ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

April 3, 2025

AGENDA
Meeting of the Advisory Committee on Bankruptcy Rules
April 3, 2025 | Atlanta, GA

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B. Consider comments on proposed Rule 1007(h) (suggestion 22-BK-H) allowing courts to require disclosure of post-petition acquisition of assets by debtors in individual chapter 11, chapter 12, and chapter 13 cases, *other than assets described in 11 USC § 541(a)(5)*.

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C. Consider comments on amendments to Rules 1007(c), 5009(b), and 9006(b) and (c) removing deadlines and adding a required notice of an individual debtor's obligation to take a course on personal financial management and file the certificate of completion. See Suggestion 22-BK-D.

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Meeting of the Advisory Committee on Bankruptcy Rules
April 3, 2025 | Atlanta, GA

10. Reporters' Memos.

    A. February 28, 2025, memo concerning Suggestions 24-BK-J, 24-BK-K, 24-BK-L, and 24-BK-M from Sai 359

    B. March 3, 2025, memo concerning a proposed change to Rule 9037 that would require pseudonyms rather than initials for minors in filings (suggestions 24-BK-D and 24-BK-E), and proposed changes under consideration by the Appellate Rules Committee that would restrict or eliminate the use of redacted SSNs in bankruptcy appeals.....363

11. New business.

12. Future meetings: The next meeting will be on September 25, 2025, in Washington, DC.

13. Adjourn.

TAB 1

RULES COMMITTEES — CHAIRS AND REPORTERS

Committee on Rules of Practice and Procedure
(Standing Committee)

Chair	Reporter
Honorable John D. Bates United States District Court Washington, DC	Professor Catherine T. Struve University of Pennsylvania Law School Philadelphia, PA

Advisory Committee on Appellate Rules

Chair	Reporter
Honorable Allison H. Eid United States Court of Appeals Denver, CO	Professor Edward Hartnett Seton Hall University School of Law Newark, NJ

Advisory Committee on Bankruptcy Rules

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

Advisory Committee on Civil Rules

Chair	Reporter
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	Associate Reporter
	Professor Andrew Bradt University of California, Berkeley Berkeley, CA

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

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Chair	Reporter
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ADVISORY COMMITTEE ON BANKRUPTCY RULES

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

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Honorable J. Paul Oetken United States District Court New York, NY	Damian S. Schaible, Esq. Davis Polk & Wardwell LLP New York, NY
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Rebecca B. Connelly Chair	B	Virginia (Western)	Member: 2021 Chair: 2022	---- 2025
Alane A. Becket	ESQ	Pennsylvania	2024	2027
Daniel A. Bress	C	Ninth Circuit	2022	2025
James O. Browning	D	New Mexico	2024	2027
Jenny L. Doling	ESQ	California	2023	2025
Michelle M. Harner	B	Maryland	2022	2025
Jeff Hopkins	D	Ohio (Southern)	2023	2025
David A. Hubbert*	DOJ	Washington, DC	----	Open
Ben Kahn	B	North Carolina (Middle)	2021	2026
Joan H. Lefkow	D	Illinois (Northern)	2023	2026
Catherine P. McEwen	B	Florida (Middle)	2021	2026
Scott F. Norberg	ACAD	Florida	2022	2025
J. Paul Oetken	D	New York (Southern)	2019	2025
Damian S. Schaible	ESQ	New York	2021	2026
Nancy J. Whaley	ESQ	Georgia	2023	2026
S. Elizabeth Gibson Reporter	ACAD	North Carolina	2008	Open
Laura B. Bartell Associate Reporter	ACAD	Michigan	2017	2026

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(2025)

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Civil Rules Liaison: Judge Catherine Peek McEwen	

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Effective (no earlier than) December 1, 2024

Current Step in REA Process:

- Effective December 1, 2024

REA History:

- Transmitted to Congress (Apr 2024)
- Transmitted to Supreme Court (Oct 2023)
- Approved by Standing Committee (June 2023 unless otherwise noted)
- Published for public comment (Aug 2022 – Feb 2023 unless otherwise noted)

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

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- Published for public comment (Aug 2022 – Feb 2023 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
EV 107	The proposed amendment was published for public comment as new Rule 611(d), but is now new Rule 107.	EV 1006
EV 613	The proposed amendment would require that, prior to the introduction of extrinsic evidence of a witness's prior inconsistent statement, the witness receive an opportunity to explain or deny the statement.	
EV 801	The proposed amendment to paragraph (d)(2) would provide that when a party stands in the shoes of a declarant or declarant's principal, hearsay statements made by the declarant or declarant's principal are admissible against the party.	
EV 804	The proposed amendment to subparagraph (b)(3)(B) would provide that when assessing whether a statement is supported by corroborating circumstances that clearly indicate its trustworthiness, the court must consider the totality of the circumstances and evidence, if any, corroborating the statement.	
EV 1006	The proposed changes would permit a properly supported summary to be admitted into evidence whether or not the underlying voluminous materials have been admitted. The proposed changes would also clarify that illustrative aids not admitted under Rule 1006 are governed by proposed new Rule 107.	EV 107

Effective (no earlier than) December 1, 2025, unless otherwise noted

Current Step in REA Process:

- Transmitted to Supreme Court (Oct 2024)

REA History:

- Approved by Standing Committee (June 2024 unless otherwise noted)
- Published for public comment (Aug 2023 – Feb 2024 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 6	The proposed amendments would address resetting the time to appeal in cases where a district court is exercising original jurisdiction in a bankruptcy case by adding a sentence to Appellate Rule 6(a) to provide that the reference in Rule 4(a)(4)(A) to the time allowed for motions under certain Federal Rules of Civil Procedure must be read as a reference to the time allowed for the equivalent motions under the applicable Federal Rule of Bankruptcy Procedure. In addition, the proposed amendments would make Rule 6(c) largely self-contained rather than relying on Rule 5 and would provide more detail on how parties should handle procedural steps in the court of appeals.	BK 8006
AP 39	The proposed amendments would provide that the allocation of costs by the court of appeals applies to both the costs taxable in the court of appeals and the costs taxable in the district court. In addition, the proposed amendments would provide a clearer procedure that a party should follow if it wants to request that the court of appeals to reconsider the allocation of costs.	
BK 3002.1 and Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R	Previously published in 2021. Like the prior publication, the 2023 republished amendments to the rule are intended to encourage a greater degree of compliance with the rule's provisions. A proposed midcase assessment of the mortgage status would no longer be mandatory notice process brought by the trustee but can instead be initiated by motion at any time, and more than once, by the debtor or the trustee. A proposed provision for giving only annual notices HELOC changes was also made optional. Also, the proposed end-of-case review procedures were changed in response to comments from a motion to notice procedure. Finally, proposed changes to 3002.1(i), redesignated as 3002.1(i) are meant to clarify the scope of relief that a court may grant if a claimholder fails to provide any of the information required under the rule. Six new Official Forms would implement aspect of the rule.	
BK 8006	The proposed amendment to Rule 8006(g) would clarify that any party to an appeal from a bankruptcy court (not merely the appellant) may request that a court of appeals authorize a direct appeal (if the requirements for such an appeal have otherwise been met). There is no obligation to file such a request if no party wants the court of appeals to authorize a direct appeal.	AP 6
Official Form 410	The proposed amendment would change the last line of Part 1, Box 3 to permit use of the uniform claim identifier for all payments in cases filed under all chapters of the Code, not merely electronic payments in chapter 13 cases. The amended form went into effect December 1, 2024.	

Effective (no earlier than) December 1, 2025, unless otherwise noted

Current Step in REA Process:

- Transmitted to Supreme Court (Oct 2024)

REA History:

- Approved by Standing Committee (June 2024 unless otherwise noted)
- Published for public comment (Aug 2023 – Feb 2024 unless otherwise noted)

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

Effective (no earlier than) December 1, 2026

Current Step in REA Process:

- Published for public comment (Aug 2024 – Feb 2025 unless otherwise noted)

REA History:

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

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

Effective (no earlier than) December 1, 2026

Current Step in REA Process:

- Published for public comment (Aug 2024 – Feb 2025 unless otherwise noted)

REA History:

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

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

Legislation That Directly or Effectively Amends the Federal Rules
119th Congress
(January 3, 2025–January 3, 2027)

Ordered by most recent legislative action; most recent first

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Litigation Transparency Act of 2025	**H.R. 1109** *Sponsor:* Issa (R-CA) *Cosponsors:* Collins (R-GA) Fitzgerald (R-WI)	CV 5, 26	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr1109/BILLS-119hr1109ih.pdf **Summary:** Would require a party or record of counsel in a civil action to disclose to the court and other parties the identity of any person that has a right to receive a payment or thing of value that is contingent on the outcome of the action or group of actions and to product to the court and other parties any such agreement.	• 02/07/2025: H.R. 1109 introduced in House; referred to Judiciary Committee
Alexandra's Law Act of 2025	**H.R. 780** *Sponsor:* Issa (R-CA) *Cosponsors:* Kiley (R-CA) Obernolte (R-CA)	EV 410	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr780/BILLS-119hr780ih.pdf **Summary:** Would permit a previous nolo contendere plea in a case involving death resulting from the sale of fentanyl to be used as evidence to prove in an 18 U.S.C. § 1111 or § 1112 case that the defendant had knowledge that the substance provided to the decedent contained fentanyl.	• 01/28/2025 introduced in House; referred to Judiciary and Energy & Commerce Committees
Protect the Gig Economy Act of 2025	**H.R. 100** *Sponsor:* Biggs (R-AZ)	CV 23	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr100/BILLS-119hr100ih.pdf **Summary:** Would add a requirement to Civil Rule 23(a) that a member of a class may sue or be sued as representative parties only if "the claim does not allege the misclassification of employees as independent contractors."	• 01/03/2025 introduced in House; referred to Judiciary Committee

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

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Rosa Parks Day Act	**H.R. 964** *Sponsor:* Sewell (D-AL) *Cosponsors:* 62 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/bill/119th-congress/house-bill/964/text?s=3&r=2&q=%7B%22search%22%3A%22federal+holiday%22%7D **Summary:** Would make Rosa Parks Day a federal holiday.	• 02/04/2025: Introduced in House; referred to Committee on Oversight & Government Reform
Lunar New Year Day Act	**H.R. 794** *Sponsor:* Meng (D-NY) *Cosponsors:* 39 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr794/BILLS-119hr794ih.pdf **Summary:** Would make Lunar New Year Day a federal holiday.	• 01/28/2025: Introduced in House; referred to Committee on Oversight & Government Reform
Election Day Act	**H.R. 6267** *Sponsor:* Fitzpatrick (R-PA) *Cosponsor:* Dingell (D-MI)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr154/BILLS-119hr154ih.pdf **Summary:** Would make Election Day a federal holiday.	• 01/03/2025: Introduced in House; referred to Committee on Oversight & Government Reform

Federal Judicial Center

Date: February 25, 2025

To: Advisory Committees on Rules of Practice and Procedure

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

Re: Federal Judicial Center Research and Education

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

RESEARCH

Completed Research for Rules Committees

Default and Default-Judgment Practices in the District Courts

At the request of the Civil Rules Committee, the Center studied district-court practices with respect to the entry of defaults and default judgments under Civil Rule 55 (www.fjc.gov/content/389994/default-and-default-judgment-practices-district-courts). In most districts, the clerk of court enters defaults, perhaps in consultation with chambers. District practices with respect to entry of default judgments for a sum certain were more varied; in many districts, the clerk of court never enters default judgments pursuant to the national rule.

Prior Convictions as Impeachment Evidence for Criminal Defendants

At the request of the Evidence Rules Committee, the Center prepared a research plan for surveying criminal defense attorneys on factors determining how defendants plead and whether they testify, consistency of rulings on whether criminal histories would be admissible for impeachment, and the predictive value of criminal history on defendants' truthfulness as witnesses. The committee decided to proceed with a proposal to amend Evidence Rule 609 without waiting for the research, which would have taken approximately two years.

Broadcasting Criminal Proceedings

The Center provided the Criminal Rules Committee with research support as it studied whether the proscription on remote public access to criminal proceedings should be amended. The committee decided not to pursue an amendment to that proscription at this time.

The Need for Redacted Social Security Numbers in Bankruptcy Cases

In light of proposals to fully redact Social Security numbers in public filings, rather than all but the last four digits, the Bankruptcy Rules Committee asked the Center to survey bankruptcy trustees and others on the need for partial Social Security numbers on certain public forms. Based on the results of the survey, the committee decided not to pursue a requirement for full redaction at this time, and it decided to continue to monitor treatment of the issue by other committees.

