to state in the petition (in a voluntary case) or within 14 days after the order for relief (in an involuntary case) whether the debtor is a "small business debtor." If the debtor so stated, the case would proceed in accordance with that designation "unless and until the court enters an order finding that the debtor's statement is incorrect." The rule was amended to permit a debtor in a voluntary chapter 11 case to state in the petition whether the debtor is a "debtor as defined in § 1182(1) of the Code and [if so] whether the debtor elects to have subchapter V of chapter 11 apply." (In an involuntary chapter 11 case, the debtor must file its statement within 14 days after entry of the order for relief.)

Rule 1020(b) provides that the United States trustee or a party in interest "may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later." The only amendment to Rule 1020(b) in 2020 was the elimination of the introductory language which formerly said "Except as provided in subdivision (c)." Former Rule 1020(c) conditioned the status of a case as a small business case on inactivity of an appointed committee of unsecured creditors; that section was eliminated because the existence or level of activity of a creditors' committee is no longer a criterion for small-business-debtor status. The SBRA eliminated that portion of the definition of "small business debtor" in § 101(51D) of the Code.

The timing for objecting to a debtor's designation under Rule 1020(a) was not changed by the amendments in response to the SBRA. The period for objecting to a debtor's designation has always been 30 days after the conclusion of the § 341 meeting. The amendment simply made the same period applicable to a subchapter V designation as to a designation as a "small business debtor."

Moreover, there is no way to include the deadline on the forms of notice of a chapter 11 bankruptcy case as he requests, because the notice is sent out before the § 341 meeting takes place. Indeed, the time and place of the § 341 meeting are included on the forms (see line 7). The date that is 30 days after the conclusion of the § 341 meeting will not be known. The only "deadline" that could be included on the notice would be a statement that the deadline is in fact "30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later," which is already provided by Rule 1020(b).

The Subcommittee recommends no action on this suggestion.

Consent Tab 2

Consent Tab 2A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: SUGGESTION FOR AMENDING RULE 7012(b)

DATE: AUGUST 17, 2022

The Advisory Committee has received a suggestion (22-BK-F) from Giuseppe Ippolito to amend Rule 7012(b) to require parties filing a pre-answer motion under Rule 12 to state whether they consent to the bankruptcy court's entry of a final order or judgment. The Subcommittee considered the Suggestion during its meeting on August 8.

The Suggestion

Mr. Ippolito, who is a law clerk to a bankruptcy judge, notes that Rules 7008 and 7012(b) require parties to state in their complaint, counterclaim, cross-claim, third-party complaint, or responsive pleading that they do or do not consent to the entry of a final judgment or order by the bankruptcy court. He argues that the current rules leave a gap: a defendant filing a pre-answer motion under Rule 12—which is not a responsive pleading—does not have to include such a statement, even though the motion could result in the bankruptcy judge issuing a final order of dismissal. He suggests that "[c]larifying the consent of the parties . . . is equally important for early dispositive motions" and that to obtain that clarification, Rule 7012(b) should be amended as follows:

> Rule 12(b)–(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading, or a motion under Rule 12(b)–(h), shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.

The 2016 Amendments to Rules 7008, 7012, and 7016

Rules 7008 (General Rules of Pleading), 7012 (Defenses and Objections), and 7016 (Pretrial Procedures) were amended in 2016 in response to *Stern v. Marshall*, 564 U.S. 462 (2011), which held that bankruptcy judges lack the constitutional authority to enter final judgments in certain proceedings that require adjudication in an Article III court, even if the proceeding has been designated as "core" by Congress.[1] Because of that decision, the label of "core" was no longer dispositive of the bankruptcy courts' authority to hear and determine a proceeding, and use of the term even created confusion since some proceedings are statutorily core but constitutionally non-core. Rules 7008 and 7012 were therefore amended to delete the requirement that parties state in their initial pleadings whether the proceeding is core or non-core and, only if non-core, whether they consent to entry of a judgment by the bankruptcy court. The amended rules instead require parties in all instances to state in their initial pleading whether they do or do not consent to the bankruptcy court's entry of a final judgment or order in the adversary proceeding.[2] Rule 7016 was amended to require the bankruptcy court, on its own motion or a party's motion, to determine its adjudicative authority in an adversary proceeding.

Among the comments that the Advisory Committee received in response to publication of the *Stern* amendments was the following comment from the National Bankruptcy Conference (NBC):

> The proposed rule [7016], which deals with pre-trial procedures, does not address the treatment of *Stern* issues that arise in the resolution of motions to dismiss or other preliminary rulings. The proposed rules should provide a mechanism for a

[1] Also part of the package of *Stern* amendments were amendments to Rules 9027 (Removal) and 9033 (Proposed Findings of Fact and Conclusions of Law).

[2] By the time the *Stern* amendments became effective, the Supreme Court had held that "Article III is not violated when the parties knowingly and voluntarily consent to adjudication by a bankruptcy judge." *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 669 (2015).

> party to raise *Stern* issues if the party has not yet filed an answer or other pleading.

The Advisory Committee, acting on the Business Subcommittee's recommendation, chose not to make any change to the amendments in response to the NBC comment for the following reasons:

> The NBC raises a valid point regarding the timing of *Stern*-related issues. Proposed Rules 7008 and 7012 require in the pleadings a statement as to consent, but *Stern* issues could arise before the filing of a responsive pleading. *See, e.g., Kirschner v. Agoglia*, 476 B.R. 75 (S.D.N.Y. 2012) (motion to dismiss). The NBC's comment, however, appears to assume that proposed Rule 7016 (titled "Pre-Trial Procedures") applies only after the close of the pleadings. For two reasons, the rule is not so limited. First, the text of proposed Rule 7016(b) directs the bankruptcy judge to decide the appropriate procedure "on its own motion or a party's timely motion." That timely motion could be a pre-answer motion that raises a *Stern* objection. Second, Civil Rule 16, incorporated by reference in Rule 7016, is not restricted to the stage of litigation after an answer is filed. Nevertheless, the NBC's comment does point out a potential gap in the proposed procedure if a party (i) files a pre-answer motion raising various defenses to a claim without objecting to the bankruptcy judge's authority to enter final orders or judgment, and then, after the denial of the motion, (ii) files an answer that objects to the bankruptcy judge's adjudicatory authority. Because this scenario is possible under the current Bankruptcy Rules, however, the Subcommittee believes the comment goes beyond the scope of the proposed amendments. The Advisory Committee may wish to consider the comment as a suggestion for future rulemaking.

Advisory Committee on Bankruptcy Rules, April 2013 Agenda Book at 287.

Discussion

Mr. Ippolito is correct that a motion under Rule 12 is not a responsive pleading, *see* Civil Rule 7(a), and therefore Rule 7012(b) does not require the moving party to state whether it consents to the bankruptcy court's adjudication. As a result, in ruling on a pre-answer motion, the court may not know whether the defendant consents to the entry of a final judgment. While that seems to create a gap, the Subcommittee concluded that it is not a problem that needs solving.

The only situation in which the court enters a final judgment or order in response to a Rule 12 motion is when it grants a motion to dismiss with prejudice or without leave to amend. *See, e.g., Avalos v. LVNV Funding, LLC (*In re *Avalos)*, 531 B.R. 748, 751 (Bankr. N.D. Ill. 2015) ("Whether there is such consent or not, an initial motion to dismiss ordinarily does not call for a final adjudication. When appropriate, dismissal with prejudice can be recommended to the District Court. Therefore, the present motion to dismiss is within authority of a bankruptcy judge to decide."). If the court denies the motion or grants leave to amend the complaint, the proceeding continues. The defendant will then have the opportunity under Rule 7012(b) to file a responsive pleading that includes a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.

When the court does grant dismissal with prejudice, the plaintiff will have been required to state in its complaint whether or not it consents to the bankruptcy court's entry of the judgment. If the plaintiff has not consented and the proceeding involves a non-core or *Stern* claim, the court knows that it will have to make proposed findings of fact and conclusions of law for the district court's resolution. If the plaintiff has consented, the absence of the defendant's consent should not matter. Having succeeded on its motion to dismiss, the defendant will not (and cannot) challenge the bankruptcy court's authority. Nor can the plaintiff appeal on that ground because it consented to the court's adjudication. Moreover, the court is likely to be able to find that the defendant impliedly consented to the entry of a judgment in its favor. *See, e.g., McChristian v. Ditech Holding Corp. (*In re *Ditech Holding Corp.)*, 2021 Bankr. LEXIS 3096 at *21 (Bankr. S.D.N.Y. 2021) (finding implied consent).

Even if that were not the case, courts are not helpless when a party fails to state whether it consents. They can require a statement by the silent party. *See, e.g., Harker v. IRS* (In re *Citro*), 2018 Bankr. LEXIS 4278 at *3 (Bankr. S.D. Ohio 2018) ("[T]he court requested the parties to file a statement as to whether they consent to the bankruptcy court entering final judgment on any 'Stern' claims involved in this proceeding.").

The Subcommittee recommends that the Advisory Committee take no further action on the Suggestion.