

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

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SECRETARY

March 16, 2017

MEMORANDUM

TO: Scott S. Harris, Clerk of the Supreme Court of the United States
FROM: David G. Campbell
SUBJECT: Summary of Proposed Amendments to the Federal Rules

This memorandum summarizes proposed amendments to the Federal Rules of Bankruptcy Procedure and corrective amendments to the Federal Rules of Appellate and Civil Procedure. The Judicial Conference of the United States approved the amendments this week. If the Supreme Court adopts the amendments and transmits them to Congress no later than May 1, 2017, they will take effect on December 1, 2017, absent passage of a contrary law.

I. Federal Rules of Bankruptcy Procedure 2002, 3002, 3007, 3012, 3015, 3015.1, 4003, 5009, 7001, and 9009

The proposed amendments to Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, along with new Rule 3015.1, would implement a new official plan form, or a local plan form equivalent, for use in cases filed under chapter 13 of the bankruptcy code.

The Advisory Committee on Bankruptcy Rules began considering the possibility of creating an official form for chapter 13 plans in 2011. A proposed form and amendments to nine related rules were published for public comment in August 2013. Because the Advisory Committee made significant changes to the form in response to public comments, the revised form and rules were published again in August 2014.

As a result of comments submitted in response to the August 2014 publication, many of which opposed a mandatory national form for chapter 13 plans, the Advisory Committee revised

and republished – in July 2016 – one of the original nine rules (Rule 3015) along with a new Rule 3015.1. The revised Rule 3015 and new Rule 3015.1 would allow districts to use their own local plan form rather than the proposed national plan form if the local form meets certain requirements. After considering public comments on this revision, the Advisory Committee and Standing Committee unanimously approved the nine rules amendments, the new rule, and the new form.

II. Corrective Rules Amendments

A. Federal Rule of Appellate Procedure 4(a)(4)(B)

The proposed amendment to Appellate Rule 4(a)(4)(B) restores subsection (iii) to correct an inadvertent deletion of that subsection in 2009. The deletion resulted from the omission of ellipses in the version of Rule 4(a)(4)(B) submitted to the Supreme Court in 2009. Subdivision (iii) states: “No additional fee is required to file an amended notice.” The Advisory and Standing Committees unanimously recommend restoring Rule 4(a)(4)(B)(iii) without publication because the provision is not controversial and was deleted inadvertently.

B. Federal Rule of Civil Procedure 4(m)

Civil Rule 4(m) addresses the time limit for service of a summons and was amended in two consecutive years, 2015 and 2016. In addition to shortening the presumptive time for service from 120 days to 90 days, the 2015 amendment added an exemption from the time limit for Rule 71.1(d)(3)(A) notices of a condemnation action. The 2016 amendment added another exemption for Rule 4(h)(2) service on a corporation, partnership, or association at a place not within any judicial district of the United States.

The sequential amendments resulted in an error. The 2016 amendment exempting Rule 4(h)(2) was prepared in 2014, before the 2015 amendment exempting Rule 71.1(d)(3)(A) was in effect. Once the 2015 amendment became effective, it should have been incorporated into the proposed 2016 amendment then making its way through the Rules Enabling Act process, but such a revision of the 2016 materials was overlooked. As a result, Rule 71.1(d)(3)(A) was not included in the list of exemptions in Rule 4(m) when the 2016 amendment became effective. The Advisory and Standing Committees unanimously recommend restoring Rule 71.1(d)(3)(A) to the list of exemptions in Rule 4(m) without re-publication.



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WASHINGTON, D.C. 20544

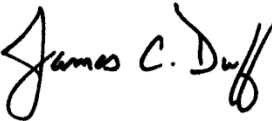
THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

March 16, 2017

MEMORANDUM

To: The Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff 

RE: TRANSMITTAL OF PROPOSED AMENDMENT TO THE FEDERAL RULES OF
APPELLATE PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court the proposed amendment to Rule 4 of the Federal Rules of Appellate Procedure, which was approved by the Judicial Conference at its March 2017 session. The Judicial Conference recommends that the amendment be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendment, I am transmitting: (i) a “clean” copy of the affected rule incorporating the proposed amendment and accompanying Committee Note; (ii) a redline version of the same; and (iii) an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference.

Attachments

**PROPOSED AMENDMENT TO THE
FEDERAL RULES OF APPELLATE PROCEDURE**

Rule 4. Appeal as of Right^{3/4} When Taken

(a) Appeal in a Civil Case.

* * * * *

(4) Effect of a Motion on a Notice of Appeal.

* * * * *

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment^{3/4} but before it disposes of any motion listed in Rule 4(a)(4)(A)^{3/4} the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

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- (ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal³/₄ in compliance with Rule 3(c)³/₄ within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.
- (iii) No additional fee is required to file an amended notice.

* * * * *

Committee Note

Subdivision (a)(4)(B)(iii). This technical amendment restores the former subdivision (a)(4)(B)(iii) that was inadvertently deleted in 2009.

**PROPOSED AMENDMENT TO THE
FEDERAL RULES OF APPELLATE PROCEDURE***

1 **Rule 4. Appeal as of Right^{3/4} When Taken**

2 **(a) Appeal in a Civil Case.**

3 * * * * *

4 **(4) Effect of a Motion on a Notice of Appeal.**

5 * * * * *

6 (B)(i) If a party files a notice of appeal after the
7 court announces or enters a judgment^{3/4} but
8 before it disposes of any motion listed in
9 Rule 4(a)(4)(A)^{3/4} the notice becomes
10 effective to appeal a judgment or order, in
11 whole or in part, when the order disposing
12 of the last such remaining motion is
13 entered.

* New material is underlined.

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14 (ii) A party intending to challenge an order
15 disposing of any motion listed in
16 Rule 4(a)(4)(A), or a judgment's alteration
17 or amendment upon such a motion, must
18 file a notice of appeal, or an amended
19 notice of appeal³/₄ in compliance with
20 Rule 3(c)³/₄ within the time prescribed by
21 this Rule measured from the entry of the
22 order disposing of the last such remaining
23 motion.

24 (iii) No additional fee is required to file an
25 amended notice.

26 * * * * *

Committee Note

Subdivision (a)(4)(B)(iii). This technical amendment restores the former subdivision (a)(4)(B)(iii) that was inadvertently deleted in 2009.

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:**

* * * * *

FEDERAL RULES OF APPELLATE PROCEDURE

Rule Recommended for Approval and Transmission

The Advisory Committee on Appellate Rules submitted a proposed technical amendment to Rule 4(a)(4)(B) to restore a subsection which had been inadvertently deleted in 2009, with a recommendation that the amendment be approved and transmitted to the Judicial Conference.

On December 14, 2016, the Office of the Law Revision Counsel (OLRC) in the U.S. House of Representatives advised that Rule 4(a)(4)(B)(iii) had been deleted by a 2009 amendment to Rule 4. Subdivision (iii), which concerns amended notices of appeal, states: “No additional fee is required to file an amended notice.” The deletion of this subdivision in 2009 was inadvertent due to an omission of ellipses in the version submitted to the Supreme Court. The OLRC deleted subdivision (iii) from its official document as a result, but the document from which the rules are printed was not updated to show deletion of subdivision (iii). As a result, Rule 4(a)(4)(B) was published with subdivision (iii) in place that year and every year since.

The proposed technical amendment restores subdivision (iii) to Rule 4(a)(4)(B). The advisory committee did not believe publication was necessary given the technical, non-substantive nature of this correction.

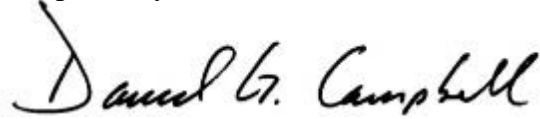
The Standing Committee voted unanimously to support the recommendation of the Advisory Committee on Appellate Rules.

Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

Recommendation: That the Judicial Conference approve the proposed amendment to Appellate Rule 4(a)(4)(B) and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,

A handwritten signature in black ink that reads "David G. Campbell". The signature is written in a cursive style with a large initial "D".

David G. Campbell, Chair

Jesse M. Furman
Gregory G. Garre
Daniel C. Girard
Susan P. Graber
Frank M. Hull
Peter D. Keisler
William K. Kelley

Amy J. St. Eve
Larry D. Thompson
Richard C. Wesley
Sally Q. Yates
Robert P. Young, Jr.
Jack Zouhary



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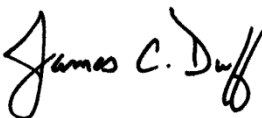
THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

March 16, 2017

MEMORANDUM

To: The Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff 

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and new Rule 3015.1 of the Federal Rules of Bankruptcy Procedure, which were approved by the Judicial Conference at its March 2017 session. The Judicial Conference recommends that the amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting: (i) a “clean” copy of the affected rules incorporating the proposed amendments and accompanying Committee Notes; (ii) a redline version of the same; (iii) an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the December 2016 Report of the Advisory Committee on Bankruptcy Rules.

Attachments

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE**

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

(a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as 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:

* * * * *

(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

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(9) the time fixed for filing objections to confirmation of 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.

* * * * *

Committee Note

Subdivisions (a) and (b) are amended and reorganized to alter the provisions governing notice under this rule in chapter 13 cases. Subdivision (a)(9) is added to require at least 21 days' notice of the time for filing objections to confirmation of a chapter 13 plan. Subdivision (b)(3) is added to provide separately for 28 days' notice of the date of the confirmation hearing in a chapter 13 case. These amendments conform to amended Rule 3015, which governs the time for presenting objections to confirmation of a chapter 13 plan. Other changes are stylistic.

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Rule 3002. Filing 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.

(b) **PLACE OF FILING.** A proof of claim or interest shall be filed 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 or chapter 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:

* * * * *

(6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that:

(A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or

(B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address.

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(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.

Committee Note

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. The inclusion of language from § 506(d) is not intended to effect any change of law with respect to claims subject to setoff under § 553. The amendment preserves the existing exceptions to this rule

under Rules 1019(3), 3003, 3004, and 3005. Under Rule 1019(3), a creditor does not need to file another proof of claim after conversion of a case to chapter 7. Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. Rules 3004 and 3005 govern the filing of a proof of claim by the debtor, trustee, or another entity if a creditor does not do so in a timely manner.

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the § 341 meeting of creditors to 70 days after the petition date. If a case is converted to chapter 12 or chapter 13, the 70-day time for filing runs from the order of conversion. If a case is converted to chapter 7, Rule 1019(2) provides that a new time period for filing a claim commences under Rule 3002. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Subdivision (c)(6) is amended to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by Rule 1007(a). The amendment also clarifies that if a court grants a creditor's motion under this rule to extend the time to file a proof of claim, the extension runs from the date of the court's decision on the motion.

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Subdivision (c)(7) is added to provide a two-stage deadline for filing mortgage proofs of claim secured by an interest in the debtor's principal residence. Those proofs of claim must be filed with the appropriate Official Form mortgage attachment within 70 days of the order for relief. The claim will be timely if any additional documents evidencing the claim, as required by Rule 3001(c)(1) and (d), are filed within 120 days of the order for relief. The order for relief is the commencement of the case upon filing a petition, except in an involuntary case. See § 301 and § 303(h). The confirmation of a plan within the 120-day period set forth in subdivision (c)(7)(B) does not prohibit an objection to any proof of claim.

Rule 3007. Objections to Claims

(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

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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, 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.

* * * * *

Committee Note

Subdivision (a) is amended to specify the manner in which an objection to a claim and notice of the objection must be served. It clarifies that Rule 7004 does not apply to the service of most claim objections. Instead, a claimant must be served by first-class mail addressed to the person whom the claimant most recently designated on its proof of claim to receive notices, at the address so indicated. If,

however, the claimant is the United States, an officer or agency of the United States, or an insured depository institution, service must also be made according to the method prescribed by the appropriate provision of Rule 7004. The service methods for the depository institutions are statutorily mandated, and the size and dispersal of the decision-making and litigation authority of the federal government necessitate service on the appropriate United States attorney's office and the Attorney General, as well as the person designated on the proof of claim.

As amended, subdivision (a) no longer requires that a hearing be scheduled or held on every objection. The rule requires the objecting party to provide notice and an opportunity for a hearing on the objection, but, by deleting from the subdivision references to "the hearing," it permits local practices that require a claimant to timely request a hearing or file a response in order to obtain a hearing. The official notice form served with a copy of the objection will inform the claimant of any actions it must take. However, while a local rule may require the claimant to respond to the objection to a proof of claim, the court will still need to determine if the claim is valid, even if the claimant does not file a response to a claim objection or request a hearing.

Rule 3012. Determining the Amount of Secured and Priority Claims

(a) DETERMINATION OF AMOUNT OF CLAIM.

On request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine:

(1) the amount of a secured claim under § 506(a) of the Code; or

(2) the amount of a claim entitled to priority under § 507 of the Code.

(b) REQUEST FOR DETERMINATION; HOW MADE. Except as provided in subdivision (c), a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court

designates in the manner provided for service of a summons and complaint by Rule 7004. A request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.

(c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.

Committee Note

This rule is amended and reorganized.

Subdivision (a) provides, in keeping with the former version of this rule, that a party in interest may seek a determination of the amount of a secured claim. The amended rule provides that the amount of a claim entitled to priority may also be determined by the court.

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Subdivision (b) is added to provide that a request to determine the amount of a secured claim may be made in a chapter 12 or chapter 13 plan, as well as by a motion or a claim objection. When the request is made in a plan, the plan must be served on the holder of the claim and any other entities the court designates according to Rule 7004. Secured claims of governmental units are not included in this subdivision and are governed by subdivision (c). The amount of a claim entitled to priority may be determined through a motion or a claim objection.

Subdivision (c) clarifies that a determination under this rule with respect to a secured claim of a governmental unit may be made only by motion or in a claim objection, but not until the governmental unit has filed a proof of claim or its time for filing a proof of claim has expired.

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case

(a) **FILING A CHAPTER 12 PLAN.** The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.

(b) **FILING A CHAPTER 13 PLAN.** The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) **FORM OF CHAPTER 13 PLAN.** If there is an Official Form for a plan filed in a chapter 13 case, that

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form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, “nonstandard provision” means a provision not otherwise included in the Official or Local Form or deviating from it.

(d) NOTICE. If the plan is not included with the notice of the hearing on confirmation mailed under Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.

(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any

modification thereof filed under subdivision (a) or (b) of this rule.

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan:

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(1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed; and

(2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.

(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan under § 1229 or § 1329 of the Code 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 for filing 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. A copy of the proposed modification, or a summary thereof, shall be included with the notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically

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designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination, unlike the amount of any current installment payments or arrearages, controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Subdivision (g)(2) provides for termination of the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve a summary of the proposed modification has been retained.

Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

Rule 3015.1. Requirements for a Local Form for Plans Filed in a Chapter 13 Case

Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:

(a) a single Local Form is adopted for the district after public notice and an opportunity for public comment;

(b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph;

(c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not:

(1) contain any nonstandard provision;

(2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or

(3) avoid a security interest or lien;

(d) the Local Form contains separate paragraphs for:

(1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;

(2) paying a domestic-support obligation;

(3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and

(4) surrendering property that secures a claim with a request that the stay under §§ 362(a) and 1301(a) be terminated as to the surrendered collateral; and

(e) the Local Form contains a final paragraph for:

(1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and

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(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

Committee Note

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter 13 Plan Form. See Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the "hanging paragraph" of § 1325(a), and surrender of property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor's individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact that the

plan contains a nonstandard provision; limits the amount of a secured claim based on a valuation of the collateral, as authorized by Rule 3012(b); or avoids a lien, as authorized by Rule 4003(d).

The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard provisions placed elsewhere in the plan are void. This part gives the debtor the opportunity to propose provisions that are not otherwise in, or that deviate from, the Local Form. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

Rule 4003. Exemptions

* * * * *

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding under § 522(f) to avoid a lien or other transfer of property exempt under the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

Committee Note

Subdivision (d) is amended to provide that a request under § 522(f) to avoid a lien or other transfer of exempt property may be made by motion or by a chapter 12 or chapter 13 plan. A plan that proposes lien avoidance in accordance with this rule must be served as provided under Rule 7004 for service of a summons and complaint. Lien avoidance not governed by this rule requires an adversary proceeding.

**Rule 5009. Closing Chapter 7, Chapter 12, Chapter 13,
and Chapter 15 Cases; Order Declaring
Lien Satisfied**

(a) CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13. If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

* * * * *

(d) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and

shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint.

Committee Note

Subdivision (d) is added to provide a procedure by which a debtor in a chapter 12 or chapter 13 case may request an order declaring a secured claim satisfied and a lien released under the terms of a confirmed plan. A debtor may need documentation for title purposes of the elimination of a second mortgage or other lien that was secured by property of the estate. Although requests for such orders are likely to be made at the time the case is being closed, the rule does not prohibit a request at another time if the lien has been released and any other requirements for entry of the order have been met.

Other changes to this rule are stylistic.

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

* * * * *

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);

* * * * *

Committee Note

Subdivision (2) is amended to provide that the determination of the amount of a secured claim under Rule 3012, like a proceeding by the debtor to avoid a lien on or other transfer of exempt property under Rule 4003(d), does not require an adversary proceeding. The determination of the amount of a secured claim may be sought by motion or through a chapter 12 or chapter 13 plan in accordance with Rule 3012. An adversary proceeding continues to be required for lien avoidance not governed by Rule 4003(d).

Rule 9009. Forms

(a) OFFICIAL FORMS. The Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that:

- (1) expand the prescribed areas for responses in order to permit complete responses;
- (2) delete space not needed for responses; or
- (3) delete items requiring detail in a question or category if the filer indicates—either by checking “no” or “none” or by stating in words—that there is nothing to report on that question or category.

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(b) DIRECTOR'S FORMS. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.

(c) CONSTRUCTION. The forms shall be construed to be consistent with these rules and the Code.

Committee Note

This rule is amended and reorganized into separate subdivisions.

Subdivision (a) addresses permissible modifications to Official Forms. It requires that an Official Form be used without alteration, except when another rule, the Official Form itself, or the national instructions applicable to an Official Form permit alteration. The former language generally permitting alterations has been deleted, but the rule preserves the ability to make minor modifications to an Official Form that do not affect the wording or the order in which information is presented on a form. Permissible changes include those that merely expand or delete the space for responses as appropriate or delete inapplicable items so long as the filer indicates that no response is intended. For example, when more space will be necessary to completely answer a question on an Official Form without an attachment, the answer space may be expanded. Similarly, varying the width or orientation of columnar data on a form for clarity of presentation would be a permissible minor change. On the other hand, many Official Forms

indicate on their face that certain changes are not appropriate. Any changes that contravene the directions on an Official Form would be prohibited by this rule.

The creation of subdivision (b) and subdivision (c) is stylistic.

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16 (8) the time fixed for filing objections and the
17 hearing to consider confirmation of a chapter 12 plan;
18 and

19 (9) the time fixed for filing objections to
20 confirmation of a chapter 13 plan.

21 (b) TWENTY-EIGHT-DAY NOTICES TO
22 PARTIES IN INTEREST. Except as provided in
23 subdivision (l) of this rule, the clerk, or some other person
24 as the court may direct, shall give the debtor, the trustee, all
25 creditors and indenture trustees not less than 28 days'
26 notice by mail of the time fixed (1) for filing objections and
27 the hearing to consider approval of a disclosure statement
28 or, under § 1125(f), to make a final determination whether
29 the plan provides adequate information so that a separate
30 disclosure statement is not necessary; ~~and~~ (2) for filing
31 objections and the hearing to consider confirmation of a

32 chapter 9, or chapter 11, or ~~chapter 13~~ plan; and (3) for the
33 hearing to consider confirmation of a chapter 13 plan.

34 * * * * *

Committee Note

Subdivisions (a) and (b) are amended and reorganized to alter the provisions governing notice under this rule in chapter 13 cases. Subdivision (a)(9) is added to require at least 21 days' notice of the time for filing objections to confirmation of a chapter 13 plan. Subdivision (b)(3) is added to provide separately for 28 days' notice of the date of the confirmation hearing in a chapter 13 case. These amendments conform to amended Rule 3015, which governs the time for presenting objections to confirmation of a chapter 13 plan. Other changes are stylistic.

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1 **Rule 3002. Filing Proof of Claim or Interest**

2 (a) NECESSITY FOR FILING. ~~An~~A secured
3 creditor, unsecured creditor, or an equity security holder
4 must file a proof of claim or interest for the claim or
5 interest to be allowed, except as provided in Rules 1019(3),
6 3003, 3004, and 3005. A lien that secures a claim against
7 the debtor is not void due only to the failure of any entity to
8 file a proof of claim.

9 (b) PLACE OF FILING. A proof of claim or
10 interest shall be filed in accordance with Rule 5005.

11 (c) TIME FOR FILING. In a voluntary chapter 7
12 liquidation case, chapter 12 family ~~farmer's~~ debt
13 adjustment case, or chapter 13 individual's ~~debt~~
14 adjustment case, a proof of claim is timely filed if it is filed
15 not later than ~~90~~70 days after the order for relief under that
16 chapter or the date of the order of conversion to a case
17 under chapter 12 or chapter 13. In an involuntary chapter 7

18 case, a proof of claim is timely filed if it is filed not later
19 than 90 days after the order for relief under that chapter is
20 entered, the first date set for the meeting of creditors called
21 under § 341(a) of the Code, except as follows: But in all
22 these cases, the following exceptions apply:

23 * * * * *

24 (6) ~~If notice of the time to file a proof of claim~~
25 ~~has been mailed to a creditor at a foreign address, o~~On
26 ~~motion filed by the~~a creditor before or after the
27 expiration of the time to file a proof of claim, the
28 court may extend the time by not more than 60 days
29 from the date of the order granting the motion. The
30 motion may be granted if the court finds that~~the~~
31 ~~notice was insufficient under the circumstances to~~
32 ~~give the creditor a reasonable time to file a proof of~~
33 ~~claim.;~~

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34 (A) the notice was insufficient under the
35 circumstances to give the creditor a reasonable
36 time to file a proof of claim because the debtor
37 failed to timely file the list of creditors' names
38 and addresses required by Rule 1007(a); or

39 (B) the notice was insufficient under the
40 circumstances to give the creditor a reasonable
41 time to file a proof of claim, and the notice was
42 mailed to the creditor at a foreign address.

43 (7) A proof of claim filed by the holder of a
44 claim that is secured by a security interest in the
45 debtor's principal residence is timely filed if:

46 (A) the proof of claim, together with the
47 attachments required by Rule 3001(c)(2)(C), is
48 filed not later than 70 days after the order for
49 relief is entered; and

50 (B) any attachments required by
51 Rule 3001(c)(1) and (d) are filed as a supplement
52 to the holder's claim not later than 120 days after
53 the order for relief is entered.

Committee Note

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. The inclusion of language from § 506(d) is not intended to effect any change of law with respect to claims subject to setoff under § 553. The amendment preserves the existing exceptions to this rule under Rules 1019(3), 3003, 3004, and 3005. Under Rule 1019(3), a creditor does not need to file another proof of claim after conversion of a case to chapter 7. Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. Rules 3004 and 3005 govern the filing of a proof of claim by the debtor, trustee, or another entity if a creditor does not do so in a timely manner.

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the § 341 meeting of creditors to 70 days after the petition date.

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If a case is converted to chapter 12 or chapter 13, the 70-day time for filing runs from the order of conversion. If a case is converted to chapter 7, Rule 1019(2) provides that a new time period for filing a claim commences under Rule 3002. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Subdivision (c)(6) is amended to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by Rule 1007(a). The amendment also clarifies that if a court grants a creditor's motion under this rule to extend the time to file a proof of claim, the extension runs from the date of the court's decision on the motion.

Subdivision (c)(7) is added to provide a two-stage deadline for filing mortgage proofs of claim secured by an interest in the debtor's principal residence. Those proofs of claim must be filed with the appropriate Official Form mortgage attachment within 70 days of the order for relief. The claim will be timely if any additional documents evidencing the claim, as required by Rule 3001(c)(1) and (d), are filed within 120 days of the order for relief. The order for relief is the commencement of the case upon filing a petition, except in an involuntary case. See § 301 and § 303(h). The confirmation of a plan within the 120-day period set forth in subdivision (c)(7)(B) does not prohibit an objection to any proof of claim.

1 **Rule 3007. Objections to Claims**

2 (a) ~~OBJECTIONS TO CLAIMS~~ TIME AND
3 MANNER OF SERVICE.

4 (1) Time of Service. An objection to the
5 allowance of a claim and a notice of objection that
6 substantially conforms to the appropriate Official
7 Form shall be in writing and filed, and served at least
8 30 days before any scheduled hearing on the objection
9 or any deadline for the claimant to request a hearing.
10 ~~A copy of the objection with notice of the hearing~~
11 ~~thereon shall be mailed or otherwise delivered to the~~
12 ~~claimant, the debtor or debtor in possession, and the~~
13 ~~trustee at least 30 days prior to the hearing.~~

14 (2) Manner of Service.

15 (A) The objection and notice shall be
16 served on a claimant by first-class mail to the
17 person most recently designated on the

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18 claimant's original or amended proof of claim as
19 the person to receive notices, at the address so
20 indicated; and

21 (i) if the objection is to a claim of
22 the United States, or any of its officers or
23 agencies, in the manner provided for
24 service of a summons and complaint by
25 Rule 7004(b)(4) or (5); or

26 (ii) if the objection is to a claim of an
27 insured depository institution, in the
28 manner provided by Rule 7004(h).

29 (B) Service of the objection and notice
30 shall also be made by first-class mail or other
31 permitted means on the debtor or debtor in
32 possession, the trustee, and, if applicable, the
33 entity filing the proof of claim under Rule 3005.

34 * * * * *

Committee Note

Subdivision (a) is amended to specify the manner in which an objection to a claim and notice of the objection must be served. It clarifies that Rule 7004 does not apply to the service of most claim objections. Instead, a claimant must be served by first-class mail addressed to the person whom the claimant most recently designated on its proof of claim to receive notices, at the address so indicated. If, however, the claimant is the United States, an officer or agency of the United States, or an insured depository institution, service must also be made according to the method prescribed by the appropriate provision of Rule 7004. The service methods for the depository institutions are statutorily mandated, and the size and dispersal of the decision-making and litigation authority of the federal government necessitate service on the appropriate United States attorney's office and the Attorney General, as well as the person designated on the proof of claim.

As amended, subdivision (a) no longer requires that a hearing be scheduled or held on every objection. The rule requires the objecting party to provide notice and an opportunity for a hearing on the objection, but, by deleting from the subdivision references to "the hearing," it permits local practices that require a claimant to timely request a hearing or file a response in order to obtain a hearing. The official notice form served with a copy of the objection will inform the claimant of any actions it must take. However, while a local rule may require the claimant to respond to the objection to a proof of claim, the court will still need to

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determine if the claim is valid, even if the claimant does not file a response to a claim objection or request a hearing.

1 **Rule 3012. ~~Valuation of Security~~Determining the**
2 **Amount of Secured and Priority Claims**

3 ~~The court may determine the value of a claim secured~~
4 ~~by a lien on property in which the estate has an interest on~~
5 ~~motion of any party in interest and after a hearing on notice~~
6 ~~to the holder of the secured claim and any other entity as~~
7 ~~the court may direct.~~

8 (a) DETERMINATION OF AMOUNT OF CLAIM.

9 On request by a party in interest and after notice—to the
10 holder of the claim and any other entity the court
11 designates—and a hearing, the court may determine:

12 (1) the amount of a secured claim under
13 § 506(a) of the Code; or

14 (2) the amount of a claim entitled to priority
15 under § 507 of the Code.

16 (b) REQUEST FOR DETERMINATION; HOW
17 MADE. Except as provided in subdivision (c), a request to

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18 determine the amount of a secured claim may be made by
19 motion, in a claim objection, or in a plan filed in a
20 chapter 12 or chapter 13 case. When the request is made in
21 a chapter 12 or chapter 13 plan, the plan shall be served on
22 the holder of the claim and any other entity the court
23 designates in the manner provided for service of a
24 summons and complaint by Rule 7004. A request to
25 determine the amount of a claim entitled to priority may be
26 made only by motion after a claim is filed or in a claim
27 objection.

28 (c) CLAIMS OF GOVERNMENTAL UNITS. A
29 request to determine the amount of a secured claim of a
30 governmental unit may be made only by motion or in a
31 claim objection after the governmental unit files a proof of
32 claim or after the time for filing one under Rule 3002(c)(1)
33 has expired.

Committee Note

This rule is amended and reorganized.

Subdivision (a) provides, in keeping with the former version of this rule, that a party in interest may seek a determination of the amount of a secured claim. The amended rule provides that the amount of a claim entitled to priority may also be determined by the court.

Subdivision (b) is added to provide that a request to determine the amount of a secured claim may be made in a chapter 12 or chapter 13 plan, as well as by a motion or a claim objection. When the request is made in a plan, the plan must be served on the holder of the claim and any other entities the court designates according to Rule 7004. Secured claims of governmental units are not included in this subdivision and are governed by subdivision (c). The amount of a claim entitled to priority may be determined through a motion or a claim objection.

Subdivision (c) clarifies that a determination under this rule with respect to a secured claim of a governmental unit may be made only by motion or in a claim objection, but not until the governmental unit has filed a proof of claim or its time for filing a proof of claim has expired.

1 **Rule 3015. Filing, Objection to Confirmation, Effect of**
2 **Confirmation, and Modification of a Plan**
3 **in a Chapter 12 ~~Family Farmer's Debt~~**
4 **~~Adjustment~~ or a Chapter 13 ~~Individual's~~**
5 **~~Debt Adjustment Case~~**

6 (a) FILING A CHAPTER 12 PLAN. The debtor
7 may file a chapter 12 plan with the petition. If a plan is not
8 filed with the petition, it shall be filed within the time
9 prescribed by § 1221 of the Code.

10 (b) FILING A CHAPTER 13 PLAN. The debtor
11 may file a chapter 13 plan with the petition. If a plan is not
12 filed with the petition, it shall be filed within 14 days
13 thereafter, and such time may not be further extended
14 except for cause shown and on notice as the court may
15 direct. If a case is converted to chapter 13, a plan shall be
16 filed within 14 days thereafter, and such time may not be
17 further extended except for cause shown and on notice as
18 the court may direct.

19 (c) ~~DATING.~~ ~~Every proposed plan and any~~
20 ~~modification thereof shall be dated.~~ FORM OF CHAPTER
21 13 PLAN. If there is an Official Form for a plan filed in a
22 chapter 13 case, that form must be used unless a Local
23 Form has been adopted in compliance with Rule 3015.1.
24 With either the Official Form or a Local Form, a
25 nonstandard provision is effective only if it is included in a
26 section of the form designated for nonstandard provisions
27 and is also identified in accordance with any other
28 requirements of the form. As used in this rule and the
29 Official Form or a Local Form, “nonstandard provision”
30 means a provision not otherwise included in the Official or
31 Local Form or deviating from it.

32 (d) ~~NOTICE AND COPIES.~~ If the plan ~~The plan or~~
33 ~~a summary of the plan shall be~~ is not included with the each
34 notice of the hearing on confirmation mailed under
35 pursuant to Rule 2002, the debtor shall serve the plan on

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36 the trustee and all creditors when it is filed with the court.
37 ~~If required by the court, the debtor shall furnish a sufficient~~
38 ~~number of copies to enable the clerk to include a copy of~~
39 ~~the plan with the notice of the hearing.~~

40 (e) TRANSMISSION TO UNITED STATES
41 TRUSTEE. The clerk shall forthwith transmit to the
42 United States trustee a copy of the plan and any
43 modification thereof filed under ~~pursuant to~~ subdivision (a)
44 or (b) of this rule.

45 (f) OBJECTION TO CONFIRMATION;
46 DETERMINATION OF GOOD FAITH IN THE
47 ABSENCE OF AN OBJECTION. An objection to
48 confirmation of a plan shall be filed and served on the
49 debtor, the trustee, and any other entity designated by the
50 court, and shall be transmitted to the United States trustee,
51 ~~before confirmation of the plan at least seven days before~~
52 the date set for the hearing on confirmation, unless the

53 court orders otherwise. An objection to confirmation is
54 governed by Rule 9014. If no objection is timely filed, the
55 court may determine that the plan has been proposed in
56 good faith and not by any means forbidden by law without
57 receiving evidence on such issues.

58 (g) EFFECT OF CONFIRMATION. Upon the
59 confirmation of a chapter 12 or chapter 13 plan:

60 (1) any determination in the plan made under
61 Rule 3012 about the amount of a secured claim is
62 binding on the holder of the claim, even if the holder
63 files a contrary proof of claim or the debtor schedules
64 that claim, and regardless of whether an objection to
65 the claim has been filed; and

66 (2) any request in the plan to terminate the stay
67 imposed by § 362(a), § 1201(a), or § 1301(a) is
68 granted.

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69 ~~(g)~~(h) MODIFICATION OF PLAN AFTER
70 CONFIRMATION. A request to modify a plan pursuant to
71 under § 1229 or § 1329 of the Code shall identify the
72 proponent and shall be filed together with the proposed
73 modification. The clerk, or some other person as the court
74 may direct, shall give the debtor, the trustee, and all
75 creditors not less than 21 days' notice by mail of the time
76 fixed for filing objections and, if an objection is filed, the
77 hearing to consider the proposed modification, unless the
78 court orders otherwise with respect to creditors who are not
79 affected by the proposed modification. A copy of the
80 notice shall be transmitted to the United States trustee. A
81 copy of the proposed modification, or a summary thereof,
82 shall be included with the notice. ~~If required by the court,~~
83 ~~the proponent shall furnish a sufficient number of copies of~~
84 ~~the proposed modification, or a summary thereof, to enable~~
85 ~~the clerk to include a copy with each notice.~~ Any objection

86 to the proposed modification shall be filed and served on
87 the debtor, the trustee, and any other entity designated by
88 the court, and shall be transmitted to the United States
89 trustee. An objection to a proposed modification is
90 governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

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Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination, unlike the amount of any current installment payments or arrearages, controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Subdivision (g)(2) provides for termination of the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

1 **Rule 3015.1. Requirements for a Local Form for Plans**
2 **Filed in a Chapter 13 Case**

3 Notwithstanding Rule 9029(a)(1), a district may
4 require that a Local Form for a plan filed in a chapter 13
5 case be used instead of an Official Form adopted for that
6 purpose if the following conditions are satisfied:

7 (a) a single Local Form is adopted for the district
8 after public notice and an opportunity for public comment;

9 (b) each paragraph is numbered and labeled in
10 boldface type with a heading stating the general subject
11 matter of the paragraph;

12 (c) the Local Form includes an initial paragraph for
13 the debtor to indicate that the plan does or does not:

14 (1) contain any nonstandard provision;

15 (2) limit the amount of a secured claim based
16 on a valuation of the collateral for the claim; or

17 (3) avoid a security interest or lien;

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18 (d) the Local Form contains separate paragraphs

19 for:

20 (1) curing any default and maintaining

21 payments on a claim secured by the debtor's principal

22 residence;

23 (2) paying a domestic-support obligation;

24 (3) paying a claim described in the final

25 paragraph of § 1325(a) of the Bankruptcy Code; and

26 (4) surrendering property that secures a claim

27 with a request that the stay under §§ 362(a) and

28 1301(a) be terminated as to the surrendered collateral;

29 and

30 (e) the Local Form contains a final paragraph for:

31 (1) the placement of nonstandard provisions, as

32 defined in Rule 3015(c), along with a statement that

33 any nonstandard provision placed elsewhere in the

34 plan is void; and

35 (2) certification by the debtor’s attorney or by
36 an unrepresented debtor that the plan contains no
37 nonstandard provision other than those set out in the
38 final paragraph.

Committee Note

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter 13 Plan Form. See Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the “hanging paragraph” of § 1325(a), and surrender of property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor’s individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact that the

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plan contains a nonstandard provision; limits the amount of a secured claim based on a valuation of the collateral, as authorized by Rule 3012(b); or avoids a lien, as authorized by Rule 4003(d).

The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard provisions placed elsewhere in the plan are void. This part gives the debtor the opportunity to propose provisions that are not otherwise in, or that deviate from, the Local Form. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

1 **Rule 4003. Exemptions**

2 * * * * *

3 (d) AVOIDANCE BY DEBTOR OF TRANSFERS
4 OF EXEMPT PROPERTY. A proceeding under § 522(f)
5 ~~by the debtor~~ to avoid a lien or other transfer of property
6 exempt under ~~§ 522(f) of the Code~~ shall be commenced by
7 motion in the manner provided by ~~in accordance with~~
8 Rule 9014, or by serving a chapter 12 or chapter 13 plan on
9 the affected creditors in the manner provided by Rule 7004
10 for service of a summons and complaint. Notwithstanding
11 the provisions of subdivision (b), a creditor may object to a
12 ~~motion filed~~ request under § 522(f) by challenging the
13 validity of the exemption asserted to be impaired by the
14 lien.

Committee Note

Subdivision (d) is amended to provide that a request under § 522(f) to avoid a lien or other transfer of exempt property may be made by motion or by a chapter 12 or chapter 13 plan. A plan that proposes lien avoidance in accordance with this rule must be served as provided under Rule 7004 for service of a summons and complaint. Lien avoidance not governed by this rule requires an adversary proceeding.

1 **Rule 5009. Closing Chapter 7—Liquidation, Chapter**
2 **12—Family Farmer’s Debt Adjustment,**
3 **Chapter 13—Individual’s Debt Adjustment,**
4 **and Chapter 15—Ancillary and Cross-**
5 **Border Cases; Order Declaring Lien**
6 **Satisfied**

7 (a) CLOSING OF CASES UNDER CHAPTERS 7,
8 12, AND 13. If in a chapter 7, chapter 12, or chapter 13
9 case the trustee has filed a final report and final account
10 and has certified that the estate has been fully administered,
11 and if within 30 days no objection has been filed by the
12 United States trustee or a party in interest, there shall be a
13 presumption that the estate has been fully administered.

14 * * * * *

15 (d) ORDER DECLARING LIEN SATISFIED. In a
16 chapter 12 or chapter 13 case, if a claim that was secured
17 by property of the estate is subject to a lien under
18 applicable nonbankruptcy law, the debtor may request entry
19 of an order declaring that the secured claim has been

30 FEDERAL RULES OF BANKRUPTCY PROCEDURE

20 satisfied and the lien has been released under the terms of a
21 confirmed plan. The request shall be made by motion and
22 shall be served on the holder of the claim and any other
23 entity the court designates in the manner provided by
24 Rule 7004 for service of a summons and complaint.

Committee Note

Subdivision (d) is added to provide a procedure by which a debtor in a chapter 12 or chapter 13 case may request an order declaring a secured claim satisfied and a lien released under the terms of a confirmed plan. A debtor may need documentation for title purposes of the elimination of a second mortgage or other lien that was secured by property of the estate. Although requests for such orders are likely to be made at the time the case is being closed, the rule does not prohibit a request at another time if the lien has been released and any other requirements for entry of the order have been met.

Other changes to this rule are stylistic.

1 **Rule 7001. Scope of Rules of Part VII**

2 An adversary proceeding is governed by the rules of
3 this Part VII. The following are adversary proceedings:

4 * * * * *

5 (2) a proceeding to determine the validity,
6 priority, or extent of a lien or other interest in
7 property, ~~other than~~ but not a proceeding under
8 Rule 3012 or Rule 4003(d);

9 * * * * *

Committee Note

Subdivision (2) is amended to provide that the determination of the amount of a secured claim under Rule 3012, like a proceeding by the debtor to avoid a lien on or other transfer of exempt property under Rule 4003(d), does not require an adversary proceeding. The determination of the amount of a secured claim may be sought by motion or through a chapter 12 or chapter 13 plan in accordance with Rule 3012. An adversary proceeding continues to be required for lien avoidance not governed by Rule 4003(d).

1 **Rule 9009. Forms**

2 (a) OFFICIAL FORMS. Except as otherwise
3 provided in Rule 3016(d), the The Official Forms
4 prescribed by the Judicial Conference of the United States
5 shall be ~~observed and used with alterations as may be~~
6 appropriate without alteration, except as otherwise
7 provided in these rules, in a particular Official Form, or in
8 the national instructions for a particular Official Form.
9 ~~Forms may be combined and their contents rearranged to~~
10 permit economies in their use. Official Forms may be
11 modified to permit minor changes not affecting wording or
12 the order of presenting information, including changes that:

13 (1) expand the prescribed areas for responses in
14 order to permit complete responses;

15 (2) delete space not needed for responses; or

16 (3) delete items requiring detail in a question or
17 category if the filer indicates—either by checking

18 “no” or “none” or by stating in words—that there is
19 nothing to report on that question or category.

20 (b) DIRECTOR’S FORMS. The Director of the
21 Administrative Office of the United States Courts may
22 issue additional forms for use under the Code.

23 (c) CONSTRUCTION. The forms shall be
24 construed to be consistent with these rules and the Code.

Committee Note

This rule is amended and reorganized into separate subdivisions.

Subdivision (a) addresses permissible modifications to Official Forms. It requires that an Official Form be used without alteration, except when another rule, the Official Form itself, or the national instructions applicable to an Official Form permit alteration. The former language generally permitting alterations has been deleted, but the rule preserves the ability to make minor modifications to an Official Form that do not affect the wording or the order in which information is presented on a form. Permissible changes include those that merely expand or delete the space for responses as appropriate or delete inapplicable items so long as the filer indicates that no response is intended. For example, when more space will be necessary to completely answer a question on an Official Form

34 FEDERAL RULES OF BANKRUPTCY PROCEDURE

without an attachment, the answer space may be expanded. Similarly, varying the width or orientation of columnar data on a form for clarity of presentation would be a permissible minor change. On the other hand, many Official Forms indicate on their face that certain changes are not appropriate. Any changes that contravene the directions on an Official Form would be prohibited by this rule.

The creation of subdivision (b) and subdivision (c) is stylistic.

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:**

* * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules * * * * * Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, new Rule 3015.1, and new Official Form 113, with a recommendation that they be approved and transmitted to the Judicial Conference.

Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and a proposed official form for chapter 13 plans, Official Form 113, were circulated to the bench, bar, and public for comment in August 2013, and again in August 2014. Rule 3015 was published for comment for a third time, along with new Rule 3015.1, for a shortened three-month period in July 2016.

* * * * *

Consideration of a National Chapter 13 Plan Form

The advisory committee began to consider the possibility of an official form for chapter 13 plans at its spring 2011 meeting. At that meeting, the advisory committee discussed two suggestions for the promulgation of a national plan form. Judge Margaret Mahoney (Bankr. S.D. Ala.), who submitted one of the suggestions, noted that “[c]urrently, every district’s plan is very different and it makes it difficult for creditors to know where to look for their treatment from district to district.” The States’ Association of Bankruptcy Attorneys (SABA), which submitted the other suggestion, stressed the impact of the Supreme Court’s then-recent decision in *United*

Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

Student Aid Funds, Inc. v. Espinosa, 130 S. Ct. 1367 (2010). Because the Court held that an order confirming a plan is binding on all parties who receive notice, even if some of the plan provisions are inconsistent with the Bankruptcy Code or rules, SABA explained that creditors must carefully scrutinize plans prior to confirmation. Moreover, SABA noted that the Court imposed the obligation on bankruptcy judges to ensure that plan provisions comply with the Code, and thus uniformity of plan structure would aid not only creditors, but also bankruptcy judges in carrying out their responsibilities. Following discussion of the suggestions, the advisory committee approved the creation of a working group to draft an official form for chapter 13 plans and any related rule amendments.

A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in August 2013. Because the advisory committee made significant changes to the form in response to comments, the revised form and rules were published again in August 2014.

At its spring 2015 meeting, the advisory committee considered the approximately 120 comments that were submitted in response to the August 2014 publication, many of which—including the joint comments of 144 bankruptcy judges—strongly opposed a mandatory national form for chapter 13 plans. Although there was widespread agreement regarding the benefit of having a national plan form, advisory committee members generally did not want to proceed with a mandatory official form in the face of substantial opposition by bankruptcy judges and other bankruptcy constituencies. Accordingly, the advisory committee decided to explore the possibility of a proposal that would involve promulgating a national plan form and related rules, but that would allow districts to opt out of the use of the official form if certain conditions were met.

Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

At its fall 2015 meeting, the advisory committee approved the proposed chapter 13 plan form (Official Form 113) and related amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009—with some technical changes made in response to comments. The advisory committee deferred submitting those items to the Standing Committee, however, in order to allow further development of the opt-out proposal. The advisory committee directed its forms subcommittee to continue to obtain feedback on the opt-out proposal from a broad range of bankruptcy constituencies and to make a recommendation at the spring 2016 meeting regarding the need for additional publication.

At its spring 2016 meeting, the advisory committee unanimously recommended publication of the two rules that would implement the opt-out proposal, an amendment to Rule 3015 and proposed new Rule 3015.1. The advisory committee also unanimously recommended a shortened publication period of three rather than the usual six months, consistent with Judicial Conference policy, which provides that “[t]he Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained.” *Guide to Judiciary Policy*, Vol. 1, § 440.20.40(d). Because of the two prior publications and the narrow focus of the revised rules, the advisory committee concluded that a shortened public comment period would provide appropriate public notice and time to comment, and could possibly eliminate an entire year from the period leading up to the effective date of the proposed chapter 13 plan package.

The Standing Committee accepted the advisory committee’s recommendation and Rules 3015 and 3015.1 were published for public comment on July 1, 2016. The comment

Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

period ended on October 3. Eighteen written comments were submitted. In addition, five witnesses testified at an advisory committee hearing conducted telephonically on September 27.

A majority of the comments were supportive of the proposal for an official form for chapter 13 plans with the option for districts to use a single local form instead. Some of those comments suggested specific changes to particular rule provisions, which the advisory committee considered. The strongest opposition to the opt-out procedure came from the National Association of Consumer Bankruptcy Attorneys (NACBA), and from three consumer debtor attorneys who testified at the September 27 hearing. They favored a mandatory national plan because of their concern that in some districts only certain plan provisions are allowed, and plans with nonstandard provisions are not confirmed. In addition, the bankruptcy judges of the Southern District of Indiana stated that they unanimously opposed Rule 3015(c) and (e) and Rule 3015.1 because they said that mandating the use of a “form chapter 13 plan,” whether national or local, exceeds rulemaking authority.

At its fall 2016 meeting, the advisory committee unanimously approved Rules 3015 and 3015.1 with some minor changes in response to comments. In addition, it made minor formatting revisions to Official Form 113 (the official plan form previously approved by the advisory committee) and reapproved it.

Finally, the advisory committee recommended that the entire package of rules and the form be submitted to the Judicial Conference at its March 2017 session and, if approved, that the rules be sent to the Supreme Court immediately thereafter so that, if promulgated by the Supreme Court by May 1, they can take effect on December 1, 2017. The advisory committee concluded that promulgating a form for chapter 13 plans and related rules that require debtors to format their plans in a certain manner, but do not mandate the content of such plans, was consistent with

Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

the Rules Enabling Act. Further, given the significant opposition expressed to the original proposal of a mandatory national plan form, the advisory committee concluded that it was prudent to give districts the ability to opt out of using it, subject to certain conditions that would still achieve many of the goals sought in the original proposal. Finally, the advisory committee concluded it did not have the ability to address concerns that bankruptcy judges in some districts consistently refuse to confirm plans that are permissible under the Bankruptcy Code. Rather, litigants affected by such improper rulings should seek redress through an appeal.

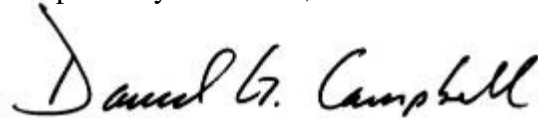
The Standing Committee voted unanimously to support the recommendations of the Advisory Committee on Bankruptcy Rules.

Recommendation: That the Judicial Conference:

- a. Approve the proposed amendments to Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and new Rule 3015.1 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;

* * * * *

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman
Gregory G. Garre
Daniel C. Girard
Susan P. Graber
Frank M. Hull
Peter D. Keisler
William K. Kelley

Amy J. St. Eve
Larry D. Thompson
Richard C. Wesley
Sally Q. Yates
Robert P. Young, Jr.
Jack Zouhary

Excerpt from the December 5, 2016 Report of the Advisory Committee on Bankruptcy Rules

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

DAVID G. CAMPBELL
CHAIR
REBECCA A. WOMELDORF
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

NEIL M. GORSUCH
APPELLATE RULES

SANDRA SEGAL IKUTA
BANKRUPTCY RULES

JOHN D. BATES
CIVIL RULES

DONALD W. MOLLOY
CRIMINAL RULES

WILLIAM K. SESSIONS III
EVIDENCE RULES

MEMORANDUM

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

FROM: Hon. Sandra Segal Ikuta, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: December 5, 2016

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Washington, D.C., on November 14, 2016. * * * * *

At the meeting the Committee concluded its more than five-year consideration of an Official Form and related rules for chapter 13 plans by giving final approval to the amendment of one rule, the adoption of a new rule, and minor amendments to the proposed new Official Form. This action completed the Committee's approval process that was begun at the fall 2015 meeting, when amendments to eight additional rules and the Official Form were approved, but held in abeyance. The Committee now seeks the Standing Committee's approval of the entire package of chapter 13 plan form and rule amendments.

* * * * *

II. Action Items

A. Items for Final Approval Following Publication

The Committee requests that the Standing Committee approve amendments to Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009; new Rule 3015.1; and new Official Form 113. The Committee recommends that the package of rules and the form be submitted to the Judicial Conference at its March meeting and, if approved, that the rules be sent to the Supreme Court immediately thereafter so that, if promulgated by the Supreme Court by May 1, they may take effect on December 1, 2017. * * * * *

Action Item 1. Chapter 13 plan Official Form and rules package.

The Committee began considering the possibility of creating a chapter 13 plan Official Form at the spring 2011 meeting. At that meeting the Committee discussed Suggestions 10-BK-G and 10-BK-M, which proposed the promulgation of a national plan form. Judge Margaret Mahoney (Bankr. S.D. Ala.), who submitted one of the suggestions, noted that “[c]urrently, every district’s plan is very different and it makes it difficult for creditors to know where to look for their treatment from district to district.” The States’ Association of Bankruptcy Attorneys (“SABA”), which submitted the other suggestion, stressed the impact of the Supreme Court’s then-recent decision in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010). Because the Court held that an order confirming a plan is binding on all parties who receive notice, even if some of the plan provisions are inconsistent with the Bankruptcy Code or rules, SABA explained that creditors must carefully scrutinize plans prior to confirmation. Moreover, SABA noted, the Court imposed the obligation on bankruptcy judges to ensure that plan provisions comply with the Code, and thus uniformity of plan structure would aid, not only creditors, but also bankruptcy judges in carrying out their responsibilities. Following discussion of the suggestions, the Committee approved the creation of a working group to draft an Official Form for chapter 13 plans and any related rule amendments.

A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in August 2013. Approximately 150 comments were submitted. Because the Committee made significant changes to the form in response to comments, the revised form and rules were published again in August 2014.

At the spring 2015 meeting, the Committee considered the approximately 120 comments that were submitted after republication, many of which—including the joint comments of 144 bankruptcy judges—were strongly opposed to the adoption of a mandatory national form for chapter 13 plans. The Committee discussed a number of options relating to the chapter 13 national form and associated rules. No member favored completely abandoning the project, and no one favored proceeding with the proposed amendments to the nine rules without also proposing a national plan form. Although there was widespread agreement regarding the benefit of having a national plan form, Committee members generally did not want to proceed with a mandatory Official Form in the face of substantial opposition by bankruptcy judges and other bankruptcy constituencies. Accordingly, the Committee was generally inclined to explore the possibility of a compromise along the lines suggested by a group of commenters, led by

Excerpt from the December 5, 2016 Report of the Advisory Committee on Bankruptcy Rules

Bankruptcy Judges Marvin Isgur and Roger Efremsky (“the compromise group”).¹ After a full discussion, the Committee voted unanimously to give further consideration to pursuing a proposal that would involve promulgating a national plan form and related rules, but that would allow districts to opt out of the use of the Official Form if certain conditions were met.

During the summer of 2015, the Forms Subcommittee, joined by former Committee chair Judge Gene Wedoff and chapter 13 trustee Jon Waage, considered how best to implement an opt-out proposal and how to respond to the substantive and stylistic comments that were submitted on the plan form and Rules 3002, 3015, and 9009 (the rules most closely associated with the opt-out proposal). The Consumer Subcommittee considered the comments submitted on Rules 2002, 3007, 3012, 4003, 5009, and 7001.

The Forms Subcommittee shared its proposed revisions of Official Form 113 and Rules 3002 and 3015 with members of the compromise group, some members of the consumer debtor bar, and some chapter 13 trustees. Prior to the fall 2015 meeting, the Committee received correspondence from the president of the National Association of Consumer Bankruptcy Attorneys (“NACBA”) and from Representative John Conyers, Jr., the Ranking Member on the House Committee on the Judiciary, and Representative Hank Johnson, Ranking Member on the Subcommittee on Regulatory Reform, Commercial and Antitrust Law. Their primary concern was procedural: they advised the Advisory Committee not to approve a version of the opt-out approach without first publishing it for public comment.

At the fall 2015 meeting, the Committee gave approval to proposed Official Form 113 and related amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009—with some technical changes made in response to comments. The Committee voted to defer submitting those items to the Standing Committee in order to allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication. It directed the Forms Subcommittee to continue to obtain feedback on the opt-out proposal from a broad range of bankruptcy constituencies and to make a recommendation at the spring 2016 meeting regarding the need for additional publication.

The Subcommittee reached out to all relevant groups and invited them to provide feedback on the opt-out proposal, as set out in proposed Rules 3015 and 3015.1, as well as on whether they perceived a need for further publication. The following groups provided comments to the Subcommittee in response: National Bankruptcy Conference (“NBC”), National Conference of Bankruptcy Judges (“NCBJ”), National Association of Consumer Bankruptcy Attorneys (“NACBA”), the American Bankruptcy Institute’s Consumer Committee, a large number of chapter 13 trustees whose comments were collected by the National Association of Chapter 13 Trustees, and an informal mortgage servicer group. While the bulk of the comments received were directed at the plan form itself, rather than at the opt-out proposal, three groups (NBC, NCBJ, and the mortgage servicers) and seven individual trustees did express support for allowing districts to opt out of a national plan form. In addition, Bankruptcy Judge Marvin Isgur (S.D. Tex.) circulated the opt-out proposal to the 144 bankruptcy judges who had submitted a

¹ Members of this group are Bankruptcy Judges Isgur, Efremsky, and Rebecca Connelly; George Stevenson, Rick Yarnell, and David Peake, who are chapter 13 trustees and past or present officers of the National Association of Chapter 13 Trustees; and creditors’ attorneys Michael Bates (Wells Fargo Bank), Alane Becket (Becket & Lee, LLP), and Karen Cordry (National Association of Attorneys General).

Excerpt from the December 5, 2016 Report of the Advisory Committee on Bankruptcy Rules

letter in 2014 opposing a national plan form, and he reported that there was general acceptance of Rules 3015 and 3015.1 among the group.

The response of NACBA to the Subcommittee's outreach was relatively brief. The president of the organization said that he could not speak for the thousands of NACBA members, and he urged the Committee to publish the proposals that were being considered. He asserted that "adoption of the 'compromise' proposal without providing a new comment period would not comply with the law and [would] subject such to litigation and added controversy." NCBJ also advised that the opt-out proposal be published for public comment.

At the spring 2016 meeting, the Committee unanimously approved the Forms Subcommittee's recommendation that the amendments to Rule 3015 and proposed new Rule 3015.1 be published for public comment. The Committee also unanimously agreed that the Committee should seek to publish Rules 3015 and 3015.1 on a truncated schedule. According to § 440.20.40(d) of the Guide to Judiciary Policy, "The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained." Because of the two prior publications and the narrow focus of the revised rules, the Committee believed that the usual 6-month comment period should be shortened so that an entire year could be eliminated from the period leading up to the effective date of the Committee's proposed rules and form.

The Standing Committee accepted the Committee's recommendation, and Rules 3015 and 3015.1 were published for public comment on July 1, 2016. The comment period ended on October 3. Eighteen written comments were submitted. In addition, five witnesses testified at a Committee hearing conducted telephonically on September 27; they also submitted their written testimony, which was posted along with the written comments.

A majority of the comments were supportive of the proposed rules' implementation of an Official Form for chapter 13 plans with the option for districts to use a single local form instead. Some of those comments suggested specific changes to particular rule provisions, which the Committee considered. The strongest opposition to the opt-out procedure came from NACBA and from three consumer debtor attorneys who testified at the hearing. They favored a mandatory national plan because of their concern that in some districts only certain plan provisions are allowed and plans with any nonstandard provisions are not confirmed. In addition, the bankruptcy judges of the Southern District of Indiana stated that they unanimously opposed Rule 3015(c) and (e) and Rule 3015.1 because they said that mandating the use of a "form chapter 13 plan," whether national or local, exceeds rulemaking authority.

At the fall 2016 meeting, the Committee unanimously accepted the Forms Subcommittee's recommendation that Rules 3015 and 3015.1 be approved with some changes that were responsive to comments submitted and that Official Form 113 (previously approved by the Committee) be amended in some minor respects and reapproved. The Committee concluded that no changes were needed to the published rules in response to comments expressing general opposition to the Committee's approach. The Committee concluded that promulgating a form for chapter 13 plans and related rules that require debtors to format their plans in a certain manner but do not mandate the content of such plans was consistent with the Rules Enabling Act. Further, given the significant opposition expressed to the original proposal of a mandatory

Excerpt from the December 5, 2016 Report of the Advisory Committee on Bankruptcy Rules

national plan form, the Committee concluded that it was it prudent to give bankruptcy districts the ability to opt out of using it, subject to certain conditions that would still achieve many of the goals the Committee sought in its original proposal. Finally, the Committee concluded it did not have the ability to address concerns that bankruptcy judges in some districts consistently refuse to confirm plans that are permissible under the Bankruptcy Code. Rather, litigants affected by such improper rulings should seek redress through an appeal.

* * * * *



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

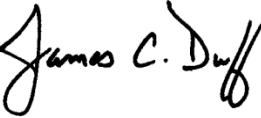
THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

March 16, 2017

MEMORANDUM

To: The Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff 

RE: TRANSMITTAL OF PROPOSED AMENDMENT TO THE FEDERAL RULES OF
CIVIL PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court the proposed amendment to Rule 4 of the Federal Rules of Civil Procedure, which was approved by the Judicial Conference at its March 2017 session. The Judicial Conference recommends that the amendment be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendment, I am transmitting: (i) a “clean” copy of the affected rule incorporating the proposed amendment and accompanying Committee Note; (ii) a redline version of the same; (iii) an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the December 2016 Report of the Advisory Committee on Civil Rules.

Attachments

**PROPOSED AMENDMENT TO THE
FEDERAL RULES OF CIVIL PROCEDURE**

Rule 4. Summons

* * * * *

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court^{3/4} on motion or on its own after notice to the plaintiff^{3/4} must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

* * * * *

Committee Note

This is a technical amendment that integrates the intended effect of the amendments adopted in 2015 and 2016.

**PROPOSED AMENDMENT TO THE
FEDERAL RULES OF CIVIL PROCEDURE***

1 **Rule 4. Summons**

2 * * * * *

3 **(m) Time Limit for Service.** If a defendant is not served
4 within 90 days after the complaint is filed, the court^¾ on
5 motion or on its own after notice to the plaintiff^¾ must
6 dismiss the action without prejudice against that defendant
7 or order that service be made within a specified time. But
8 if the plaintiff shows good cause for the failure, the court
9 must extend the time for service for an appropriate period.
10 This subdivision (m) does not apply to service in a foreign
11 country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a
12 notice under Rule 71.1(d)(3)(A).

13 * * * * *

* New material is underlined.

Committee Note

This is a technical amendment that integrates the intended effect of the amendments adopted in 2015 and 2016.

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:**

* * * * *

FEDERAL RULES OF CIVIL PROCEDURE

Rule Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted a proposed technical amendment to restore the 2015 amendment to Rule 4(m), with a recommendation that it be approved and transmitted to the Judicial Conference.

Civil Rule 4(m) (Summons–Time Limit for Service) was amended on December 1, 2015, and again on December 1, 2016. In addition to shortening the presumptive time for service from 120 days to 90 days, the 2015 amendment added, as an exemption to that time limit, Rule 71.1(d)(3)(A) notices of a condemnation action. The 2016 amendment added to the list of exemptions Rule 4(h)(2) service on a corporation, partnership, or association at a place not within any judicial district of the United States.

The 2016 amendment exempting Rule 4(h)(2) was prepared in 2014 before the 2015 amendment adding Rule 71.1(d)(3)(A) to the list of exemptions was in effect. Once the 2015 amendment became effective, it should have been incorporated into the proposed 2016 amendment then making its way through the Rules Enabling Act process. It was not, and, as a result, Rule 71.1(d)(3)(A) was omitted from the list of exemptions in Rule 4(m) when the 2016 amendment became effective. The proposed amendment restores Rule 71.1(d)(3)(A) to the list of exemptions in Rule 4(m). The proposed amendment is technical in nature—it is identical to the amendment published for public comment in 2013, approved by the Judicial Conference, and adopted by the Court. Accordingly, re-publication for public comment is not required.

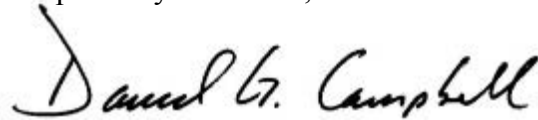
Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

The Standing Committee voted unanimously to support the recommendation of the Advisory Committee on Civil Rules.

Recommendation: That the Judicial Conference approve the proposed amendment to Civil Rule 4(m) and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,

A handwritten signature in black ink that reads "David G. Campbell". The signature is written in a cursive style with a large initial "D".

David G. Campbell, Chair

Jesse M. Furman
Gregory G. Garre
Daniel C. Girard
Susan P. Graber
Frank M. Hull
Peter D. Keisler
William K. Kelley

Amy J. St. Eve
Larry D. Thompson
Richard C. Wesley
Sally Q. Yates
Robert P. Young, Jr.
Jack Zouhary

Excerpt from the December 9, 2016 Report of the Advisory Committee on Civil Rules

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

DAVID G. CAMPBELL
CHAIR

REBECCA A. WOMELDORF
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

NEIL M. GORSUCH
APPELLATE RULES

SANDRA SEGAL IKUTA
BANKRUPTCY RULES

JOHN D. BATES
CIVIL RULES

DONALD W. MOLLOY
CRIMINAL RULES

WILLIAM K. SESSIONS III
EVIDENCE RULES

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

FROM: Hon. John D. Bates, Chair
Advisory Committee on Civil Rules

DATE: December 9, 2016

RE: Report of the Advisory Committee on Civil Rules

Introduction

The Civil Rules Advisory Committee met at the Administrative Office of the United States Courts in Washington, D.C., on November 3, 2016.

* * * * *

One action item is presented. Part I recommends that Rule 4(m) be submitted to the Judicial Conference as a technical amendment to restore a provision inadvertently omitted from the proposal that took effect on December 1, 2016.

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I. ACTION ITEM: RULE 4(m)

Rule 4(m) was amended on December 1, 2015, and again on December 1, 2016. The intended result of the two amendments is clear. But the proposed 2015 amendment was inadvertently overlooked in preparing the proposal that led to adoption of the 2016 amendment. This action item recommends approval of the intended rule text for submission to the Judicial Conference in March 2017 as a technical amendment, looking toward adoption by the Supreme Court this spring.

Excerpt from the December 9, 2016 Report of the Advisory Committee on Civil Rules

The proposed rule text revises the final sentence of Rule 4(m). Rule 4(m) establishes a presumptive time for serving the summons and complaint, allowing for extension by the court. The final sentence of the rule should read:

This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

The two-step process of amending Rule 4(m) went astray in this way: The 2015 amendment began as part of a large package designed in part to accelerate the initial steps in a civil action. The published proposal shortened the presumptive time for service from 120 days to 60 days; after hearings and comments, the time was set at 90 days. While this change was being considered, the Department of Justice recommended that the exemptions be expanded to add Rule 71.1(d)(3)(A) notices of a condemnation action. This recommendation was accepted without controversy. As of December 1, 2015, service of a notice under Rule 71.1(d)(3)(A) was excluded from Rule 4(m).

The 2016 amendment added Rule 4(h)(2) to the set of exemptions. The addition was made in response to many comments on the published proposal that eventually became the 2015 amendment. These comments reflected uncertainty, even confusion, as to Rule 4(h)(2) service on a corporation, partnership, or association at a place not within any judicial district of the United States. Rule 4(h)(2) allows such service “in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).” Invoking Rule 4(f) might bring service under (h)(2) within the Rule 4(m) exemption for service under Rule 4(f). That result makes sense—the problems with effecting prompt service outside the United States are much the same, and are augmented by shortening the presumptive time from 120 days to 90 days. But the rule text is ambiguous. So Rule 4(h)(2) was added to the exemptions.

The problem arose from preparing the Rule 4(h)(2) proposal by working from Rule 4(m) as it was in 2014, before the 2015 amendment. Adding the exemption for service under Rule 71.1(d)(3)(A) had been proposed, but final action was more than a year in the future. That change was inadvertently not included in the proposal that, as subsequently published, recommended, and adopted, read:

This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1).

The possibility of correcting the rule text as a scrivener’s error was explored with Congress. The outcome is that the official print for the House of Representatives Committee on the Judiciary will include this footnote:

Rule 4(m) is set out above as it appears in the Supreme Court order of Apr. 28, 2016. As amended by the Supreme Court order of Apr.29, 2015, the last sentence of Rule 4(m) reads as follows: “This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1) or to service of a notice under Rule 71.1(d)(3)(A).” The language added to the last sentence in 2015, “or to service

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of a notice under Rule 71.1(d)(3)(A)", probably should be part of Rule 4(m), but does not appear in the 2016 amendment.

The omission of Rule 71.1(d)(3)(A) from the list of exemptions should be corrected through the Rules Enabling Act process. The provision has already been published, reviewed, and adopted. Because the omission resulted from sheer inadvertence, the correction can be recommended for adoption without further publication.

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