Remote Participation in Bankruptcy Contested Matters

The Center provided the Bankruptcy Rules Committee with research support as it studied remote participation in contested matters.

Current Research for Rules Committees

Intervention on Appeal

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

Bankruptcy Judges' Use of Masters

At the request of the Bankruptcy Rules Committee, the Center surveyed bankruptcy judges on how and whether they would use masters if they had the authority to do that.

Complex Criminal Litigation

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

Completed Research for Other Judicial Conference Committees

Redaction of Non-Government Party Names in Social Security and Immigration Case Documents

As part of its privacy study for the Committee on Court Administration and Case Management, the Center prepared a study of Social Security and immigration cases that (1) prepared a compilation of local rules and procedures on redacting non-government party names and (2) examined redaction in samples of publicly available dispositive documents (www.fjc.gov/content/391683/redaction-non-government-party-names-social-security-and-immigration-case-documents).

Civics Education and Outreach

A new curated website shows public-outreach and civics-education efforts by individual federal courts, as well as materials prepared by the Center and the Administrative Office (www.fjc.gov/content/388217/overview). The curated resources educate the public about the role, structure, function, and operation of the federal courts. The site includes an interactive map, created at the request of the Committee on the Judicial Branch, that displays highlighted civics-education resources and civics-program information pages on court websites. This may assist courts in developing or expanding their own civics efforts.

Remote Public Access to Court Proceedings

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

Current Research for Other Judicial Conference Committees

Evaluation of a Pilot Program in Which Comparative Sentencing Information Is Incorporated Into Presentence Investigation Reports

At the request of the Committee on Criminal Law, the Center is evaluating a two-year pilot program in which selected districts are incorporating comparative sentencing information from the Sentencing Commission's Judiciary Sentencing Information (JSIN) platform into presentence investigation reports.

The Privacy Study: Unredacted Sensitive Personal Information in Court Filings

At the request of the Committee on Court Administration and Case Management, the Center is conducting research on unredacted personal information in public filings.

Case Weights for Bankruptcy Courts

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

Other Completed Research

United States District Courts' Local Rules and Procedures on Electronic Filing by Self-Represented Litigants

Prepared to supplement a planned episode of *Court to Court*, a documentary-style video program presented by the Center's Education

Division, this report compiles local rules and procedures in the ninety-four district courts on electronic filing by self-represented litigants (www.fjc.gov/content/391989/united-states-district-courts-local-rules-and-procedures-electronic-filing-self). More than two thirds of the courts permit self-represented litigants to use the court's electronic filing system at least on a case-by-case basis.

Science Resources

The Center maintains a curated website for federal judges with resources related to scientific information and methods (www.fjc.gov/content/326577/overview-science-resources). Recently added is information on dementia and the law (www.fjc.gov/content/385467/dementia-and-law).

JUDICIAL GUIDES

In Preparation

Manual for Complex Litigation

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

Reference Manual on Scientific Evidence

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

Manual on Recurring Issues in Criminal Trials

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

Benchbook for U.S. District Court Judges

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

HISTORY

Spotlight on Judicial History

Since 2020, the Center has posted twenty-five short essays about judicial history on a variety of topics (www.fjc.gov/history/spotlight-judicial-history). Recently posted are "Tort Claims Against the United States" (www.fjc.gov/history/spotlight-judicial-history/tort-claims-against-united-states) and "The Codification of Federal Statutes on the Judiciary" (www.fjc.gov/history/spotlight-judicial-history/federal-judicial-statutes).

Work of the Courts

Of the Center's seven essays on the work of the courts, the most recent two are "Foreign Treaties in the Federal Courts" (fjc.gov/history/work-courts/foreign-treaties-in-federal-courts) and "Juries in the Federal Judicial System" (www.fjc.gov/history/work-courts/juries-in-federal-judicial-system).

EDUCATION

Specialized Workshops

Reconstruction and the Constitution: A Historical Perspective

A two-day, in-person judicial workshop in Philadelphia on the Reconstruction Amendments included visits to the National Constitution Center; Independence Hall; the Old City Hall, where the Supreme Court met from 1791 to 1800; and Congress Hall, where Congress met from 1790 to 1800.

Ronald M. Whyte Intellectual Property Seminar

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

Search and Surveillance Warrants in the Digital Age

This three-day, in-person program was designed for magistrate judges who handle criminal warrant applications as part of their day-to-day responsibilities.

Law and Technology Workshop for Judges

This three-day, in-person workshop addressed artificial intelligence and its regulation and governance, digital forensics, statistics in law and forensic evidence, technology and cognitive liberty, technology and the Fourth Amendment, access to justice, cybersecurity, and ethical and policy issues with artificial intelligence.

Distance Education

Evaluating Historical Evidence

The Center is offering judges a six-part interactive online series that provides tools for managing cases with significant historical evidence. Historians discuss historical methodology and provide practical tips on evaluating historical evidence, whether presented in the form of expert witnesses, amicus briefs, or litigant arguments. The first episode was "An Introduction: What Do Historians Do and How Do They Do It?"

Implications of Purdue Pharma *for Bankruptcy Judges*

A live webcast for bankruptcy judges discussed the implications of the Supreme Court's June 27, 2024, decision in *Harrington v. Purdue Pharma*

L.P., which held, "The bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seek to discharge claims against a nondebtor without the consent of affected claimants."

Court to Court

A documentary-style video program presenting innovation and creative problem solving by personnel in individual court units around the country, this program included as a recent episode "Transforming Justice: The Power of Drug Courts" (featuring Northern District of West Virginia Magistrate Judge Michael Aloi and Special Offender Specialist and U.S. Probation Officer Jill Henline).

Court Web

This monthly webcast included as recent episodes "Honoring the Past, Inspiring the Future—the 100th Anniversary of the Federal Probation Act" (featuring Northern District of Illinois Judge Edmond Chang, chair of the Criminal Law Committee, and District of Maryland Chief Probation Officer Leon Epps); "Neuroscience-Informed Decision-Making" (featuring retired District of Massachusetts Judge Nancy Gertner, now managing director of the Massachusetts General Hospital Center for Law, Brain & Behavior, and codirector and cofounder psychiatrist and lawyer Dr. Judith Edersheim); and "An Update on the Cardone Report after the 60th Anniversary of the CJA" (featuring District of New Hampshire Judge Landya B. McCafferty and Western District of Texas Judge Kathleen Cardone).

Term Talk

The Center presents periodic webcasts with the nation's top legal scholars discussing what federal judges need to know about the U.S. Supreme Court's most impactful decisions. Recent episodes included "*City of Grants Pass v. Johnson*; *McElrath v. Georgia*" (discussing status and conduct in the context of ordinances that punish sleeping and the absolute bar against retrying acquitted defendants even when there are inconsistent verdicts), "*Smith v. Arizona*; *Diaz v. United States*" (discussing guidelines for determining when reports prepared by analysts are testimonial and limitations on expert testimony about a defendant's mental state), "*Erlinger v. United States*; *Pulsifer v. United States*" (discussing the existence of a prior offense as a jury question and the requirements for safety-valve relief under the First Step Act), "*Chiaverini v. City of Napoleon*" (discussing how probable cause for one charge does not insulate other charges from a § 1983 malicious-prosecution claim), "*United States Trustee v. John Q. Hammons*; *Harrington v. Purdue Pharma L.P.*" (discussing the Supreme Court's rejection of the release of claims against third-party nondebtors without claimant consent and the Court's decision not to reimburse claimants for bounded nonuniformities), "*Fischer v. United States*; *Snyder v. United States*" (discussing the 2002 Sarbanes-Oxley Act as applied to January 6 defendants

and whether the amended federal bribery statute criminalizes gratuities), and "*Alexander v. S.C. State Conference of NAACP*; *Robinson v. Callais*" (discussing how courts should determine if race or party affiliation predominates in a legislature's redistricting and the uncertainty surrounding application of the *Purcell* principle).

Supreme Court Term in Review for Bankruptcy Judges

A 2024 webcast discussed some of the most significant Supreme Court decisions, including key bankruptcy cases.

Diocese Cases in Bankruptcy

This webcast for bankruptcy judges addressed the authority of the court, the scope of the automatic stay, and limitations of bankruptcy relief. It included discussion of the overarching themes of religion, trauma, procedural justice, confidence in the court system, and the inevitable media presence.

Consumer Case-Law Update for Bankruptcy Judges

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

Business Case-Law Update for Bankruptcy Judges

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

General Workshops

National Workshops for Trial-Court Judges

Three-day workshops are held for district judges in even-numbered years and annually for magistrate judges and bankruptcy judges respectively.

Circuit Workshops for U.S. Appellate and District Judges

The Center has recently put on three-day workshops for Article III judges in the Fourth and Ninth Circuits.

National Conference for Pro Se and Death Penalty Staff Attorneys

This three-day educational conference was most recently presented in 2024.

Orientation Programs

Orientation Programs for New Trial-Court Judges

The Center invites newly appointed trial-court judges to attend two one-week conferences focusing on skills unique to judging. The first phase includes sessions on trial practice, case management, and judicial ethics. In addition, district judges learn about the sentencing process, magistrate judges learn about search warrants, and bankruptcy judges learn about the bankruptcy code. The second phase includes sessions on such topics as civil-

rights litigation, employment discrimination, security, self-represented litigants, relations with the media, and ethics.

Orientation for New Circuit Judges

Orientation programs for new circuit judges include a three-day program hosted by the Center and a program at New York University School of Law for both state and federal appellate judges.

Orientation for New Term Law Clerks

The Center offers online orientation to new term law clerks. Phase I is offered before the clerkship begins, and phase II is offered after the clerkship has begun.

TAB 2

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of Sept. 12, 2024
Washington, D.C. and on Microsoft Teams

The following members attended the meeting in person:

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

The following members attended the meeting remotely:

Circuit Judge Daniel A. Bress
District Judge Jeffery P. Hopkins
District Judge Joan H. Lefkow

The following persons also attended the meeting in person:

Professor S. Elizabeth Gibson, Reporter
Professor Laura B. Bartell, Associate Reporter
District Judge John D. Bates, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Professor Catherine T. Struve, reporter to the Standing Committee
Kenneth S. Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Bankruptcy Judge Laurel Isicoff, liaison from the Committee on the Administration of the Bankruptcy System
H. Thomas Byron III, Administrative Office
Shelly Cox, Administrative Office
Allison A. Bruff, Administrative Office
Dana Elliott, Administrative Office
Scott Myers, Administrative Office
Kyle Brinker, Rules Law Clerk
Carly E. Giffin, Federal Judicial Center

Rebecca Garcia, Chapter 12 & 13 Trustee
Merril Hirsh, Academy of Court-Appointed Neutrals
Kaiya Lyons, American Association for Justice

The following persons also attended the meeting remotely:

Professor Daniel R. Coquillette, consultant to the Standing Committee
Ramona D. Elliott, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
Tim Reagan, Federal Judicial Center
Molly Johnson, Federal Judicial Center
Rakita Johnson, Administrative Office
Alane Becket, Esq., Becket & Lee (member of Committee effective Oct. 1)
District Judge James Browning (member of Committee effective Oct. 1)
Bridget M. Healy, Administrative Office
Hilary Bonial, Esq. Bonial PC
John Hawkinson, journalist
Daniel Kamensky, Esq., Creditor Rights Coalition
Alan Morrison, George Washington University
John Rabiej, Esq., Rabiej Litigation Law Center

Discussion Agenda

1. **Greetings and Introductions**

Judge Rebecca Connelly welcomed the group and thanked everyone for joining this meeting, including those Committee members attending virtually. She acknowledged the two members of the Committee for whom this is the last meeting – Jeremy Retherford and Judge George Wu – and thanked them for their service. She announced that the new members of the Committee will be District Judge James Browning and Alane Becket, who were attending the meeting remotely.

Judge Connelly thanked the members of the public attending in person or remotely for their interest and she noted that the meeting would be recorded.

2. **Approval of Minutes of Meeting Held on Apr. 11, 2024**

The minutes were approved.

3. Oral Reports on Meetings of Other Committees

(A) *June 4, 2024, Standing Committee Meeting*

Judge Connelly gave the report.

(1) Bankruptcy Rules Committee Business

Final Approval

The Standing Committee gave final approval to the proposed amendments to Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case) and Proposed New Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R. The Standing Committee also gave final approval to the proposed amendment to Rule 8006(g) (Certifying a Direct Appeal to a Court of Appeals) and Official Form 410 (Proof of Claim relating to Uniform Claim Identifier) after making one technical change to Official Form 410 to conform it to the restyled Bankruptcy Rules scheduled to go into effect on Dec. 1, 2024.

Approval for Publication for Public Comment

The Standing Committee approved for publication a revised version of amendments to Rule 3018 (Chapter 9 or 11 – Accepting or Rejecting a Plan); and amendments to Rules 1007 (Lists, Schedules, Statements, and Other Documents; Time to File), 5009 (Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied), and 9006 (Computing and Extending Time; Motions) dealing with the certificate of completion of financial management course.

Amendments to Rule 9014 (Contested Matters), 9017 (Evidence) and new Bankruptcy Rule 7043 (Taking Testimony) dealing with remote testimony in contested matters were approved for publication by electronic vote after the meeting after extensive changes were made to the committee note for Rule 9014 that addressed concerns raised during the Standing Committee meeting that it inadequately explained why remote testimony was needed in contested matters as compared with adversary proceedings.

(2) Joint Committee Business

Professor Catherine Struve and Tom Byron also reported to the Standing Committee on the Pro Se Electronic-Filing Project, the Redaction of Social Security Numbers Project, and the Joint Subcommittee on Attorney Admission. Judge Connelly noted that they would be reporting to this Committee on these projects later in the meeting.

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

The Advisory Committee on Appellate Rules will meet on Oct. 9, 2024. No report.

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

The Advisory Committee on Civil Rules will meet on Oct. 10, 2024. No report.

(D) ***June 13-14, 2024, Meeting of the Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee")***

Judge Isicoff provided the report.

Legislative Proposal Regarding Chapter 7 Debtors' Attorney Fees

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

The Administrative Office (AO) transmitted the legislative proposal to Congress most recently in July 2023. The proposal continues to be reviewed by Congressional staff, and several bankruptcy judges and AO staff have met with members of Congress to answer questions raised in connection with this proposal. If Congress enacts amendments to the Code based on this position, conforming changes to the Bankruptcy Rules would be required. The Bankruptcy Committee will continue to update the Advisory Committee on any progress in this area.

Remote Testimony in Bankruptcy Contested Matters

Last year the Bankruptcy Committee preliminarily reviewed suggested amendments to the Bankruptcy Rules concerning remote testimony in bankruptcy contested matters that were being considered by the Advisory Committee, with a focus on whether those amendments conflict with the Judicial Conference remote public access policy. The Bankruptcy Committee determined that the proposed amendments would not conflict with existing Conference policy. It then communicated this view, through staff, to the CACM Committee. The CACM Committee chair later sent a letter to Judge Connelly conveying the views of the two committees. The proposed amendments were submitted to the Standing Committee for publication and were published for public comment last month. The Bankruptcy Committee will continue to discuss these proposed amendments when it meets in December.

Masters in Bankruptcy Cases

The suggestion to allow appointment of masters in bankruptcy cases is an area in which the Bankruptcy Committee was historically very engaged, and Judge Isicoff is personally interested in it.

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

4. **Intercommittee Items**

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

Tom Byron gave the report.

The Rules Committees have received several suggestions that address particular issues relating to the privacy rules, including suggestions regarding redaction of social-security numbers in federal-court filings and a suggestion relating to initials of known minors in court filings. The Advisory Committees will continue to consider those suggestions.

The Working Group has met a couple of times to consider whether additional privacy-related issues should be addressed by the Advisory Committees. After considering a number of issues that are highlighted in the memorandum included in the Agenda Book, the Working Group recommends that the Advisory Committees should not address these additional issues at this time. Each of the issues represents an area where some clarifying changes could be made to the privacy rules or where they could be expanded to cover additional information. But the consensus view is that there is no demonstrated need for the Rules Committees to take up any of these issues because there is no real-world problem that we need to solve right now.

Judge Isicoff noted that in the S.D. Fla. there is a large number of persons of Hispanic origin with the same name, and it would be difficult to distinguish between them without the last four digits of the social security number.

Jenny Doling suggested that we should consider potential changes to Rule 9037 to add "teeth" to the rule to address situations when attorneys willfully violate the privacy rule.

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

Judge Oetken and Professor Struve gave the report.

The Subcommittee chaired by Judge J. Paul Oetken has been considering the proposal by Alan Morrison and others for adoption of national rules concerning admission to the bars of the federal district courts.

The suggestion that there be a national rule that would create a national "Bar of the District Court for the United States" administered by the Administrative Office of the U.S. Courts was rejected by the Subcommittee. In addition to its practical challenges, the

Subcommittee was concerned that the Rules Enabling Act may not authorize a rule to create a new bar. The Standing Committee supported the Subcommittee's decision.

Other approaches may be more promising, including a rule that would bar U.S. district courts from having a local rule requiring (as a condition to admission to the district court's bar) that the applicant reside in, or be a member of the bar of, the state in which the district court is located.

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

During the summer the Subcommittee met virtually and reviewed Tim Reagan's research concerning local-counsel requirements and admission fees. The Subcommittee also discussed issues relating to the unauthorized practice of law and noted that it would be useful to ask state bar authorities whether they would have concerns about a national rule loosening district-court admission requirements for out-of-state lawyers. More information about practices under Appellate Rule 46 would also be useful. The Subcommittee is currently making inquiries with Circuit Clerks to ascertain how Appellate Rule 46 is functioning and whether the Rule's relatively open approach to attorney admission causes any problems with attorney conduct in the circuits. However, a number of participants in discussions of this project have questioned whether the experience of the federal courts of appeals with attorney admission can generalize to the context of admission to practice at the trial level.

An additional consideration is that some courts require local counsel be associated with an attorney admitted pro hac vice to the district court. Although Dean Morrison and his fellow proponents for rule change appear to assume that admission to a district court's bar would exempt an out-of-state lawyer from the requirement of associating local counsel in a case, that is not necessarily true. One might question whether the proposed rule change would have the effect desired by its proponents if the local district responded by expanding their local-counsel requirement to encompass out-of-state attorneys admitted in the district but not to the state bar.

There was spirited discussion about the suggestion. Judge Wu noted that, in his district, the requirement for associating local counsel had grown out of the need to have physical access to counsel without delay – contact rather than expertise – and in light of modern communication methods it need not be problematic to remove that requirement.

Judge McEwen invited Judge Isicoff to comment. Judge Isicoff said that the bench-bar funds come from attorney admission fees, so there are financial impacts to the proposals. Judge McEwen noted that civic outreach is paid for out of those funds and that changing the rules for

admission to the district bar could alter the proportion of pro hac vice fees versus general admission fees.

Professor Struve noted that some proposals would have no financial impact, and others would have a greater impact. The Subcommittee is certainly aware of issues relating to financial impact.

Damian Schaible asked the judges in the room how they would feel about not having local counsel involved. Judge Oetken said that there is wide variation between districts as to whether they require local counsel, as the study showed. This proposal does not deal with the local counsel requirements. Mr. Schaible thinks that this has to be part of the proposal if the goal is to streamline the process.

Judge Harner said the Subcommittee may want to consider differences in the bankruptcy courts where the out-of-district lawyers may include a greater number of repeat players than in district-court litigation.

Professor Coquillette said that the fees for admission pro hac vice were not a big concern; hiring a local counsel was the major concern because of the cost involved. The two big issues are local-counsel requirements and requirements for in-state bar admission in states where admission requires taking the bar exam.

Judge Bates congratulated the Subcommittee for the work it has done so far and said that the work is obviously not over. There is an underlying issue under the Rules Enabling Act as to whether the rules can address this. The question of rulemaking authority would become even more acute if a proposal were to address local-counsel requirements. Professor Struve said the Subcommittee will continue to consider the issue of rulemaking authority.

Judge Lefkow reported on the local counsel rule in her district, which had been required for service only, and was abrogated because of electronic service rules.

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

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

Professor Struve gave the report and thanked those who have participated in the project.

The Working Group has been studying two broad topics: (1) increases to electronic access to court by self-represented litigants (whether via CM/ECF or alternative means) and (2) service (of papers subsequent to the complaint) by self-represented litigants on litigants who will receive an electronic notice of filing (Notice of Filing) (which includes a notice of docket

activity) through the court's electronic-filing system or through a court-based electronic-noticing program.

The Working Group has collaborated on a very tentative sketch of a possible amendment to Civil Rule 5. The sketch implements two policy choices. First, as to service, it eliminates the requirement of separate paper service (of documents after the complaint) on a litigant who receives a Notice of Filing through the court's electronic-filing system or court-based electronic-noticing program. In a conceptually separate change, the proposal would also allow service by email to the address used by the court when sending notices by email. She invited comments on this aspect of the proposal.

Professor Gibson noted that electronic service also got moved up to the top of the methods of service in the proposed sketch.

Judge Harner said that the proposal makes great sense for most situations, but in bankruptcy there often are many people (creditors) who are not yet on CM/ECF. Professor Struve said that the proposal applies only to those being served who are registered to receive electronic service. For service on others this provision would not apply. Judge Harner thinks that point should be made more clearly so the pro se litigant will not be misled. Ken Gardner said that if the litigants do not effectively serve, they will get deficiency notices and there will be more work for the clerks. Judge Kahn suggested language *requiring* physical service on those who are not registered in subsection (b)(3) of the proposal. He also questioned the email service option.

Professor Scott Norberg agreed with Judge Harner that pro se litigants are not likely to understand the difference between registered and unregistered parties. Perhaps the electronic system could alert the filer that the service is effective only on those registered. Professor Struve responded that the difficulty is that these pro se filers will not get the bounceback notice because they do not have the electronic access themselves. The question is how much should be handled by national rule and how much by local provisions and guidance documents.

Judge McEwen agreed that some list should be given to the pro se litigants so they know who will receive electronic service and who needs to be served by another method. And if that list has to go out to the pro se litigant by mail, then they will be late in serving those who need to be served by another method. The only way to do it quickly is if it is sent by email originally.

Nancy Whaley shared her experience. She receives everything electronically. Looking at the current system through the eyes of a non-attorney, it is very complicated and difficult to explain and comply with. She thinks the pro se litigant should have the same rights as the attorneys who use electronic filing, but it is difficult. Professor Struve noted that pro se litigants may be on both sides, serving and receiving service.

Judge Harner thinks we are assuming everyone has an email address and access to the internet, which may not be true. Should we require email addresses on the proof of claim? Ken Gardner said it is a nightmare on the proof of claim form, which creates problems no matter what

we do. There are already two addresses on the form, and even someone who knows bankruptcy has trouble understanding which to use. BNC reconciles the addresses for service in bankruptcy, and it may be different for district court.

Damian Schaible asked whether we can end paper service on those who are registered for electronic filing. Ken Gardner said that is a local requirement. Mr. Schaible asked whether this could be dealt with in a national rule. Mr. Gardner said in some places people are not as comfortable with electronic filing. Ms. Whaley noted that BNC allows you to elect not to receive paper filings if you are receiving electronic filings.

Professor Struve said she is hearing that attempting to deal with electronic service for pro se litigants is a worthy project, but that the drafting should be further refined; she invited any interested participants to let her know if they would be willing to assist in the drafting effort.

Second, as to filing, the sketch presumptively permits self-represented litigants to file electronically on the court's electronic filing system, or alternatively allows a local rule or general court order that bars self-represented litigants from using the court's electronic-filing system so long as the court permits the use of another electronic method (like email) for filing documents and receiving electronic notice of activity in the case. This is likely to be controversial in many districts.

The Working Group supports the publication and adoption of the proposed rule changes concerning service, whether or not included with the provisions regarding filing. Professor Struve asks for the reactions of the Advisory Committee.

Judge McEwen wants some gatekeeping function to prevent litigants from putting inappropriate material on the electronic filing system, and that requires resources. Professor Struve said either that will be built into CM/ECF, or the courts will use the alternative process. Perhaps, Judge McEwen suggests, the litigants must take a course, or someone must look at it before it is posted. Judge Isicoff said her district eliminated email access for pro se litigants because it was being abused. The documents were not always in pdf format and could not be opened. The filings included grocery lists, family photos, etc., and the clerk's office would have to examine them manually on limited resources. The clerks have to be able to refuse access to their electronic filing system. Professor Struve said that the proposal allows the court to take a litigant who abuses the system off CM/ECF. Judge Isicoff suggested that the power to exclude litigants should be extended to alternative electronic-filing systems like email.

Ken Gardner opposes having separate systems for filing. His court has an email system and the filing of inappropriate materials exists today, even from lawyers. He noted that the litigants think they have filed a document when they use the email system, despite clear documentation noting that a document is not filed through these alternative systems until it has been accepted. He wants to have equal access to justice, and that means using the court's electronic filing system.

Judge Harner thinks perhaps we could start just by reversing the presumption to allow pro se litigants to file electronically unless the court adopts a local rule to preclude it rather than allowing it only if the court orders. Also, the rules should continue to be clear that the clerk cannot reject a litigant's filings. Ken Gardner likes not having to make the judgment and thinks current Rule 5005(a)(1) is appropriate. He agrees with Judge Harner that perhaps incremental changes would be appropriate.

Judge Kahn observed that an alternative to CM/ECF does not have a provision for original signatures and that can create problems.

Again, Professor Struve indicated that the Working Group will continue to analyze the proposal and thanked the Advisory Committee for its valuable contributions.

5. **Report by the Consumer Subcommittee**

(A) ***Proposed Amendment to Rule 2003***

Judge Harner and Professor Gibson provided the report.

Rebecca Garcia, a chapter 12 and chapter 13 trustee, has submitted a suggestion (Suggestion 24-BK-G) to amend Rule 2003(a) and (c) as pertains to the timing, location, and recording of meetings of creditors in chapter 7, 11, 12, and 13 cases. She makes this suggestion, which has been endorsed by the Association of Chapter 12 Trustees and the National Association of Chapter 13 Trustees, in response to the current practice of conducting the meetings remotely by means of Zoom. The proposed amendment would (1) authorize remote meetings of creditors, (2) create a preference for virtual meetings over ones held in person, (3) allow video recording of meetings, and (4) provide the same timeframe in all chapters for holding the meetings.

As to the first issue, the question is whether an amendment to Rule 2003 is needed. The Justice Department (through the USTP) and the AO (through the bankruptcy administrators) have already established a nationwide program of remote meeting of creditors under the existing rule. The Subcommittee is supportive of remote meetings but is seeking feedback from the Advisory Committee on several issues. The first is whether an amendment to the Rule is needed. Can Rule 2003(a)'s authorization of meetings "at any . . . place designated by the United States trustee within the district convenient for the parties in interest" be read to encompass remote meetings?

If an amendment to expressly authorize remote meetings is needed, the Subcommittee also asks whether there be concerns about the Advisory Committee proposing another "remoteness" amendment on the heels of the proposed amendments regarding remote hearings in contested matters. Subcommittee members discussed a number of reasons why allowing remote meetings of creditors should not raise concerns. These meetings are not judicial proceedings. Section 341(c) of the Code prohibits judges from attending the meetings, and it allows creditors to participate on their own without

attorney representation. Moreover, the experience to date shows that the nationwide program of Zoom meetings is being conducted with few problems or concerns.

The Subcommittee invited the views of the Advisory Committee on whether to pursue an amendment to authorize expressly remote 341 meetings. (The Subcommittee does not recommend amending the rule to create a preference for remote meetings.)

Nancy Whaley said there was concern under the current rule as to where the trustee was located to conduct the meeting of creditors. During Covid in their district they had to be in their office, not in their homes. U.S. trustees around the country have different views on where the trustee had to be sitting. And some trustees do not live within their district. Chapter 7 trustees have to be within the district to be appointed, but chapter 12 and 13 trustees do not.

Scott Norberg said that if the rule is not broken, we should not fix it. He does, however, see that there could be an issue interpreting the phrase "place within the district." Perhaps the words "within the district" should be struck from the rule.

Judge Harner expressed concerns about making a change that suggests previous practice (the current practice of remote 341 hearings) violated the rule.

Ramona Elliott said that she thinks the rule is working as it is, so no change is necessary.

Judge Bates, while not wanting to speak for the Standing Committee on its reaction to another remote proceeding, acknowledged that this is different from the existing proposal for remote contested matters, but says some members of the Standing Committee might not be happy to see another remote proceeding.

Ken Gardner said this suggestion really cannot be extended to chapter 13 cases.

Nancy Whaley suggested taking this back to the Subcommittee to discuss how to define "place in the district."

Judge Harner asked Ramona Elliott if the U.S. trustees will continue to regulate where the trustees must be located if the rule did not require the meeting to be at a place within the district. Ramona Elliott says that the statute is not limited to chapter 7 trustees. During the pandemic there were trustees who moved across the country and were conducting 341 meetings from there. She asked whether we want the perception that trustees are not near the court. This is generally the only contact the debtor has with the bankruptcy system. She has also heard that there may be a new proposal coming from the National Association of Bankruptcy Trustees (NABT) related to Rule 2003.

Assuming that the rule is not changed to allow remote hearings, Professor Gibson suggested that the Advisory Committee would not pursue the portion of the suggestion

allowing video recording. Ramona Elliott told the Subcommittee that the USTP has declined to allow video recording of debtor examinations, allowing only audio recording, and she opposed amending the rule to allow video recording.

As to the final portion of the suggestion that recommends that time periods for setting the meeting of creditors be the same for all chapters (no fewer than 21 days and no more than 60 days after the order for relief), the justification was that it would "streamline the time frames." Professor Gibson reviewed the history of the changes to the time periods in Rule 2003, and noted that because other time periods in the Bankruptcy Code and Rules are expressed in relation to the meeting of creditors, a change to the times in Rule 2003(a) would have a ripple effect elsewhere. She recommended to the Subcommittee that, in the absence of a good reason to make this change, the Subcommittee not make this amendment.

Nancy Whaley told the Subcommittee, and explained to the Advisory Committee, that the impact of such a change on other provisions would be less than might otherwise appear. In a chapter 12, having a 341 meeting 35 days after filing is too short. She explained that under the current rule meetings of creditors are often set for 60 days after the order for relief. That scheduling relies on the provision that allows an extended 60-day deadline "if the designated meeting place is not regularly staffed by the United States trustee or an assistant who may preside." The proposed amendment for a uniform 60-day deadline, Ms. Whaley said, would merely reflect the current practice. She supports the extension of time.In response to a question from Professor Gibson, Nancy Whaley said the problem of insufficient time for chapter 12 meetings of creditors is not eliminated by holding such meetings remotely. Judge Kahn said he is reluctant to go to 60 days because in subchapter V that is the date of the status conference. He does not oppose some extension, perhaps 50 days for chapter 12 and chapter 13.

Judge Harner thought it would be helpful to have more information from the chapter 12 and 13 trustees before making any recommendations. Ken Gardner said that he does not think the time frame for a chapter 7 should be extended at all because debtors move after filing, creating difficulties in finding them for a 341 meeting. Judge Harner suggested that the first issue on amending the rule to reflect remote hearings be tabled for now until the NABT suggestion is made. As to the issue regarding time frames for the meetings, the Subcommittee should ask for more information from the chapter 12 and chapter 13 trustees and continue to consider it with respect to those chapters.

6. **Report by the Forms Subcommittee**

(A) ***Proposed Technical Amendments to Official Forms 122A-2 and 122C-2 to conform to Connecticut Housing and Utilities Standards***

Judge Kahn and Scott Myers provided the report.

The U.S. Trustee Program recently updated the Means Testing page on its website to reflect that, effective May 15, 2024, "the Housing and Utilities Standards for Connecticut shall be broken down by planning regions rather than counties, to reflect the Census Bureau's use of the State of Connecticut's nine Regional Councils of government, or Planning Regions, as the county equivalent for purposes of the statistical data that informs the Housing and Utilities Standards."

In completing Official Form 122A-2, lines 8 and 9a, a debtor must consult the Housing and Utilities Standards for the debtor's "county" to determine the appropriate income deduction amount. To conform to the revised terminology now used for Connecticut, lines 8 and 9a should be revised to add "or planning region" after the word "county." The same changes should be made to lines 8 and 9a of Official Form 122C-2.

The Advisory Committee has the authority to make "non-substantive, technical, or conforming amendments" to official forms, subject to later approval by the Standing Committee. The Subcommittee recommended that the Advisory Committee approve the changes effective December 1, 2024, and ask the Standing Committee to approve the changes when it meets in January 2025.

Scott Norberg asked about the terminology in Louisiana where they have parishes rather than counties. Scott Myers said no one had raised that as a problem. Judge Wu said the language in the committee note should be "almost all" states rather than "most states" and moving the "However" to the beginning of the next sentence. The Advisory Committee agreed to that amendment to the committee note.

The Advisory Committee approved the changes, but after the meeting voted by email to recommit the matter to the Forms Subcommittee to reconsider the proposal in light of the fact that states other than Connecticut have geographic subdivisions that are not called "counties."

(B) ***Recommendation for Publication of Amendments to Official Form 101***

Judge Kahn and Professor Bartell provided the report.

Mark A. Neal, Clerk of the Bankruptcy Court for the D. Md., submitted a suggestion (24-BK-I) to modify the prompt for Question 4 in Part 1 on the Voluntary Petition for Individuals Filing for Bankruptcy (Official Form 101). Currently the question asks for "Your Employer Identification Number (EIN), if any." Mr. Neal notes that some pro se debtors are providing the employer identification number of their employers, not realizing that the question is attempting to elicit the EIN of the individual filing for bankruptcy if that individual is himself or herself an employer. Because multiple debtors may file who have the same employer and list that employer's EIN, the CM/ECF monitoring for repeat filings triggers a report erroneously suggesting that the debtor is not eligible because of prior filings.

The Subcommittee agrees that the prompt may be confusing, and recommends to the Advisory Committee for publication an amendment to the existing language of the prompt in Question 4 and the addition of a new paragraph so that the prompt would read as follows:

"EIN (Employer Identification Number) issued to you, if any.

Do NOT list the EIN of any separate legal entity such as your employer, a corporation, partnership, or LLC that is not filing this petition."

A suggested committee note follows:

Committee Note

Question 4 has been amended to make it clear that only debtors who themselves have an employer identification number (EIN) should list it; they should not include the EIN of their employer or any other entity not filing the petition.

Professor Harner said that this amendment will be very useful.

The Advisory Committee approved the proposed amendment and committee note and will recommend them to the Standing Committee for publication.

(C) ***Consider Instructions for Forms Implementing Rule 3002.1***

Judge Kahn and Professor Gibson provided the report.

At its June meeting, the Standing Committee gave final approval to the proposed amendments to Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence) and the six new forms proposed to implement its new provisions. The forms, if approved by the Judicial Conference, will go into effect on December 1, 2025, simultaneously with the amended rule. In the meantime, instructions for completing the forms need to be drafted.

The instructions for some official forms are relatively short and straightforward, but these are likely to be more detailed. In response to publication of the forms, several commenters asked for instructions, and one commenter raised a number of questions about the meaning of terms used in the forms, to which the Advisory Committee responded that the instructions would address those issues.

During the Subcommittee's meeting on July 29, a group was formed to draft the instructions. It will work on them this fall, and the Subcommittee will present recommended instructions to the Advisory Committee at the spring meeting.

(D) ***Recommendation Concerning Proposed Amendment to Official Form 318 and Director's Forms 3180W and 3180H***

Judge Kahn and Professor Bartell provided the report.

We have received a suggestion from Dana C. McWay, Chair of the Administrative Office of the U.S. Courts' Unclaimed Funds Expert Panel, that language be added to the form Order of Discharge used in Chapter 7 and Chapter 13 cases notifying recipients that unclaimed funds may be available and suggesting that they check the Unclaimed Funds Locator to ascertain whether they are entitled to any. Although there are comparable forms of Order of Discharge used in Chapter 12 and Subchapter V of Chapter 11, the Panel believes that there are fewer unclaimed funds in those cases and inclusion of the language is not necessary but could be done for consistency. The Panel notes that the Orders of Discharge "reach a wide audience, including those for whom Bankruptcy courts hold unclaimed funds, making the forms an ideal vehicle to inform potential claimants of available funds." The Panel suggests that the following language be inserted in each form:

Money may be left over in this case.

Unclaimed funds are held by the court for an individual or entity who is entitled to the money but who has failed to claim ownership of it. To search unclaimed funds, use the Unclaimed Funds Locator at https://ucf.uscourts.gov/.

The Subcommittee recommends that no action be taken on this suggestion for several reasons.

First, although it is true that the Order of Discharge must be mailed by the clerk under Bankruptcy Rule 4004(g) to all creditors, the Subcommittee does not believe that order is the appropriate vehicle for admonitions about unclaimed funds. The existence of unclaimed funds has nothing to do with discharge. The Subcommittee believes that the discharge order should be kept clean of extraneous matter.

Second, often courts do not receive unclaimed funds until months after the discharge order is issued, so even if a creditor saw the notice and immediately communicated with the clerk's office – and this might increase the number of such calls -- the clerk would only be able to tell the creditor to check back later.

Third, if the reason that the funds are unclaimed is that the creditor has failed to update its address, the discharge order will be sent to the same erroneous address and therefore will not reach the creditor with a right to the funds.

Fourth, including this in the discharge order may encourage fraudulent claims by creditors who are not entitled to the funds. Such fraudulent claims seem to be increasing,

and having the notice in the discharge order might encourage creditors to "try their luck" in securing unclaimed funds.

Finally, including that statement in the explanation of the nature of a bankruptcy discharge in the discharge order, which was drafted more for debtors than for creditors, could confuse debtors who might think there is left-over money that belongs to them.

Although the Subcommittee is sympathetic to the goals of the Unclaimed Funds Expert Panel, it does not believe this is the appropriate approach and recommends that no action be taken on the suggestion.

The Advisory Committee agreed with the recommendation to take no action.

(E) ***Suggestion to Amend Official Form 106C***

Judge Kahn and Professor Gibson provided the report.

Rebecca Garcia, a chapter 12 and chapter 13 trustee, has submitted a suggestion (Suggestion 24-BK-H) to amend Official Form 106C (Schedule C: The Property You Claim as Exempt). The suggestion, which has been endorsed by the Association of Chapter 12 Trustees and the National Association of Chapter 13 Trustees, proposes amending the form to include a total amount of assets being claimed exempt, similar to Schedule C in use prior to 2015. Ms. Garcia explains that "28 U.S.C. Sec. 589b(d)(3) requires the uniform final report submitted by trustees to total the 'assets exempted.' Without the amount totaled on the form, the Trustee is required to manually add up the amounts on each form in preparation of the required final report."

The current form resulted from several years of deliberation by the Advisory Committee and represents a compromise of competing interests. Professor Gibson reviewed the history of the changes made to the form in response to the S. Ct. opinion in *Schwab v. Reilly*, 560 U.S. 770 (2010).

Members of the Subcommittee understood the desire of trustees to have a total dollar amount of claimed exemptions listed on Form 106C in order to simplify their task of reporting "assets exempted" to the U.S. trustee under 28 U.S.C. § 589b. But because the form − in response to *Schwab* − allows an unspecified dollar amount to be claimed, simple addition to arrive at a total amount is not always possible. The value of an asset claimed as 100% exempt might be unliquidated or in dispute. Requiring a debtor to assign a definite value to such property in order to arrive at a total amount would be contrary to the option recognized in *Schwab*.

A suggestion was made that the form be revised to place in separate columns the two categories of exemption amounts: "☐ $_____" and "☐ 100% of fair market value, up to any applicable statutory limit." With that design the column for specific dollar amounts could be totaled. Consideration of that possibility led to a

discussion of the trustees' statutory duty to report "assets exempted." Several questions were raised:

- Does reporting only exemptions claimed in a specific dollar amount satisfy the statutory requirement?
- Are unspecified amounts currently being reported and, if so, how?
- Are assets claimed as exempt on Form 106C the same as "assets exempted?

The Subcommittee intends to explore these issues further, assisted by Ramona Elliott, who will gather further information about the purpose and use of the reports to U.S. trustees on exemptions. The Subcommittee welcomes any thoughts and suggestions from the Advisory Committee about issues to pursue.

Judge Connelly said that it is important to recognize that the trustees are required to report this figure, and they are doing it manually now. The request is to have the form provide a total.

Judge Bates asked whether the trustee would have to double-check the total in any event if the debtor did the addition. Nancy Whaley said that the software would total the number. She said that there may be variations around the country about the computation and it is worthwhile to continue the conversation.

Judge McEwen noted that even if the software totaled the figures, pro se litigants often file schedules that are handwritten and would have to do it themselves.

Judge Kahn said that many exemptions do not have a limit in dollars, and the exempt value will not be reflected in the schedule.

The Subcommittee will continue to consider the suggestion.

(F) ***Conforming Changes to Director's Form 2000 concerning Pending Elimination of Official Form 423***

Judge Kahn and Scott Myers provided the report.

The pending amendments to Rule 1007(b)(7) on track to go into effect this December eliminate the requirement that the debtor file a statement on Official Form 423 *Certification About a Financial Management Course*. Instead, it requires that the debtor file the certificate of course completion provided by the approved course provider, unless the course provider notifies the court of course completion. The amendments also eliminate the requirement that a debtor who has been excused from taking such a course file Official Form 423 indicating the court's waiver of the requirement. As a result, Official Form 423 will be abrogated this December.

Abrogation of Official Form 423 requires conforming changes to Director's Form 2000, *Required Lists, Schedules, and Fees.* That form serves as a checklist for debtors of various requirements under chapter 7, 11, 12, or 13 of the Bankruptcy Code. Revisions are needed to the chapter 7, 11, and 13 checklists to remove references to Official Form 423, and to reflect that the debtor will no longer have to affirmatively assert the applicability of an exemption from taking the course.

Because Form 2000 is a Director's Form, the Advisory Committee's role is to review and, if appropriate, endorse any changes to the form. The Subcommittee recommends that the Advisory Committee endorse the proposed changes to Form 2000.

The Advisory Committee endorsed the proposed changes to Form 2000.

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

(A) ***Continued Consideration of Suggestion 22-BK-I Concerning SSN Redaction in Bankruptcy Filings***

Judge Oetken and Professor Bartell provided the report.

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

When the Advisory Committee last considered the suggestion, it concluded that it needed more information before formulating a response. Specifically, it decided to defer consideration until two different tasks were completed.

First, the Committee on Court Administration and Case Management of the Judicial Conference of the United States (CACM) requested the Federal Judicial Center (FJC) to design and conduct studies regarding the inclusion of sensitive personal information in court filings and in social security and immigration opinions that would update the 2015 FJC privacy study and gather information about compliance with privacy rules and the extent of unredacted SSNs in court filings. That study, completed in April 2024, is included in the agenda book.

Second, the Subcommittee decided that it was important to survey debtor attorneys, chapter 7, 12, and 13 trustees, creditor attorneys, various tax authorities, and representatives of the National Association of Attorneys General about whether bankruptcy forms that currently require inclusion of the debtor's redacted SSN must or should continue to do so. Concurrently, the Subcommittee decided to ask for reactions

from bankruptcy clerks of court on the issue. Working with the FJC, the reporters and members of the Subcommittee developed two surveys and sent them electronically to the various bankruptcy parties. The responses to the surveys are included in the agenda book.

After reviewing the privacy study and the results on the surveys, the Subcommittee recommends that the Advisory Committee take no action on Sen. Wyden's suggestion for three reasons.

First, as far as the Subcommittee knows there is no demonstrated problem of SSN fraud stemming from the disclosure of either full or truncated SSN in bankruptcy filings. Sen. Wyden pointed to the last FJC report on protecting privacy and noted that full SSNs have been disclosed in court filings (including in bankruptcy court filings). But he provided no evidence that these disclosures have in fact led to "identity theft, stalking or other harms" about which he is concerned. Moreover, the FJC's 2024 Privacy Study indicates the disclosure of full SSNs in bankruptcy filings is very low – approximately 0.1% of the filings checked. Even if the Advisory Committee recommended the extensive modifications to the rules and forms to eliminate redacted SSNs from most bankruptcy court filings, mistakes would be made (as they are today). The bankruptcy clerks and courts cannot guarantee that any rules would be followed especially in connection with proofs of claim where most of the errors are made. As the 2024 Privacy Study pointed out, although there are very few disclosures of full SSNs in filed bankruptcy documents, the vast majority of such disclosures appear to violate the existing privacy rules. The various rules committees have consistently tried to limit disclosure of personally identifiable information in filed documents to the redacted SSN in an effort to protect the privacy of debtors. The Standing Committee in the past has declined to go beyond the current requirements, and although the suggestion is well-meant, it may not be addressing a real-world problem.

Second, the surveys indicate a significant number of bankruptcy specialists oppose the idea removing the truncated SSN with respect to every form listed. Perhaps over time those parties could be made comfortable with the deletion of the truncated SSN in many of the forms, but it seems unwise to pursue changes that are both unnecessary and potentially unpopular.

Third, there are other ways to address the very valid concerns expressed in the Suggestion. It is clear from the 2024 Privacy Study that significant progress has been made in protecting SSNs from disclosure, and it is anticipated that such progress will continue. At this meeting the Subcommittee is recommending for publication an amendment to Bankruptcy Rule 2002(o) to eliminate the requirement that notices sent under Bankruptcy Rule 2002 use the full caption described in Bankruptcy Rule 1005 (which includes the truncated SSN) and instead use a shorter caption that does not include that information. This may decrease the number of filed documents with the truncated SSN.

As described in Part II of the 2024 Privacy Study, there are a number of ongoing approaches to protect privacy in court filings and opinions, including continued outreach

and educational efforts. In May 2023 CACM sent a memorandum to the courts sharing suggested practices to protect personal information in court filings and opinions. The memorandum urged the courts to continue or to consider initiating outreach efforts to litigants and members of the bar to ensure that they are aware of redaction obligations and the need to minimize personal identifiers in certain court filings. In addition, CACM recently requested the AO and FJC to explore other ways to increase awareness about ways to protect privacy in court filings and opinions.

The current case management system notifies filers via a prominent banner titled "Redaction Agreement" that appears immediately after a filer logs in to remind them of the redaction requirements. The instructions to Official Form B410 (Proof of Claim) include a warning that "A Proof of Claim form and any attached documents must show only the last 4 digits of any social security number …." Continuing advances in court management software may alert filers and courts of possible violations of the privacy rules so that corrective action can be taken.

For these reasons, the Subcommittee recommended that the Advisory Committee take no action on Suggestion 22-BK-I.

Tom Byron noted that that the other Advisory Committees must also address Senator Wyden's suggestion and that it would be helpful to get feedback from the Advisory Committee on its reasoning. For example, while the Bankruptcy Rules Advisory Committee has identified benefits of having the last four digits of the SSN for bankruptcy purposes, should uniformity prevail across the other Advisory Committees? Which of the reasons for declining to take action are compelling to the Bankruptcy Advisory Committee? Judge Bates asked whether the Advisory Committee should make a final "no action" decision today or simply indicate the direction in which it is leaning.

Judge Isicoff repeated a statement she made earlier in the meeting about the need for truncated SSNs to assist in debtor identification in her district.

Judge Connelly said the most compelling reason for the recommendation is that there is no demonstrated problem that rule amendments would solve.

Judge Harner asked whether the discussion is likely to be different in the other committees because they don't use the SSN in the same way. She has no concern about deferring decision on this suggestion until the other Subcommittees consider it.

Judge Lefkow thought perhaps it would help the other Advisory Committees because they might want to know what the Bankruptcy Advisory Committee thinks. Tom Byron assured the Advisory Committee that its preliminary assessment would be shared.

Professor Gibson sees no reason why bankruptcy privacy rule cannot be different from the other privacy rules. There was extensive discussion about whether the Advisory Committee should take action today.

Judge Kahn said that today it seems that the cost of disclosing truncated SSN does not outweigh the need that the bankruptcy community has for the SSN. But we may get additional information in the future, and we can decide to make a different decision then.

Jenny Doling pointed out that there are full SSNs on the notice of 341 meeting sent to creditors but that version of the 341 notice is not publicly docketed. Judge Harner also expressed concern about shadow dockets which may disclose a full SSN number found in a filing even if that filing is later shielded on the court docket.

For the reasons set forth in the memorandum, the Advisory Committee decided to take no action on this Suggestion at this time but to continue to monitor discussions and developments in the other Advisory Committees.

(B) ***Suggestion to Amend Rule 2002(o) to allow short-form captions for Rule 2002 Notices***

A suggestion was made by the Clerk of Court for the Bankruptcy Court for the District of Minnesota, in which clerks of court for eight other bankruptcy courts in the Eighth Circuit joined, suggesting that Rule 2002(n) (restyled Rule 2002(o)) be amended to eliminate the requirement that the caption of every notice given under Rule 2002 comply with Rule 1005. The Bankruptcy Clerks Advisory Group submitted a second suggestion supporting the first one.

When it last considered the suggestions, the Subcommittee decided to survey bankruptcy clerks on their reaction to the suggestion. The results of that survey are included in the agenda book. The clerks overwhelmingly (19 out of the 21 respondents) stated that they endorsed the suggestion and, in fact, many ignore the requirements of Rule 2002(n) in their current practice.

The Subcommittee recommends an amendment to restyled Rule 2002(o) to the Advisory Committee for publication. The amended rule would read as follows:

> **(o) Caption.** The caption of a notice given under this Rule 2002 must include the information that Form 416B requires. The caption of a debtor's notice to a creditor must also include the information that § 342(c) requires.
>
> Committee Note
>
> The amendment eliminates the requirement that all notices given under Rule 2002 include the caption required for the bankruptcy petition under Rule 1005. That caption requires, among other things, the debtor's employer-identification number, last four digits of the debtor's social security number or individual debtor's taxpayer-identification number, any other federal taxpayer-identification number and all other names used within eight years before filing the petition. Instead, most Rule 2002 notices may use the caption described in Official Form 416B,

which requires only the court's name, the name of the debtor, the case number, the chapter under which the case was filed, and a brief description of the document's character. Rule 2002 notices sent by the debtor must also include the information that § 342(c) of the Code requires. The notice of the meeting of creditors, Rule 2002(a)(1), will continue to include all information required by Official Forms 309(A-I).

Professor Gibson suggested that the words "to Rule 2002(o)" be inserted in the first line of the committee note after the word "amendment." The Advisory Committee approved the amended rule and committee note with that change and recommended it to the Standing Committee for publication.

8. **Report of the Business Subcommittee**

(A) ***Report Regarding Suggestion to Propose a Rule Requiring Random Assignment of Mega Bankruptcy Cases within a District***

Judge McEwen and Professor Gibson provided the report.

A group of nine individuals and one organization, calling itself the Creditor Rights Coalition, has submitted Suggestion 24-BK-B, which requests the promulgation of a new Bankruptcy Rule "requiring random assignment of all mega bankruptcy cases to all bankruptcy judges within a particular district." Such a rule would prohibit the practice of some districts of assigning large bankruptcy cases to a member of a pre-selected panel of judges or limiting assignment to the judge or judges sitting within the division where the case was filed. The suggestion posits that "[l]ocal judicial assignment rules that concentrate mega bankruptcy cases within a district to small subsets of bankruptcy judges undermine public confidence in the Chapter 11 system."

The Subcommittee recommends that the Advisory Committee table consideration of this suggestion pending consideration of a similar issue by the Committee on the Administration of the Bankruptcy System ("the Bankruptcy Committee").

The Subcommittee also noted that it is not clear that the assignment of cases within a district comes within the bankruptcy rulemaking authority under 28 U.S.C. § 2075, which does not allow the Bankruptcy Rules to supersede statutes. Section 154(a) of Title 28 provides that "[e]ach bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court." Whether that statute leaves room for a national rule prescribing how bankruptcy cases are to be assigned within a district is a question that will need to be explored if and when the Advisory Committee takes up consideration of the Creditor Rights Coalition's suggestion.

The Advisory Committee agreed with the recommendation and tabled consideration of the suggestion.

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

Judge McEwen and Professor Gibson provided the report.

Rule 9031 (as restyled) provides: "Fed. R. Civ. P. 53 does not apply in a bankruptcy case." As declared by its title, the effect of this rule is that "Using Masters [Is] Not Authorized" in bankruptcy cases. Since the rule's promulgation in 1983, the Advisory Committee has been asked on several occasions to propose an amendment to it to allow the appointment of masters in certain circumstances, but each time the Advisory Committee has decided not to do so. Now two new suggestions to amend Rule 9031 have been submitted to the Advisory Committee by Chief Bankruptcy Judge Michael B. Kaplan of the District of New Jersey (24-BK-A) and by the American Bar Association (ABA) (24-BK-C).

At its spring meeting, the Advisory Committee directed the Subcommittee to gather more information before making a recommendation. Specifically, it was agreed that a survey of bankruptcy judges should be undertaken to learn whether the judges thought the rules should allow masters to be used in bankruptcy cases and in what circumstances, if any, they had ever needed such assistance.

Carly Giffin of the Federal Judicial Center offered the FJC's services in creating and conducting such a survey, and she suggested that it might be helpful to begin with interviews of some bankruptcy judges in order to determine the types of questions that might be asked in the survey. There was also a suggestion at the meeting that a separate survey might be conducted of district judges to learn how they had used masters.

At the Subcommittee's July 26 meeting, members agreed that it would be helpful for Dr. Giffin to begin by interviewing a group of bankruptcy judges regarding the need for masters in bankruptcy cases. The Subcommittee suggested the names of several bankruptcy judges from a variety of districts and with differing points of view. Dr. Giffin completed the interviews and provided information to the Advisory Committee about the results.

She interviewed nine judges, and they identified several tasks that would be facilitated by the ability to appoint a special master, such as discovery disputes and claims estimation or valuation. Unlike an examiner, a master would work for the court. Some judges thought use of special masters could speed up cases, ultimately saving the estate money and benefitting all parties. A special master might have expertise that the judge does not, and utilizing an expert's knowledge could help the judge make decisions and speed the case along.

The major concern expressed was the increased cost of having a master. Even judges who supported allowing appointment of special masters thought that it should be done only when the case was large enough to absorb the associated cost. Another concern expressed was that appointment of a special master would take the judicial decision-maker out of the picture. Litigants want to be heard by a judge directly rather than on review of a special master's decision. Another issue deals with appointment of special masters, and potential favoritism. Repeated appointments of the same people could give the appearance that the judge was benefitting certain cronies.

In addition, some judges expressed concern that bankruptcy judges do not have authority to appoint special masters because no such authority is granted by the Bankruptcy Code. Others thought a revised rule could confer the authority, while some thought they already had inherent authority to appoint a special master notwithstanding the rule.

Some judges thought the rule should set out special factors that should be required before appointments were made, or who could request appointment. Some thought only other bankruptcy judges should serve as special masters, which would solve the cost issue, but there were some objections to that idea.

In sum three judges supported amending the rule to permit appointment of special masters. Two judges said they would not need a special master, but were not opposed to permitting others to appoint them. Three judges opposed amending the rule. One judge said he would have no objection to another judge serving as a special master, but was otherwise against amending the rule.

The Advisory Committee discussed the issue. Judge Wu said he is sensitive to cost, but noted that there are certainly cases where bankruptcy judges should have the resource of a special master. Judge Harner said she sees the potential value. Judge Isicoff said she used a special master for discovery disputes (not realizing it was prohibited) and suggested that perhaps special masters should be used only for matters that an examiner cannot do. She thinks using special masters for discovery dispute would be tremendously valuable. Using other bankruptcy judges as a special master may raise issues of judicial immunity, even if judges were willing to do that.

Judge Bates said that he thought that if a special master were supposed to be functionally the same as a magistrate judge, that creates complications; magistrates are statutory, cost-free, and judicial parties, unlike special masters. He also questions whether bankruptcy judges should look to outside masters to have expertise on the law. There are real complications here and the Subcommittee should think about what needs masters would serve.

Judge McEwen identified fee disputes as an area that would be appropriate for a master. Judge Kahn said that there are various other parties involved in a bankruptcy

case, like the examiner and mediators, who can handle discrete issues. He thinks we cannot do this without knowing the extent of authority these special masters would have. He would prefer developing a more limited bankruptcy rule rather than extending Rule 53 to bankruptcy cases. Judge Wu said he assumes that any special master would only make proposed findings and conclusions and refer them to the bankruptcy judge.

Judge Kahn said he wants to ask bankruptcy judges who oppose the appointment why they do so. Dr. Giffin thinks the opposition comes from lack of statutory authority or the appearance of impropriety having an outsider performing what is an essential judicial function. Damian Schaible stated that using other bankruptcy judges seems a different question than appointing masters.

Dr. Giffin does think that gathering more information is valuable, and the Subcommittee will assist Dr. Giffin in devising a survey to go to the bankruptcy judges and potentially a broader group to share with the Advisory Committee. The Subcommittee will also consider the issue of whether bankruptcy courts have the authority to appoint special masters.

Judge Connelly invited any non-members of the Subcommittee to submit any questions or thoughts to the Subcommittee.

9. **New Business**

There was no new business.

10. **Future Meetings**

The spring 2025 meeting has been scheduled for April 3, 2025, at a location to be determined.

11. **Adjournment**

The meeting was adjourned at 2:10 p.m.

TAB 3

TAB 3A

TAB 3A1

MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

January 7, 2025

The Judicial Conference Committee on Rules of Practice and Procedure (the Standing Committee) met in a hybrid in-person and virtual session in San Diego, California, on January 7, 2025. The following members attended:

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

The following attended on behalf of the Advisory Committees:

Advisory Committee on Appellate Rules –
Judge Allison H. Eid, Chair
Professor Edward Hartnett, Reporter

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

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

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

Advisory Committee on Evidence Rules –
Judge Jesse M. Furman, Chair
Professor Daniel J. Capra, Reporter

Others who provided support to the Standing Committee, in person or remotely, included Professor Catherine T. Struve, the Standing Committee's Reporter; Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee; H. Thomas Byron III, Esq., Secretary to the Standing Committee; Bridget M. Healy, Esq., Rules Committee Staff Counsel; Shelly Cox and Rakita Johnson, Rules Committee Staff; Kyle Brinker, Law Clerk to the Standing Committee; John S. Cooke, Director, Federal Judicial Center (FJC); and Dr. Tim Reagan, Senior Research Associate, FJC.

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

OPENING BUSINESS

Judge John D. Bates, Chair of the Standing Committee, called the meeting to order and welcomed everyone, including Standing and advisory committee members, reporters, and consultants who were attending remotely. Judge Bates gave a special welcome to Judges Stephen Higginson and Joan Ericksen as the new Standing Committee members, although Judge Ericksen was unable to attend the meeting due to a scheduling conflict. Judge Bates also noted that Lisa Monaco was unable to attend the meeting.

Judge Bates informed the Committee that Thomas Byron, Secretary to the Standing Committee, would soon leave his position for a new career opportunity and thanked him for his invaluable contributions that helped guide the rules process over the prior several years. Professor Catherine Struve, reporter to the Standing Committee, also thanked Mr. Byron for his excellence as Secretary and recalled his dedication, insight, and collegiality when he served as the Department of Justice (DOJ) representative to the Appellate Rules Committee.

Judge Bates notified the Committee that Professors Bryan Garner and Joseph Kimble, consultants to the Standing Committee, authored a new book entitled Essentials for Drafting Clear Legal Rules. The book reflects lessons from the rules restyling project over the last 30 years and is an update on Professor Garner's previous publication on the same subject. The book is available for free download from the Rules Committees' style resources page on the uscourts.gov website, and the Administrative Office printed copies for the use of the Rules Committee members and reporters. Judge Bates added that Professors Garner and Kimble provided essential counsel to the rules committees during the restyling project as did Joseph Spaniol, who previously served as Secretary to the Standing Committee and as Deputy Director of the Administrative Office and Secretary of the Judicial Conference before his appointment as Clerk of the Supreme Court. Mr. Spaniol retired as Clerk in 1991 but has served as consultant to the rules committees.

Judge Bates also welcomed members of the public and press who were observing the meeting in person or remotely.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee approved the minutes of the June 4, 2024, meeting** with a correction that deleted the words "conducted a survey and" on page 23 of the minutes.

Mr. Byron reported that the latest set of proposed rule amendments took effect on December 1, 2024. A list of the rule amendments is included in the agenda book beginning on page 50. Mr. Byron also reported that the latest proposed rule amendments approved in the Standing Committee's June meeting are pending before the Supreme Court and, if approved, will be transmitted to Congress. Those amendments are on track to take effect on December 1, 2025, in the absence of congressional action. A list of the proposed rule amendments is included in the agenda book beginning on page 52.

Judge Bates noted that a December 2024 report on FJC research projects begins on page 79 of the agenda book. Dr. Tim Reagan explained that the FJC in November 2023 restarted its reports to the rules committees about work the FJC does. Because he has heard during meetings that education can be a useful alternative to rule amendments, these periodic reports now include

information about education as well as research conducted by the FJC. He also explained that the report does not discuss ongoing research for other Judicial Conference committees, but descriptions of such research will be included once the FJC completes the research and publishes the findings. Judge Bates thanked Dr. Reagan for the FJC's excellent work.

JOINT COMMITTEE BUSINESS

Electronic Filing by Self-Represented Litigants

Professor Struve reported on this item and explained that the item has two parts.

The first part relates to paper service by a self-represented litigant. The current rules appear to say that self-represented litigants who file documents in paper form must effect traditional service of those papers on others in the case even if the other litigants also receive electronic copies through CM/ECF or its equivalent. The point of this first part would be to eliminate this duplicative and burdensome requirement for papers subsequent to the complaint.

The second part relates to access to a court's electronic filing system by self-represented litigants. The rules currently set a presumption that self-represented litigants lack access to the court's system unless the court acts to provide it. This part of the project would increase access for self-represented litigants by flipping the presumption: allowing self-represented litigants access unless the court acts to prohibit access. The proposal would also require a court to provide a reasonable alternative if the court acts in a general way to prohibit self-represented litigants from accessing the court's electronic-filing system. The proposal would allow a court to set reasonable exceptions and conditions on access.

Professor Struve noted that the Standing and advisory committees had been discussing this item for several meetings. The Appellate, Civil, and Criminal Rules Committees appeared open to proceeding toward recommending both parts for publication for public comment. On the other hand, the Bankruptcy Rules Committee supported the goals of the project but was skeptical about proceeding forward. One reason was that access for self-represented litigants to electronic filing systems is currently least prevalent in bankruptcy courts. Regarding the service component, bankruptcy practice is more likely to feature multiple self-represented litigants in one matter than practice in other levels of court. Self-represented litigants in bankruptcy court may include the debtor, small creditors, and some Chapter 5 trustees.

When there are multiple self-represented litigants, a self-represented filer who is not on the electronic filing system or receiving electronic notices will not be able to know which other litigants are also not receiving electronic notices and therefore require paper service. Because practice before district courts and courts of appeals is much less likely to feature multiple self-represented litigants in the same matter, this problem is not likely to afflict these courts. Accordingly, Professor Struve suggested that it might be prudent for the Bankruptcy Rules to take a different approach than the Appellate, Civil, and Criminal Rules. She asked the Standing Committee if it would be open to approving publication of a package of amendments to the Appellate, Civil, and Criminal Rules without similar proposals for amending the Bankruptcy Rules. Professor Struve noted that if this approach were taken, a question would arise as to how

courts would treat self-represented litigants when a bankruptcy matter is appealed to a district court or court of appeals.

Judge Connelly stated that the Bankruptcy Rules Committee supported the project's goals but that it had practical concerns. She indicated that if the other rules committees further explored the item, it could provide the Bankruptcy Rules Committee valuable guidance for future discussion.

Judge Bates asked whether the Committee would support approving publication of an amendment package that would effect these changes for the Appellate, Civil, and Criminal Rules without changing the service and filing approaches for self-represented litigants under the Bankruptcy Rules. He also asked whether it was necessary to discuss how to handle service and filing issues for self-represented litigants in bankruptcy appeals.

Professor Struve observed that some courts in bankruptcy appeals already allow self-represented litigants to access their electronic filing systems and exempt them from effecting paper service. She said that it does not appear that the courts in these instances are experiencing substantial difficulty, and if there are problems, the Committee has several options to resolve them.

Judge Bates commented that the Committee could set aside the bankruptcy appeals question and asked Professor Struve if a vote by the Standing Committee was needed. Professor Struve responded that she would like to hear any concerns that Committee members may have with the project.

A judge member thought that the Bankruptcy Rules taking a separate path did not raise a significant issue. He had discussed the proposal with the clerk of his court, who highlighted two features of the proposed amendments as crucial—namely, the provision permitting a court to use alternative means of providing electronic access for self-represented litigants and the provision recognizing the court's authority to withdraw a person's access to the electronic filing system. The clerk also pointed out the potential cost savings by eliminating the need to mail thousands of hardcopy letters to self-represented litigants. And he observed that as a court provides greater electronic access for self-represented litigants, the court's help desk grows in importance. The judge member turned the Committee's attention to draft Civil Rule 5(b)(3)(E)'s statement that electronic service under that provision is not effective if the sender learns that it did not reach the person to be served, and asked if this provision would require the sender to monitor the court's site.

Professor Struve commented that the member's question is a larger one that applies to the current rule. She observed that current Rule 5(b)(3)(E) is the provision that allows users of the court's electronic-filing system to rely on that system for making service, and that the provision seems to be working.

The judge member also pointed out that draft Rule 5(d)(3)(B)(iv) (authorizing the court to withdraw a person's access to the electronic filing system) appeared to be limited to self-represented litigants, and asked whether that was intended to suggest that the court lacked authority to withdraw a noncompliant lawyer's access to the system. Professor Struve acknowledged that subsection (B) is about self-represented litigants but stated that there was no intent to limit the

court's authority to withdraw a noncompliant lawyer's access; she noted that the working group could discuss ways to ensure that this provision did not give rise to a negative inference.

The judge member identified the National Center for State Courts as a source of helpful information about access to justice for self-represented litigants. Professor Struve agreed about the NCSC's expertise and invited Committee members to let her know if they thought that the NCSC should be consulted while the rule is in the development stage rather than waiting until the public comment period.

A judge member said that she supported moving forward with a proposed change to the Appellate, Civil, and Criminal Rules for the reasons previously stated.

Professor King asked whether the discussion of a different approach for the Bankruptcy Rules assumed that total uniformity (concerning service and filing) would be imposed as between the Civil and Criminal Rules. Professor Struve assured her that the project was not intended to achieve total uniformity among the service and filing provisions in the Civil, Criminal, and Appellate Rules; differences already exist among those provisions, and this project does not seek to eliminate them. Rather, the goal in preparing for the spring advisory committee meetings will be to transpose the key features shown in the Civil Rule 5 sketch into the relevant Appellate and Criminal Rules. Professor Marcus highlighted the question of how to treat appeals from a bankruptcy court. Professor Struve observed that appeals from bankruptcy courts to district courts are currently addressed by Bankruptcy Rule 8011, and she also noted that technical amendments to the Bankruptcy Rules will be required if the draft Civil Rule 5 is approved.

Joint Subcommittee on Attorney Admission

Professor Struve reported on this item, the report for which begins on page 113 of the agenda book. Professor Struve recalled that this item originated from an observation by Dean Alan Morrison and others that the district courts have varying approaches to attorney admission. To be admitted to the district court, some districts require attorneys to be admitted to the bar of the state that encompasses the district, and some of those states require attorneys to take their bar exam in order to be admitted to the state bar. The Subcommittee has been discussing possible ways to address this issue. One possible solution would be to follow the approach in Appellate Rule 46, which does not require admission to the bar of a state within the relevant circuit.

The Subcommittee has also heard a number of concerns from the Standing Committee and advisory committees. District courts regulate admission to protect the quality of practice in their districts, which is linked to concerns about protecting the interests of clients. State bar authorities and state courts might also have concerns with a national rule along these lines. In addition, the Subcommittee has discussed how a rule might interact with local counsel requirements.

Professor Struve thanked Professor Coquillette and Dr. Reagan for their research and expertise. She noted that a survey of circuit clerks was recently completed, which found that the clerks generally feel that Appellate Rule 46 works well for the courts of appeals. Professor Struve recognized, however, that practice before the courts of appeals differs from practice before the district courts. A request for input was posted on the website of the National Organization of Bar Counsel, but the Subcommittee did not receive any responses.

Professor Struve said that the Subcommittee was proposing a research program based on what Subcommittee members said would be helpful going forward, including consultation with chief district judges in select districts. One type of district on which these inquiries would focus would be districts that require admission to the bar of the encompassing state. Possible questions may include: why do you have this approach? How would you react to a national rule setting a more permissive standard for admission? And are there other measures that could address barriers to access? Inquiries to district courts that do not require in-state bar admission might ask whether their approach to attorney admission has caused any problems. Dean Morrison suggested also inquiring of judges who have handled multidistrict litigation (MDL) proceedings. Outreach to state bar authorities and practitioners could also be helpful.

Professor Coquillette recalled the history of the Standing Committee's study of a DOJ proposal for national rules governing attorney conduct in federal courts. After a question was raised about whether such a project would exceed the existing rulemaking authority under the Rules Enabling Act, Senator Leahy proposed a bill to give the Standing Committee the authority to promulgate rules of attorney conduct. State bar authorities opposed the idea of such national rules, and the Standing Committee decided not to promulgate rules of attorney conduct (other than rules like Civil Rule 11). Judge Bates commented that, consistent with Professor Coquillette's observations, the Committee likely will need to research its authority to regulate attorney admission.

A practitioner member recommended speaking to districts that require attorneys (even some attorneys who are admitted to the district court's bar) to associate with local counsel; such requirements, this member observed, may undermine a national admission rule. The member also recommended researching the Committee's authority to craft a rule regarding local counsel requirements. Professor Struve responded that the Subcommittee shared this concern and would continue to consider whether it could draft an effective admission rule without also addressing local counsel requirements.

A judge member commented that a Military Spouse J.D. Network analysis found that state bar rule changes have made it somewhat easier for military spouses to become state bar members. But the member cautioned that the provisions for military spouses vary widely among states and some rules are difficult to navigate. The member also identified fees as a barrier to access for military spouses because they relocate and join bar associations at a higher rate than other lawyers. The member wondered whether the Committee could make suggestions or provide guidance concerning measures such as fee waivers if it determines that it does not have authority to regulate attorney admission.

Judge Bates responded that the judiciary could offer suggestions, but the Judicial Conference would be better equipped and able to provide suggestions or guidance to district courts generally. The district courts may then adopt or not adopt a suggestion offered. Professor Struve observed that informal suggestions historically have varied by committee. For example, the chair of the Appellate Rules Committee has sent letters to chief circuit judges with some success. However, Professor Struve noted that this would likely be more difficult at the district level.

A judge member questioned whether the Committee should proceed any further on this item without first determining the Committee's rulemaking authority. Judge Bates responded that

the initial suggestion that gave rise to this item sketched multiple approaches, some broad and some narrow. Because a narrow approach might raise fewer rulemaking questions, the thinking was first to determine which approaches were potentially desirable before considering the question of authority to adopt those approaches. Professor Struve agreed that if the Subcommittee were to decide not to recommend rulemaking, it would obviate the need to delve into the question of the Committee's rulemaking authority.

Professor Coquillette noted that almost all district courts have already adopted rules governing attorney conduct (often by incorporating by reference the attorney conduct rules of the state in which the district court is located). Professor Struve observed that while Civil Rule 83 *cabins* local rulemaking authority, the local rules are adopted pursuant to a separate statutory provision (28 U.S.C. § 2071), such that an analysis of the authority for making national rules under 28 U.S.C. § 2072 would not necessarily call into question local rules regulating attorney conduct. Professor Coquillette agreed. Professor Bradt commented that research on the question of rulemaking authority is ongoing.

A judge member thought that the considerations differ depending on the area of law. For example, an attorney handling a federal criminal case need not know state law. In contrast, a civil attorney admitted to a federal district court but not the state encompassing that district court might have an incentive to steer the case toward federal court. He also raised concern about situations where a state-law claim is asserted in federal court (for example, in supplemental jurisdiction) but then dismissed (for instance, if the federal claim that supported subject-matter jurisdiction was dismissed); if the claimant's lawyer is not admitted to practice in the relevant state, then the federal-court dismissal leaves the client without a lawyer. Lastly, the member pointed out that the states fund their bar regulators by means of fees paid by the lawyers who are admitted to the state bar. Admitting out-of-state lawyers to practice in federal district courts within the state could increase the workload of state regulators without providing the funding to sustain that work. The member recommended reaching out to the Conference of Chief Justices or a similar body to receive the views of state regulatory authorities.

A practitioner member asked if input has been sought from MDL transferee judges, whose perspective could be beneficial because they frequently see lawyers from elsewhere who are not required to have local counsel and often are not admitted pro hac vice. Judge Bates agreed that the Subcommittee should consider making inquiries to MDL transferee judges; he observed that issues of attorney admission may differ as between leadership counsel and non-leadership counsel.

A judge member observed that federal district courts regularly refer attorney discipline issues to state bar authorities, and it would be important to receive the views of chief judges about this relationship.

Professor Marcus pointed out that the motivation and effect of the proposals currently under consideration differed in an important way from the ill-fated project on national rules of attorney conduct. In the national rules on attorney conduct project, the DOJ was seeking adoption of national rules that would override particular state attorney-conduct obligations in criminal cases that the DOJ did not like. The proposals currently being considered would not do that, and this distinction sheds important light on the question of rulemaking authority and illustrates the types of things that the rulemakers should stay away from. Professor Coquillette agreed.

Judge Bates thanked the Subcommittee and reporters for their work.

Potential Issues Related to the Privacy Rules

Mr. Byron reported on several privacy issues, the materials for which begin on page 150 in the agenda book. The project began in 2022 following a suggestion by Senator Ron Wyden to require the redaction of the complete social security number in public filings rather than only the redaction of the first five digits. A sketch of a proposed amendment (to Civil Rule 5.2) implementing this suggestion appears on page 155 of the agenda book. That potential amendment has been held pending consideration of additional privacy-related suggestions pending before the advisory committees.

Mr. Byron, working with the reporters, had also discussed other possible privacy-related issues (which had been identified based on a review of the history and functioning of the privacy rules). These issues included possible ambiguity and overlap in exemptions, the scope of waivers by self-represented litigants who fail to comply with redaction requirements, additional categories of protected information that could be subjected to redaction, and possible protection of other sensitive information. The working group's recommendation—that no rule amendments were warranted with respect to these other topics—was discussed at the fall 2024 meetings of the Bankruptcy, Civil, Criminal, and Appellate Rules Committees. The advisory committees generally thought that the issues did not raise a real-world problem demanding a rule amendment. Accordingly, the advisory committees determined not to add any of these issues to their agendas. In the fall 2024 Appellate Rules Committee meeting, however, the question was raised whether rulemaking should always be reactive or whether it should sometimes be preventive—that is, whether rulemaking is sometimes warranted to prevent real-world harm from ever occurring, in instances where the harm in question would be sufficiently serious to warrant the preventive approach.

A practitioner member observed that filings by self-represented litigants often include information that should not be on a public docket, such as their own social security numbers. This member suggested that there should be coordination between broadening access to electronic filing systems for self-represented litigants and protecting the privacy of personal information because self-represented litigants may unintentionally disclose their own personal information. Professor Struve asked if, currently, court staff screen paper filings submitted by self-represented litigants before the court staff uploads the filings into the electronic system. The member did not know whether court staff screen paper filings, but has seen filings several times this year that include personal information.

Returning to the question that had been voiced in the Appellate Rules Committee, Professor Hartnett noted that most rules concern the processing of cases and so the focus is on how the rules affect litigation itself. In these circumstances, it makes sense to be generally reluctant to amend the rules if courts and parties are able to resolve issues under the current rules. But the privacy rules are about avoiding collateral harm from the litigation system. For that reason, perhaps the mindset should be different regarding the need to identify a demonstrated harm.

A judge member agreed with the practitioner member's comments that allowing self-represented litigants greater access to electronic filing systems could lead to greater privacy

concerns. He also noted that this is an area where artificial intelligence could be helpful, yet privacy concerns are difficult to fully resolve post-filing because some entities review filings minutes after they are made public. This member also mentioned a different issue concerning filings under seal. Local circuit practices concerning sealed filings vary widely. The member thought that privacy concerns are most acute in criminal matters, particularly when the case involves cooperating defendants. If the district court accepts a guilty plea from a cooperating defendant and this is reflected in a sealed filing, it could be catastrophic for a local practice (for instance, of automatically unsealing a filing after a certain time period) to divulge that document.

Mr. Byron responded that the member highlighted an example of a concern that would be included in the fourth category of other sensitive information beyond the current scope of the privacy rules. The current privacy requirements are fairly targeted to narrow redaction requirements for information like home addresses. He emphasized that he was not discouraging discussion of protecting other information. Rather, those ideas are simply in a separate category.

Professor Beale noted that redactions for social security numbers and privacy protections for minors were on the Committee's agenda for discussion later in the meeting.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Furman and Professor Capra presented the report of the Advisory Committee on Evidence Rules, which last met on November 8, 2024, in New York, NY. The Advisory Committee presented several information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 160.

Information Items

Rule 801 (Definitions That Apply to This Article; Exclusions from Hearsay). Judge Furman noted a proposed amendment to Rule 801(d)(1)(A) was out for public comment. The proposed amendment would provide that all prior inconsistent statements by a testifying witness are admissible over a hearsay objection. Two comments had been submitted thus far, including a comment by the Federal Magistrate Judges Association that supports the proposed amendment. The FMJA supported the proposal on the grounds that it would make the rule consistent with Rule 801(d)(1)(B) and would reduce confusion.

Rule 609 (Impeachment by Evidence of a Criminal Conviction). Judge Furman reported that the Advisory Committee continues to consider a proposal to amend Rule 609(a)(1)(B). Rule 609(a)(1) addresses the impeachment use of evidence of a witness's prior felony conviction. Rule 609(a)(1)(A) addresses cases in which the witness is not a criminal defendant. Rule 609(a)(1)(B) addresses criminal cases in which the witness is a defendant and allows admission of the evidence if its probative value outweighs its prejudicial effect. The Advisory Committee previously rejected a proposal to abrogate Rule 609(a)(1) altogether. In the wake of that decision, the Advisory Committee agreed to consider a more modest amendment that would alter Rule 609(a)(1)(B)'s balancing test to make it less likely that courts would admit highly prejudicial and minimally probative evidence of convictions against criminal defendants.

Specifically, the proposal being discussed would add the word "substantially" before the word "outweighs" in Rule 609(a)(1)(B). The Advisory Committee members who were present at

the November meeting were evenly divided on whether to further consider the proposal. One member was absent. The proposal was supported by the federal public defender representative and opposed by the DOJ. There was a general acknowledgement that some courts are admitting highly inflammatory prior convictions similar to the charged crime, contrary to what was intended by the rule, but there was disagreement about the magnitude of that problem. The magnitude of the problem could be difficult to identify because this often does not get further than a district court ruling, which may not be in writing or reported. There is also some evidence that decisions in this area deter defendants from taking the stand.

The FJC identified research approaches to further examine this question but concluded that the only fruitful approach may be sending a nationwide questionnaire to defense counsel. The Advisory Committee agreed unanimously not to use that approach given the low probability that it would yield useful data.

The Advisory Committee agreed to discuss the proposed amendment again at its Spring meeting. The member who was absent at the Fall meeting had previously voted in favor of abrogating Rule 609(a)(1) altogether and supported proceeding with the Rule 609(a)(1)(B) amendment.

Artificial Intelligence (AI) and Deepfakes. In the fall of 2023, the Advisory Committee began considering challenges posed by the development of AI, and the Advisory Committee is focusing on two issues. The first issue is authenticity and the problem of deepfakes. The second issue is reliability when machine learning evidence is admitted without supporting expert testimony.

At the November meeting, informed by an excellent memorandum by Professor Capra, the Advisory Committee considered whether and how to proceed with potential rulemaking to address these concerns. There was a consensus that AI presents real issues of concern for the Rules of Evidence and that there are strong arguments for taking a hard look at the rules. At the same time, there was concern that the development of AI could outpace the rulemaking process. It was also noted that the rules have already shown the flexibility to meet the challenges of evolving technology in other instances, for example with respect to social media.

The Advisory Committee discussed a number of proposals and agreed that two paths warrant further consideration. First, regarding reliability, the Advisory Committee tentatively agreed on a proposed amendment that would create a new rule, Rule 707, that would essentially apply the Rule 702 standard to evidence that is the product of machine learning. The proposal is set out on page 162 of the agenda book. The rule would exempt the output of basic scientific instruments or routinely relied upon commercial software. The Advisory Committee is considering whether to further explain the scope of the exemptions. The Advisory Committee rejected proposals to instead address the reliability issue in Chapter 9 of the rules, which concern authentication.

A judge member expressed support for taking up the topic of machine-generated evidence and agreed that the key admissibility question is reliability. He stressed the need for careful attention to the exemptions in the proposed draft rule. He queried whether DNA and blood testing would fall under an exemption and asked if Professor Roth was assisting the Advisory Committee

because she authored an excellent article about safeguards in this area. Professor Capra and Judge Furman said that she was. Professor Capra noted that Professor Roth had made a presentation on AI to the Committee and assisted in drafting the sketch of Rule 707 and its accompanying committee note. Professor Capra said that he and Professor Roth agreed that the commercial software exception may be too broad, and they are working on language that the Advisory Committee can consider at its next meeting. He also questioned whether an exception in the text is necessary to prevent courts from holding hearings on evidence related to common instruments such as thermometers.

Judge Bates noted the statement in the agenda book that disclosure issues relating to machine learning were better addressed in either the Civil or Criminal Rules, not the Evidence Rules, and that the issue should be brought to the attention of those respective Advisory Committees for their parallel consideration. He asked about the plan moving forward and any coordination among the committees.

Professor Capra said that he and Professor Beale had discussed the topic; the major issue concerns disclosure of source codes and trade secrets. These, he and Judge Furman said, are disclosure questions rather than evidence questions. But, Professor Capra reported, the discussions are at the preliminary stage.

Judge Bates noted that if coordination is important, then the discussions should progress beyond the preliminary stage. Professor Capra and Judge Furman agreed. Professor Beale said that the Criminal Rules Committee has not yet considered the issue.

Professor Marcus observed that the Civil Rules Committee, likewise, has not yet considered the issue. He noted the practice of using technology-assisted review when responding to discovery requests under Civil Rule 34. There has been a debate about whether a responding party must disclose the details of such technology-assisted review.

Judge Furman said that the Advisory Committee intends to come back to the Standing Committee seeking permission to publish the proposed new Rule 707 for public comment.

Second, regarding deepfakes, the Advisory Committee agreed that this is an important issue but is not sure that it requires a rule amendment at this time. At bottom, deepfakes are a sophisticated form of video or audio generated by AI. So they are a form of forgery, and forgery is a problem that courts have long had to confront—even if the means of creating the forgery and the sophistication of the forged evidence are now different. The Advisory Committee thus generally thought that courts have the tools to address the problem, as courts demonstrated when first confronting the authenticity of social media posts.

That said, the Advisory Committee also thought that it should take steps to develop an amendment it could consider in the event that courts are suddenly confronted with significant deepfake problems that the existing tools cannot adequately address. Accordingly, the Advisory Committee intends further work on the proposed rule found in the agenda book at page 163. This proposed Rule 901(c) would place the burden on the opponent of evidence to make an initial showing that a reasonable person could find that the evidence is fabricated. After such an initial

showing, the burden would shift to the proponent to show by a preponderance of the evidence that the evidence was not fabricated.

The Advisory Committee will continue to monitor developments to assess the need for rulemaking and think about definitional issues, such as what would be subject to the rule. Some proposals submitted would apply this kind of rule to all visual evidence whether or not it was generated by AI, but the Advisory Committee generally agreed that such proposals were too broad.

Judge Bates asked for confirmation that the Advisory Committee's plan is to consider an approach similar to the draft Rule 901(c) but not yet seek the Standing Committee's approval for publication. Judge Furman said that was correct.

Judge Furman said that the Advisory Committee also discussed the "liar's dividend" – that is, a situation where counsel objects to genuine evidence, attempting to create a reasonable doubt in a criminal case and arguing that the evidence may have been faked. Ultimately, the Advisory Committee thought that this was not an issue for the Rules of Evidence.

A judge member commented that the memorandum (in discussing the sketch of the possible Rule 901(c)) first mentions that the opponent of AI evidence must make an initial showing that there is something suspicious about the item, which seems like a reasonable suspicion or probable cause standard; but then the memo goes on to say the showing must be enough for a reasonable person to find that the evidence is fabricated, which sounds instead like a preponderance standard. The member stated that these two formulations are in tension and questioned whether it would be possible for someone to meet the preponderance test without more information or discovery. Judge Furman said that the Advisory Committee will take the member's comment under advisement.

False Accusations. Judge Furman reported that, prompted by a suggestion, the Advisory Committee considered whether to propose a rule amendment to address false accusations of sexual misconduct, either by an amendment to Evidence Rule 412 or a new Rule 416. As between these alternatives, the Advisory Committee agreed that a new rule would be preferable, but the Advisory Committee ultimately decided not to pursue an amendment and to take the issue off its agenda. These issues more often occur in state and military courts—which would be unlikely to adopt a federal model and which have existing tools adequate to address the issue.

Rule 404 (Character Evidence; Other Crimes, Wrongs, or Acts). Judge Furman reported that this item was prompted by a suggestion asserting that courts are admitting evidence of uncharged acts of misconduct even where the probative value of the act depends on a propensity inference. The Advisory Committee considered amending Rule 404(b) to require the government to show that the probative value of the other act evidence does not depend on such an inference. Over the objection of the federal public defender representative, the Advisory Committee decided not to pursue an amendment and to remove this item from its agenda.

Members noted that Rule 404(b)'s notice requirement was amended in 2020 to require the government to articulate a non-propensity purpose for bad act evidence, and the Advisory Committee thought that it should wait to see how courts apply the new amendment. Some Advisory Committee members also thought that some examples cited by the suggestion were

proper applications of Rule 404(b). In addition, the DOJ strongly opposed an amendment because, it argued, the 2020 amendment was the product of substantial work and compromise.

Judge Furman said that the Advisory Committee will continue to monitor developments in this area.

Rule 702 and Peer Review. Judge Furman reported that the Advisory Committee considered a suggestion to amend Rule 702 to address the role of peer review as set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993), and Rule 702's 2000 committee note. Under *Daubert* and the committee note, the existence of peer-review is relevant to a court's determination of the reliability of an expert's methodology, and thus the admissibility of expert testimony. The attorneys argued that this is problematic because many studies cannot be replicated.

The Advisory Committee decided not to pursue an amendment and to remove the item from the agenda. The consensus of committee members was that Rule 702 is general: it does not mention particular factors. The Advisory Committee thought that singling out a particular factor in the text would be awkward and potentially problematic. Moreover, courts have exercised appropriate discretion in connection with the peer review factor and there is not a problem warranting an amendment.

***The Supreme Court's Decisions in* Diaz v. United States *and* Smith v. Arizona.** