

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

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

1. Approve the proposed 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 .....pp. 2–3
  
2.
  - 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; and
  
  - b. Approve the proposed new Official Form 113 to take effect at the same time as the above listed rules.....pp. 4–8
  
3. 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.....pp. 8–9

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

- Federal Rules of Appellate Procedure .....p. 3
- Federal Rules of Civil Procedure..... pp. 8-13
- Federal Rules of Criminal Procedure.....pp. 13–15
- Federal Rules of Evidence .....pp. 15–16
- Other Matters .....pp. 16–17

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

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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

The Committee on Rules of Practice and Procedure (Standing Committee) met in Phoenix, Arizona on January 3, 2017. All members participated except Deputy Attorney General Sally Q. Yates.

Representing the advisory rules committees were: Judge Neil M. Gorsuch, Chair, and Professor Gregory E. Maggs, Reporter, of the Advisory Committee on Appellate Rules; Judge Sandra Segal Ikuta, Chair, Professor S. Elizabeth Gibson, Reporter, and Professor Michelle M. Harner, Associate Reporter, of the Advisory Committee on Bankruptcy Rules; Judge John D. Bates, Chair, Professor Edward H. Cooper, Reporter, and Professor Richard L. Marcus, Associate Reporter, of the Advisory Committee on Civil Rules; Judge Donald W. Molloy, Chair, Professor Sara Sun Beale, Reporter (by telephone), and Professor Nancy J. King, Associate Reporter (by telephone), of the Advisory Committee on Criminal Rules; and Professor Daniel J. Capra, Reporter, of the Advisory Committee on Evidence Rules.

Also participating in the meeting were: Professor Daniel R. Coquillette, the Standing Committee's Reporter; Professor R. Joseph Kimble and Professor Bryan A. Garner, consultants to the Standing Committee; Rebecca A. Womeldorf, the Standing Committee's Secretary; Bridget Healy (by telephone), Scott Myers, Derek Webb (by telephone), and Julie Wilson, Attorneys on the Rules Committee Support Staff; Lauren Gailey, Law Clerk to the Standing Committee; Judge Jeremy D. Fogel, Director, Dr. Tim Reagan, and Dr. Emery G. Lee III, of the

**NOTICE**

**NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE  
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Federal Judicial Center; Zachary A. Porianda, Attorney Advisor, Judicial Conference Committee on Court Administration and Case Management (CACM Committee); Judge Robert Michael Dow, Jr., Chair of the Rule 23 Subcommittee, Advisory Committee on Civil Rules; and Judge Paul W. Grimm, former member of the Advisory Committee on Civil Rules. Elizabeth J. Shapiro attended on behalf of the Department of Justice.

## **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.

**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.

The proposed amendment to the Federal Rules of Appellate Procedure is set forth in Appendix A, with a December 22, 2016 memorandum submitted to the Standing Committee detailing the proposed amendment.

### *Information Items*

The advisory committee met on October 18, 2016 in Washington, D.C. In light of proposed changes to Appellate Rule 25 regarding electronic filing and service, the advisory committee considered whether Appellate Rules 3(a) and (d) should also be amended to eliminate references to mailing. The advisory committee will continue to review any proposed changes at its next meeting. It also discussed possible changes to Appellate Rule 8(b), which is currently out for public comment. The rule concerns proceedings to enforce the liability of a surety or other security provider who provides security for a stay or injunction pending appeal. The advisory committee learned of a problem in the published draft with the references to forms of security, but determined to postpone acting on the proposed changes until it receives all public comments on the published version of Rule 8(b).

The advisory committee discussed possible changes to Appellate Rule 26.1 regarding disclosure statements given the published proposed changes to Criminal Rule 12.4, also concerning disclosure statements. The advisory committee tentatively decided to recommend conforming amendments to Appellate Rule 26.1, but remains open to a more targeted approach to amending Rule 26.1(a). The advisory committee decided not to create special disclosure rules for bankruptcy cases, absent a recommendation from the Advisory Committee on Bankruptcy Rules.

## FEDERAL RULES OF BANKRUPTCY PROCEDURE

### *Rules and Official Form 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. The proposed amendments summarized below are more fully explained in the report from the chair of the advisory committee, attached as Appendix B.

#### 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 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.

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 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 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; and
- b. Approve the proposed new Official Form 113 to take effect at the same time as the above listed rules.

The proposed amendments to the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms are set forth in Appendix B, with excerpts from the Advisory Committee's reports.

## **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.

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.

The proposed amendment to the Federal Rules of Civil Procedure is set forth in Appendix C with an excerpt from the Advisory Committee’s report.

### *Information Items*

#### Rules Published for Public Comment

On August 12, 2016, proposed amendments to Rules 5 (Serving and Filing Pleadings and Other Papers); 23 (Class Actions); 62 (Stay of Proceedings to Enforce a Judgment); and 65.1 (Proceedings Against a Surety) were published for public comment. The comment period closes February 15, 2017. Public hearings were held in Washington, D.C. on November 3, 2016, and in Phoenix, Arizona on January 4, 2017. Twenty-one witnesses presented testimony, primarily on the proposed amendments to Rule 23. A third telephonic hearing is scheduled for February 16, 2017.

#### Pilot Projects

At its September 2016 session, the Judicial Conference approved two pilot projects developed by the advisory committee and approved by the Standing Committee—the Expedited

Procedures Pilot Project and the Mandatory Initial Discovery Pilot Project—each for a period of approximately three years, and delegated authority to the Standing Committee to develop guidelines to implement the pilot projects.

Both pilot projects are aimed at reducing the cost and delay of civil litigation, but do so in different ways. The goal of the Expedited Procedures Pilot Project (EPP) is to promote a change in culture among federal judges generally by confirming the benefits of active case management through the use of the existing rules of procedure. The chief features of the EPP are: (1) holding a scheduling conference and issuing a scheduling order as soon as practicable, but not later than the earlier of 90 days after any defendant is served or 60 days after any defendant appears; (2) setting a definite period for discovery of no more than 180 days and allowing no more than one extension, only for good cause; (3) informal and expeditious disposition of discovery disputes by the judge; (4) ruling on dispositive motions within 60 days of the reply brief; and (5) setting a firm trial date that can be changed only for exceptional circumstances, while allowing flexibility as to the point in the proceedings when the date is set. The aim is to set trial at 14 months from service or the first appearance in 90 percent of cases, and within 18 months of service or first appearance in the remaining cases. Under the pilot project, judges would have some flexibility to determine exactly how to informally resolve most discovery disputes, and to determine the point at which to set a firm trial date.

In addition to finalizing the details of the EPP, work has commenced on developing supporting materials, including a “user’s manual” to give guidance to EPP judges, model forms and orders, and additional educational materials. Mentor judges will also be made available to support implementation among the participating judges.

The goal of the Mandatory Initial Discovery Pilot Project (MIDP) is to measure whether court-ordered, robust, mandatory discovery that must be produced before traditional discovery

will reduce cost, burden, and delay in civil litigation. Under the MIDP, the mandatory initial discovery will supersede the initial disclosures otherwise required by Rule 26(a)(1), the parties may not opt out, favorable as well as unfavorable information must be produced, compliance will be monitored and enforced, and the court will discuss the initial discovery with the parties at the initial Rule 16 case management conference and resolve any disputes regarding compliance.

To maximize the effectiveness of the initial discovery, responses must address all claims and defenses that will be raised by any party. Hence, answers, counterclaims, crossclaims, and replies must be filed within the time required by the civil rules, even if a responding party intends to file a preliminary motion to dismiss or for summary judgment, unless the court finds good cause to defer the time to respond in order to consider a motion based on lack of subject matter jurisdiction, lack of personal jurisdiction, sovereign immunity, absolute immunity, or qualified immunity. The MIDP will be implemented through a standing order issued in each of the participating districts. As with the EPP, a “user’s manual” and other educational materials are being developed to assist participating judges.

Now that the details of each pilot project are close to being finalized, recruitment of participating districts continues in earnest, with a goal of recruiting districts varying by size as well as geographic location. Although it is preferable to have participation by every judge in a participating district, there is some flexibility to use districts where only a majority of judges participate. The target for implementation of the MIDP is spring 2017, and for the EPP it is fall 2017.

#### Other Projects

Among the other projects on the advisory committee’s agenda is the consideration of the procedure for demanding a jury trial. This undertaking was prompted by a concern expressed to the advisory committee about a possible ambiguity in Rule 81(c)(3), the rule that governs

demands for jury trials in actions removed from state court. Rule 81(c)(3)(A) provides that a party who demanded a jury trial in accordance with state law need not renew the demand after removal. It further provides that a party need not make a demand “[i]f the state law *did* not require an express demand” (emphasis added). Before the 2007 Style Project amendments, this provision excused the need to make a demand if state law *does* not require a demand.

Recognizing that the Style Project amendments did not affect the substantive meaning of the rules, most courts continue to read Rule 81(c)(3)(A) as excusing a demand after removal only if state law does not require a demand at any point. However, as expressed to the advisory committee, replacing “does” with “did” created an ambiguity that may mislead a party who wants a jury trial to forgo a demand because state law, although requiring a demand at some point after the time of removal, did not require that the demand be made by the time of removal.

Robust discussion of this issue at the June 2016 meeting of the Standing Committee prompted a suggestion by some that the demand requirement be dropped and that jury trials be available in civil cases unless expressly waived, as in criminal cases. The advisory committee has undertaken some preliminary research of local federal rules and state court rules to compare various approaches to implementing the right to jury trial and to see whether local federal rules reflect uneasiness with the present up-front demand procedure. An effort also will be made to get some sense of how often parties who want a jury trial fail to get one for failing to make a timely demand.

The advisory committee is also reviewing Rule 30(b)(6) (Notice or Subpoena Directed to an Organization). A subcommittee has been formed to consider whether it is feasible and useful to address by rule amendment some of the problems that bar groups have regularly identified with depositions of entities. This is the third time in twelve years that Rule 30(b)(6) has been on the advisory committee’s agenda. It was studied carefully a decade ago. The conclusion then

was that the problems involve behavior that cannot be effectively addressed by a court rule. The question was reassessed a few years later with a similar conclusion. The issue has been raised again by 31 members of the American Bar Association Section of Litigation. The subcommittee has not yet formed any recommendation as to whether the time has come to amend the rule, but it has begun working on initial drafts of possible amendments in an effort to evaluate the challenges presented.

### **FEDERAL RULES OF CRIMINAL PROCEDURE**

The Advisory Committee on Criminal Rules presented no action items.

#### ***Information Items***

On August 12, 2016, proposed amendments to Rules 12.4 (Disclosure Statement); 45(c) (Additional Time After Certain Kinds of Service); and 49 (Serving and Filing Papers) were published for public comment. The comment period closes February 15, 2017.

At its spring 2016 meeting, the advisory committee formed a subcommittee to consider a suggestion that Rule 16 (Discovery and Inspection) be amended to address discovery in complex cases. The original proposal submitted by the National Association of Criminal Defense Lawyers and the New York Council of Defense Lawyers provided a standard for defining a “complex case” and steps to create reciprocal discovery. The subcommittee determined that this proposal was too broad, but determined that there might be a need for a narrower, targeted amendment. After much discussion at the fall 2016 meeting, the advisory committee determined that it would be useful to hold a mini-conference to obtain feedback on the threshold question of whether an amendment is warranted, gather input about the problems an amendment might address, and get focused comments and critiques of specific proposals. Invited participants include a diverse cross-section of stakeholders, including criminal defense attorneys from both

large and small firms, public defenders, prosecutors, Department of Justice attorneys, discovery experts, and judges. The mini-conference will be held on February 7, 2017, in Washington, D.C.

Another subcommittee was formed to consider a conflict in the case law regarding Rule 5(d) of the Rules Governing Section 2255 Proceedings for the United States District Courts (The Answer and Reply). That rule—as well as Rule 5(e) of the Rules Governing Section 2254 Cases in the United States District Courts—provides that the petitioner/moving party “*may* submit a reply . . . within a time period fixed by the judge” (emphasis added). The conflict involves the use of the word “*may*.” Some courts have interpreted the rule as affording a petitioner the absolute right to file a reply. Other courts have interpreted the rule as allowing a reply only if permitted by the court.

The subcommittee presented its preliminary report at the fall 2016 meeting. Discussion concluded with a request that the subcommittee draft a proposed amendment to be presented to the advisory committee at its next meeting.

As previously reported, the Standing Committee referred to the advisory committee a request by the CACM Committee to consider rules amendments to address concerns regarding dangers to cooperating witnesses posed by access to information in case files. A subcommittee was formed to consider the suggested amendments. In its preliminary consideration of the CACM Committee’s suggestions, the subcommittee concluded that any rules amendments would be just one part of any solution to the cooperator issue. This feeling was shared by others and, as a result, the Administrative Office Director created a task force to take a broad look at the issue and possible solutions. While the task force is charged with taking a broad view, the subcommittee will continue its work to develop possible rules-based solutions.

The task force is comprised of members of the rules committees and the CACM Committee and will also include participation of key stakeholders from the Criminal Law



Committee, the Department of Justice, the Bureau of Prisons, the Sentencing Commission, a Federal Public Defender, and a clerk of court. The Task Force held its first meeting on November 16, 2016. It anticipates issuing a final report, including any rules amendments developed and endorsed by the rules committees, in January 2018.

## **FEDERAL RULES OF EVIDENCE**

The Advisory Committee on Evidence Rules presented no action items.

### ***Information Items***

The Advisory Committee on Evidence Rules met on October 21, 2016 at Pepperdine University School of Law in Los Angeles. On the day of the meeting, the advisory committee held a symposium to review case law developments on Rule 404(b), possible amendments to Rule 807 (the residual exception to the hearsay rule), and the advisory committee's working draft of possible amendments to Rule 801(d)(1)(A) to provide for broader substantive use of prior inconsistent statements.

At the meeting, the advisory committee discussed the comments made at the symposium, including proposals for amending Rule 404(b). The advisory committee will consider the specific proposals for amending Rule 404(b) at its next meeting.

The advisory committee also discussed possible amendments to Rule 801(d)(1)(A). It decided against implementing the "California rule," under which all prior inconsistent statements are substantively admissible, as it was concerned that there will be cases in which there is a dispute about whether the statement was ever made, making the admissibility determination costly and distracting. The advisory committee is considering whether the rule should be amended to allow substantive admissibility of a prior inconsistent statement so long as it was videotaped. The advisory committee will continue to deliberate on whether to amend Rule 801(d)(1)(A).

Over the past year, the advisory committee has been considering whether to propose an amendment to Rule 807, the residual exception to the hearsay rule. It has developed a working draft of an amendment to Rule 807, and that working draft was reviewed at the symposium. The advisory committee will continue to review and discuss the working draft with a focus on changes that could be made to improve the trustworthiness clause, and deletion of the superfluous provisions regarding material fact and interest of justice.

Also on the advisory committee's agenda are possible amendments to Rule 702 (Testimony by Expert Witnesses). A symposium will be held in conjunction with the Advisory Committee's fall 2017 meeting to consider possible changes to Rule 702 in light of recent challenges to forensic evidence, concerns that the rule is not being properly applied, and problems that courts have had in applying the rule to non-scientific and "soft" science experts.

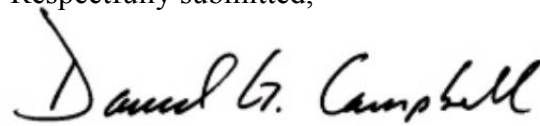
### **OTHER MATTERS**

In 1987, the Judicial Conference established a policy that "[e]very five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished." A committee's recommendations are presented to the Executive Committee in the form of responses to a Committee Self-Evaluation Questionnaire commonly referred to as the "Five Year Review." Among other things, the Five Year Review asks committees to examine not only the need for their continued existence but also their jurisdiction, workload, composition, and operating processes.

The Standing Committee discussed a version of the Five Year Review that had been completed by the Advisory Committee on Bankruptcy Rules and concluded that the answers to most questions applied across all the rules committees. Accordingly, the Standing Committee decided to complete and submit a single combined Five Year Review for all the rules

committees. Because the existence of the Standing Committee is required by statute, it recommended its continued existence. It also recommended the continued existence of each of the advisory committees as their work promotes the orderly examination and amendment of federal rules in their respective areas. With some elaboration, the Standing Committee also recommended maintaining the jurisdiction, workload, composition, and operating processes of all of the rules committees.

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	Amy J. St. Eve
Gregory G. Garre	Larry D. Thompson
Daniel C. Girard	Richard C. Wesley
Susan P. Graber	Sally Q. Yates
Frank M. Hull	Robert P. Young, Jr.
Peter D. Keisler	Jack Zouhary
William K. Kelley	

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

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

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



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

1 **Rule 4. Appeal as of Right<sup>3/4</sup> 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<sup>3/4</sup> but  
8 before it disposes of any motion listed in  
9 Rule 4(a)(4)(A)<sup>3/4</sup> 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.

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\* New material is underlined.

2 FEDERAL RULES OF APPELLATE PROCEDURE

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 appeal<sup>3</sup>/<sub>4</sub> in compliance with  
20 Rule 3(c)<sup>3</sup>/<sub>4</sub> 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.

## MEMORANDUM

To: Standing Committee

From: Dave Campbell and Rebecca Womeldorf

Date: December 22, 2016

Subject: Proposal to restore Rule 4(a)(4)(B)(iii)

The current published version of Appellate Rule 4 includes a subdivision (a)(4)(B)(iii). This short subdivision, which concerns amended notices of appeal, says: “No additional fee is required to file an amended notice.”

On December 14, 2016, the Office of the Law Revision Counsel (OLRC) in the House of Representatives informed the Rules Office of the AO that the published version of Rule 4 should not include subdivision (a)(4)(B)(iii) because the subdivision was deleted by a 2009 amendment to Rule 4.

The deletion of this subdivision in 2009 was inadvertent. That year, there were numerous amendments to the Appellate Rules, many of which were part of the Time Computation Project. Changes were included in a redlined version of the rules that was used during the committee process and published for public comment. Amendments to Rules 4(a)(4)(B)(ii) and 4(a)(5) were part of the Time Computation Project amendments, but an amendment to subdivision (iii) was not. In the redlined version, asterisks were used between subdivisions 4(a)(4)(B)(ii) and 4(a)(5) to show that other material (part (iii)) was not changed, but when the rules were combined into a “clean version,” the asterisks were inadvertently omitted, making it appear that subdivision (iii) was deleted. This clean version was later included in the Supreme Court’s order.

The Office of Law Revision Counsel (“OLRC”) apparently noted this fact in 2009 and deleted subdivision (iii) from its official document, but the document from which the rules are printed (referred to, apparently, as the “PDF”) 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.

We understand that a publisher recently noticed that subdivision (iii) was omitted from the Court's 2009 order and asked OLRC if it was part of the rule. On reviewing this history, OLRC concluded – as it had in 2009 – that subdivision (iii) was deleted by omission from the Court’s order. So, OLRC plans to publish Rule 4(a)(4)(B) without subdivision (iii), and to include a footnote noting that it was inadvertently deleted.

To correct this error, we request that the Standing Committee approve a technical amendment that restores subdivision (a)(4)(B)(iii) to Rule 4. The Advisory Committee on Appellate Rules has been informed of this proposed change, and no member has expressed concern. The technical correction could then be approved by the Judicial Conference in March and by the Supreme Court before the end of May, and would become effective on December 1, 2017 absent any action by Congress. We do not believe publication is necessary given the technical, non-substantive nature of this correction.

The proposed amendment is as follows:

**Rule 4. Appeal as of Right<sup>3/4</sup> 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<sup>3/4</sup> but before it disposes of any motion listed in Rule 4(a)(4)(A)<sup>3/4</sup> 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.

(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 appeal<sup>3/4</sup> in compliance with Rule 3(c)<sup>3/4</sup> 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 AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE\***

1 **Rule 2002. Notices to Creditors, Equity Security**  
2  **Holders, Administrators in Foreign**  
3  **Proceedings, Persons Against Whom**  
4  **Provisional Relief is Sought in Ancillary**  
5  **and Other Cross-Border Cases, United**  
6  **States, and United States Trustee**

7 (a) TWENTY-ONE-DAY NOTICES TO PARTIES  
8 IN INTEREST. Except as provided in subdivisions (h), (i),  
9 (l), (p), and (q) of this rule, the clerk, or some other person  
10 as the court may direct, shall give the debtor, the trustee, all  
11 creditors and indenture trustees at least 21 days' notice by  
12 mail of:

13 \* \* \* \* \*

14 (7) the time fixed for filing proofs of claims  
15 pursuant to Rule 3003(c);~~and~~

---

\* New material is underlined; matter to be omitted is lined through.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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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#### **Changes Made After Publication and Comment**

None.

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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.;~~

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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.

## 8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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 60 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.

**Changes Made After Publication and Comment**

- The deadline in subsection (c) for filing a proof of claim in a voluntary chapter 7, 12, or 13 case was changed from 60 days to 70 days.
- The phrase “under that chapter” was added after “order for relief” in two places in subdivision (c).
- The Committee Note was changed accordingly.

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

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

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

---

### **Changes Made After Publication and Comment**

- Subdivision (a) was divided into two paragraphs that separately address time of service and manner of service.
- A requirement of service on an entity that files a proof of claim under Rule 3005 was added to subdivision (a)(2)(B).

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



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.

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### **Changes Made After Publication and Comment**

None.

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.

18 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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

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

20 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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.

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

22 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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.



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.

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### **Changes Made After Publication and Comment**

The phrase “unlike the amount of any current installment payments or arrearages” was added to the paragraph of the Committee Note that discusses Rule 3015(g).

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;

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

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.

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### **Changes Made After Publication and Comment**

- References to Bankruptcy Code §§ 362(a) and 1301(a) were added to subsection (d)(4).
- References to Rules 3012(b) and 4003(d) were added to what is now the penultimate paragraph of the Committee Note.
- The last paragraph of the Committee Note was subdivided and the sentence “This part gives the debtor the opportunity to propose provisions that are not otherwise in, or that deviate from, the Local Form.” was added to what is now 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.

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**Changes Made After Publication and Comment**

None.

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



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.

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#### **Changes Made After Publication and Comment**

None.

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).

**Changes Made After Publication and Comment**

- The first sentence of the Committee Note was revised to describe more accurately a proceeding under Rule 4003(d).
- The example in the Committee Note of a proceeding to determine the amount of a secured claim was deleted.
- The phrase “by motion or” was added to the second sentence of the Committee Note.

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

36 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.

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**Changes Made After Publication and Comment**

None.

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
 First Name Middle Name Last Name

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

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

Case number \_\_\_\_\_  
 (If known)

Check if this is an amended plan, and list below the sections of the plan that have been changed.

\_\_\_\_\_  
 \_\_\_\_\_

Official Form 113  
**Chapter 13 Plan**

12/17

**Part 1: Notices**

**To Debtors:** This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. Plans that do not comply with local rules and judicial rulings may not be confirmable.

*In the following notice to creditors, you must check each box that applies.*

**To Creditors:** Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.

You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance. **Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Included" or if both boxes are checked, the provision will be ineffective if set out later in the plan.**

1.1	A limit on the amount of a secured claim, set out in Section 3.2, which may result in a partial payment or no payment at all to the secured creditor	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.2	Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.3	Nonstandard provisions, set out in Part 8	<input type="checkbox"/> Included	<input type="checkbox"/> Not included

**Part 2: Plan Payments and Length of Plan**

**2.1 Debtor(s) will make regular payments to the trustee as follows:**

\$ \_\_\_\_\_ per \_\_\_\_\_ for \_\_\_\_\_ months

[and \$ \_\_\_\_\_ per \_\_\_\_\_ for \_\_\_\_\_ months.] *Insert additional lines if needed.*

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in this plan.

**2.2 Regular payments to the trustee will be made from future income in the following manner:**

Check all that apply.

- Debtor(s) will make payments pursuant to a payroll deduction order.
- Debtor(s) will make payments directly to the trustee.
- Other (specify method of payment): \_\_\_\_\_.

**2.3 Income tax refunds.**

Check one.

- Debtor(s) will retain any income tax refunds received during the plan term.
- Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the plan term.
- Debtor(s) will treat income tax refunds as follows:  
\_\_\_\_\_  
\_\_\_\_\_

**2.4 Additional payments.**

Check one.

- None.** If "None" is checked, the rest of § 2.4 need not be completed or reproduced.
- Debtor(s) will make additional payment(s) to the trustee from other sources, as specified below. Describe the source, estimated amount, and date of each anticipated payment.  
\_\_\_\_\_  
\_\_\_\_\_

**2.5 The total amount of estimated payments to the trustee provided for in §§ 2.1 and 2.4 is \$ \_\_\_\_\_.**

**Part 3: Treatment of Secured Claims**

**3.1 Maintenance of payments and cure of default, if any.**

Check one.

- None.** If "None" is checked, the rest of § 3.1 need not be completed or reproduced.
- The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated. Unless otherwise ordered by the court, the amounts listed on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Collateral	Current installment payment (including escrow )	Amount of arrearage (if any)	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage	Estimated total payments by trustee
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____ %	\$ _____	\$ _____
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____ %	\$ _____	\$ _____

Insert additional claims as needed.



**3.2 Request for valuation of security, payment of fully secured claims, and modification of undersecured claims. Check one.**

**None.** If "None" is checked, the rest of § 3.2 need not be completed or reproduced.

*The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.*

The debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the debtor(s) state that the value of the secured claim should be as set out in the column headed *Amount of secured claim*. For secured claims of governmental units, unless otherwise ordered by the court, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed below. For each listed claim, the value of the secured claim will be paid in full with interest at the rate stated below.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

The holder of any claim listed below as having value in the column headed *Amount of secured claim* will retain the lien on the property interest of the debtor(s) or the estate(s) until the earlier of:

- (a) payment of the underlying debt determined under nonbankruptcy law, or
- (b) discharge of the underlying debt under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor.

Name of creditor	Estimated amount of creditor's total claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____

*Insert additional claims as needed.*

**3.3 Secured claims excluded from 11 U.S.C. § 506.**

Check one.

**None.** If "None" is checked, the rest of § 3.3 need not be completed or reproduced.

The claims listed below were either:

- (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or
- (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
_____	_____	\$ _____	____%	\$ _____	\$ _____
				Disbursed by:	
				<input type="checkbox"/> Trustee	
				<input type="checkbox"/> Debtor(s)	
_____	_____	\$ _____	____%	\$ _____	\$ _____
				Disbursed by:	
				<input type="checkbox"/> Trustee	
				<input type="checkbox"/> Debtor(s)	

*Insert additional claims as needed.*

**3.4 Lien avoidance.**

Check one.

**None.** If "None" is checked, the rest of § 3.4 need not be completed or reproduced.

**The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.**

The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). Unless otherwise ordered by the court, a judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5 to the extent allowed. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). *If more than one lien is to be avoided, provide the information separately for each lien.*

Information regarding judicial lien or security interest	Calculation of lien avoidance	Treatment of remaining secured claim
<b>Name of creditor</b>  _____  _____	a. Amount of lien  \$ _____	<b>Amount of secured claim after avoidance</b> (line a minus line f) \$ _____
	b. Amount of all other liens  \$ _____	
<b>Collateral</b>  _____  _____	c. Value of claimed exemptions  + \$ _____	<b>Interest rate</b> (if applicable)  _____ %
	d. Total of adding lines a, b, and c  \$ _____	
<b>Lien identification</b> (such as judgment date, date of lien recording, book and page number)  _____  _____	e. Value of debtor(s)' interest in property  - \$ _____	<b>Monthly payment on secured claim</b> \$ _____
	f. Subtract line e from line d.  \$ _____	
Extent of exemption impairment (Check applicable box):  <input type="checkbox"/> <b>Line f is equal to or greater than line a.</b>  The entire lien is avoided. (Do not complete the next column.)  <input type="checkbox"/> <b>Line f is less than line a.</b>  A portion of the lien is avoided. (Complete the next column.)		<b>Estimated total payments on secured claim</b> \$ _____

Insert additional claims as needed.

**3.5 Surrender of collateral.**

Check one.

**None.** If "None" is checked, the rest of § 3.5 need not be completed or reproduced.

The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) request that upon confirmation of this plan the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay under § 1301 be terminated in all respects. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	Collateral
_____	_____
_____	_____

Insert additional claims as needed.

**Part 4: Treatment of Fees and Priority Claims**

**4.1 General**

Trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in § 4.5, will be paid in full without postpetition interest.

**4.2 Trustee's fees**

Trustee's fees are governed by statute and may change during the course of the case but are estimated to be \_\_\_\_\_% of plan payments; and during the plan term, they are estimated to total \$\_\_\_\_\_.

**4.3 Attorney's fees**

The balance of the fees owed to the attorney for the debtor(s) is estimated to be \$\_\_\_\_\_.

**4.4 Priority claims other than attorney's fees and those treated in § 4.5.**

Check one.

- None.** If "None" is checked, the rest of § 4.4 need not be completed or reproduced.
- The debtor(s) estimate the total amount of other priority claims to be \_\_\_\_\_.

**4.5 Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.**

Check one.

- None.** If "None" is checked, the rest of § 4.5 need not be completed or reproduced.
- The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4). *This plan provision requires that payments in § 2.1 be for a term of 60 months; see 11 U.S.C. § 1322(a)(4).*

Name of creditor	Amount of claim to be paid
_____	\$ _____
_____	\$ _____

*Insert additional claims as needed.*

**Part 5: Treatment of Nonpriority Unsecured Claims**

**5.1 Nonpriority unsecured claims not separately classified.**

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

- The sum of \$\_\_\_\_\_.
- \_\_\_\_\_% of the total amount of these claims, an estimated payment of \$\_\_\_\_\_.
- The funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately \$\_\_\_\_\_. Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

**5.2 Maintenance of payments and cure of any default on nonpriority unsecured claims. Check one.**

- None.** If "None" is checked, the rest of § 5.2 need not be completed or reproduced.
- The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. The claim for the arrearage amount will be paid in full as specified below and disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	\$ _____
_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	\$ _____

*Insert additional claims as needed.*

**5.3 Other separately classified nonpriority unsecured claims. Check one.**

- None.** If "None" is checked, the rest of § 5.3 need not be completed or reproduced.
- The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	\$ _____	_____%	\$ _____
_____	_____	\$ _____	_____%	\$ _____

*Insert additional claims as needed.*

**Part 6: Executory Contracts and Unexpired Leases**

**6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected. Check one.**

- None.** If "None" is checked, the rest of § 6.1 need not be completed or reproduced.
- Assumed items.** Current installment payments will be disbursed either by the trustee or directly by the debtor(s), as specified below, subject to any contrary court order or rule. Arrearage payments will be disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Description of leased property or executory contract	Current installment payment	Amount of arrearage to be paid	Treatment of arrearage (Refer to other plan section if applicable)	Estimated total payments by trustee
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____	\$ _____
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____	\$ _____

Insert additional contracts or leases as needed.

**Part 7: Vesting of Property of the Estate**

**7.1 Property of the estate will vest in the debtor(s) upon**

Check the applicable box:

- plan confirmation.
- entry of discharge.
- other: \_\_\_\_\_.

**Part 8: Nonstandard Plan Provisions**

**8.1 Check "None" or List Nonstandard Plan Provisions**

None. If "None" is checked, the rest of Part 8 need not be completed or reproduced.

Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in the Official Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.

The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Part 9: Signature(s):**

**9.1 Signatures of Debtor(s) and Debtor(s)' Attorney**

*If the Debtor(s) do not have an attorney, the Debtor(s) must sign below; otherwise the Debtor(s) signatures are optional. The attorney for the Debtor(s), if any, must sign below.*

**X** \_\_\_\_\_  
Signature of Debtor 1

**X** \_\_\_\_\_  
Signature of Debtor 2

Executed on \_\_\_\_\_  
MM / DD / YYYY

Executed on \_\_\_\_\_  
MM / DD / YYYY

**X** \_\_\_\_\_  
Signature of Attorney for Debtor(s)

Date \_\_\_\_\_  
MM / DD / YYYY

**By filing this document, the Debtor(s), if not represented by an attorney, or the Attorney for Debtor(s) also certify(ies) that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in Official Form 113, other than any nonstandard provisions included in Part 8.**

## Exhibit: Total Amount of Estimated Trustee Payments

---

The following are the estimated payments that the plan requires the trustee to disburse. If there is any difference between the amounts set out below and the actual plan terms, the plan terms control.

- a. **Maintenance and cure payments on secured claims** *(Part 3, Section 3.1 total)* \$ \_\_\_\_\_
- b. **Modified secured claims** *(Part 3, Section 3.2 total)* \$ \_\_\_\_\_
- c. **Secured claims excluded from 11 U.S.C. § 506** *(Part 3, Section 3.3 total)* \$ \_\_\_\_\_
- d. **Judicial liens or security interests partially avoided** *(Part 3, Section 3.4 total)* \$ \_\_\_\_\_
- e. **Fees and priority claims** *(Part 4 total)* \$ \_\_\_\_\_
- f. **Nonpriority unsecured claims** *(Part 5, Section 5.1, highest stated amount)* \$ \_\_\_\_\_
- g. **Maintenance and cure payments on unsecured claims** *(Part 5, Section 5.2 total)* \$ \_\_\_\_\_
- h. **Separately classified unsecured claims** *(Part 5, Section 5.3 total)* \$ \_\_\_\_\_
- i. **Trustee payments on executory contracts and unexpired leases** *(Part 6, Section 6.1 total)* \$ \_\_\_\_\_
- j. **Nonstandard payments** *(Part 8, total)* + \$ \_\_\_\_\_

**Total of lines a through j**

\$ _____
----------

### Committee Note

Official Form 113 is new and is the required plan form in all chapter 13 cases, except to the extent that Rule 3015(c) permits the use of a Local Form. Except as permitted by Rule 9009, alterations to the Official Form are not permitted. As the form explains, spaces for responses may be expanded or collapsed as appropriate, and sections that are inapplicable do not need to be reproduced. Portions of the form provide multiple options for provisions of a debtor's plan, but some of those options may not be appropriate in a given debtor's situation or may not be allowed in the court presiding over the case. Debtors are advised to refer to applicable local rulings. Nothing in the Official Form requires confirmation of a plan containing provisions inconsistent with applicable law.

*Part 1.* This part sets out warnings to both debtors and creditors. For creditors, if the plan includes one or more of the provisions listed in this part, the appropriate boxes must be checked. For example, if Part 8 of the plan proposes a provision not included in, or contrary to, the Official Form, that nonstandard provision will be ineffective if the appropriate check box in Part 1 is not selected.

*Part 2.* This part states the proposed periodic plan payments, the estimated total plan payments, and sources of funding for the plan. Section 2.1 allows the debtor or debtors to propose periodic payments in other than monthly intervals. For example, if the debtor receives a paycheck every week and wishes to make plan payments from each check, that should be indicated in § 2.1. If the debtor proposes to make payments according to different "steps," the amounts and intervals of those payments should also be indicated in § 2.1. Section 2.2 provides for the manner in which the debtor will make regular payments to the trustee. If the debtor selects the option of making payments pursuant to a payroll deduction order, that selection serves as a request by the debtor for entry of the order. Whether to enter a payroll deduction order is determined by the court. See Code § 1325(c). If the debtor selects the option of making payments other than by direct payments to the trustee or by a payroll deduction order, the alternative method (*e.g.*, a designated third party electronic funds transfer program) must be specified. Section 2.3 provides



for the treatment of any income tax refunds received during the plan term.

*Part 3.* This part provides for the treatment of secured claims.

The Official Form contains no provision for proposing preconfirmation adequate protection payments to secured creditors, leaving that subject to local rules, orders, forms, custom, and practice. A Director's Form for notice of and order on proposed adequate protection payments has been created and may be used for that purpose.

Section 3.1 provides for the treatment of claims under Code § 1322(b)(5) (maintaining current payments and curing any arrearage). For the claim of a secured creditor listed in § 3.1, an estimated arrearage amount should be given. A contrary arrearage or current installment payment amount listed on the creditor's timely filed proof of claim, unless contested by objection or motion, will control over the amount given in the plan.

In § 3.2, the plan may propose to determine under Code § 506(a) the value of a secured claim. For example, the plan could seek to reduce the secured portion of a creditor's claim to the value of the collateral securing it. For the secured claim of a non-governmental creditor, that determination would be binding upon confirmation of the plan. For the secured claim of a governmental unit, however, a contrary valuation listed on the creditor's proof of claim, unless contested by objection or motion, would control over the valuation given in the plan. *See* Bankruptcy Rule 3012. Bankruptcy Rule 3002 contemplates that a debtor, the trustee, or another entity may file a proof of claim if the creditor does not do so in a timely manner. *See* Bankruptcy Rules 3004 and 3005. Section 3.2 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.3 deals with secured claims that under the so-called "hanging paragraph" of § 1325(a)(5) may not be bifurcated into secured and unsecured portions under Code § 506(a), but it allows for the proposal of an interest rate other than the contract rate to be applied to payments on such a claim. A contrary claim amount listed on the creditor's timely filed proof of claim, unless contested by

objection or motion, will control over the amount given in the plan. If appropriate, a claim may be treated under § 3.1 instead of § 3.3.

In § 3.4, the plan may propose to avoid certain judicial liens or security interests encumbering exempt property in accordance with Code § 522(f). This section includes space for the calculation of the amount of the judicial lien or security interest that is avoided. A plan proposing avoidance in § 3.4 must be served in the manner provided by Bankruptcy Rule 7004 for service of a summons and complaint. *See* Bankruptcy Rule 4003. Section 3.4 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.5 provides for elections to surrender collateral and requests for termination of the stay under § 362(a) and § 1301 with respect to the collateral surrendered. Termination will be effective upon confirmation of the plan.

*Part 4.* This part provides for the treatment of trustee's fees and claims entitled to priority status. Section 4.1 provides that trustee's fees and all allowed priority claims (other than those domestic support obligations treated in § 4.5) will be paid in full. In § 4.2, the plan lists an estimate of the trustee's fees. Although the estimate may indicate whether the plan will be feasible, it does not affect the trustee's entitlement to fees as determined by statute. In § 4.3, the form requests a statement of the balance of attorney's fees owed. Additional details about payments of attorney's fees, including information about their timing and approval, are left to the requirements of local practice. In § 4.4, the plan calls for an estimated amount of other priority claims. A contrary amount listed on the creditor's proof of claim, unless changed by court order in response to an objection or motion, will control over the amount given in § 4.4. In § 4.5, the plan may propose to pay less than the full amount of a domestic support obligation that has been assigned to, or is owed to, a governmental unit, but not less than the amount that claim would have received in a chapter 7 liquidation. *See* §§ 1322(a)(4) and 1325(a)(4) of the Code. This plan provision requires that the plan payments be for a term of 60 months. *See* § 1322(a)(4).

*Part 5.* This part provides for the treatment of unsecured claims that are not entitled to priority status. In § 5.1, the plan may propose to pay nonpriority unsecured claims in accordance with several options. One or more options may be selected. For example, the plan could propose simply to pay unsecured creditors any funds remaining after disbursements to other creditors, or it could also provide that a defined percentage of the total amount of unsecured claims will be paid. In § 5.2, the plan may propose to cure any arrearages and maintain periodic payments on long-term, nonpriority unsecured debts pursuant to § 1322(b)(5) of the Code. In § 5.3, the plan may provide for the separate classification of nonpriority unsecured claims (such as co-debtor claims) as permitted under Code § 1322(b)(1).

*Part 6.* This part provides for executory contracts and unexpired leases. An executory contract or unexpired lease is rejected unless it is listed in this part. If the plan proposes neither to assume nor reject an executory contract or unexpired lease, that treatment would have to be set forth as a nonstandard provision in Part 8.

The Official Form contains no provision on the order of distribution of payments under the plan, leaving that to local rules, orders, custom, and practice. If the debtor desires to propose a specific order of distribution, it must be contained in Part 8.

*Part 7.* This part defines when property of the estate will revert in the debtor or debtors. One choice must be selected—upon plan confirmation, upon entry of discharge the case, or upon some other specified event. This plan provision is subject to a contrary court order under Code § 1327(b).

*Part 8.* This part gives the debtor or debtors the opportunity to propose provisions that are not otherwise in, or that deviate from, the Official Form. All such nonstandard provisions must be set forth in this part and nowhere else in the plan. This part will not be effective unless the appropriate check box in Part 1 is selected. *See* Bankruptcy Rule 3015(c).

*Part 9.* The plan must be signed by the attorney for the debtor or debtors. If the debtor or debtors are not

represented by an attorney, they must sign the plan, but the signature of represented debtors is optional. In addition to the certifications set forth in Rule 9011(b), the signature constitutes a certification that the wording and order of Official Form 113 have not been altered, other than by including any nonstandard provision in Part 8.

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### **Changes Made After Publication and Comment**

- Part 1 (Notices). The following language was added to the Notice to Debtors: “Plans that do not comply with local rules and judicial rulings may not be confirmable.”
- Part 2. Subpart 2.3 (Income tax refunds) was expanded to include all income taxes, not just federal, and a more open-ended response option was added.
- Part 3. In subpart 3.1 (Maintenance of payments and cure of default, if any), “if any” was inserted after “cure of default” and “amount of arrearage.” Language was added to limit postpetition changes in the payment amount to those that are properly noticed pursuant to Rule 3002.1, and the provision now specifies that the trustee will make any arrearage payments. A sentence was added to cover the situation in which a secured creditor does not file a timely proof of claim.
- Changes were made in subpart 3.2 (Request for valuation of security . . .) to clarify that the lien of a secured creditor is released at discharge only as to the debtor’s or the estate’s interest in the collateral and only if the debt secured by the property is discharged.
- In subpart 3.3 (Secured claims excluded from 11 U.S.C. § 506), a sentence was added to provide that if the secured creditor does not file a timely proof of claim, the plan’s statement of the amount of the claim will control.
- Subpart 3.4 (Lien avoidance) was changed to recognize the court’s authority to provide an

effective date for a lien avoidance other than the date the confirmation order is entered. A change was also made to clarify that a claim for which a lien is avoided will be treated as an unsecured claim only to the extent that the claim is allowed.

- Subpart 3.5 (Surrender of collateral) was changed from providing for the debtor's consent to termination of the stay to providing that the debtor requests that the stay be terminated upon confirmation.
- Part 4. Subpart 4.1 (General) was changed to clarify that domestic support obligations that have not been assigned will be treated under the general provision for payment in full of the priority amount. "Postpetition" was inserted before "interest."
- In subpart 4.2 (Trustee's fees), language was added to specify that the amount of the trustee's fees is determined by statute and may vary over time.
- In subpart 4.5 (Domestic support obligations assigned or owed to a governmental unit. . .), a reminder was inserted that § 1322(a)(4) requires that the debtor's disposable income for 60 months be devoted to the plan if the plan provides for less than full payment of assigned domestic support obligations.
- Part 5. Subpart 5.1 (General) and subpart 5.3 were deleted. In the subpart that is now 5.2 (Maintenance of payments and cure of any default on nonpriority unsecured claims), clarifying explanations were added, including a statement that the trustee will make payments on any arrearages being cured.
- Part 6 (Executory contracts and unexpired leases). In subpart 6.1, the columns were rearranged to a more logical order, and the heading of the second column was changed to include executory contracts.

A statement was added that the trustee will disburse arrearage payments.

- Part 7 of the published form (Order of distribution of Trustee Payments) was deleted. Subsequent parts were renumbered.
- New Part 7 (Vesting of Property of the Estate). The option of property vesting in the debtor upon the closing of the case was changed to vesting upon the “entry of discharge.”
- New Part 8 (Nonstandard Plan Provisions). A sentence explaining the meaning of “nonstandard provision” was added, along with a statement that nonstandard provisions placed elsewhere in the plan are ineffective.
- New Part 9 (Signatures). A statement was added after the signatures certifying that the plan is identical in wording and order of provisions to Official Form 113, except for any nonstandard provisions placed in Part 8.
- Exhibit: Total Amount of Estimated Trustee Payments. The wording of the introductory explanation was revised, and a sentence was added to clarify that payment amounts specified in the plan control over the amounts listed in the Exhibit. An entry was added for payments under any Part 8 nonstandard provisions.
- Committee Note. The Committee Note was revised in accordance with the changes in the plan.
- A number of technical and formatting changes were made.

**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**  
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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. The draft minutes of that meeting are attached.

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”).<sup>1</sup> 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

<sup>1</sup> 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.

\* \* \* \* \*

**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<sup>3/4</sup> on  
5 motion or on its own after notice to the plaintiff<sup>3/4</sup> 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 \* \* \* \* \*

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\* New material is underlined.

**Committee Note**

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

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

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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

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*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.

\* \* \* \* \*

**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



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

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.

\* \* \* \* \*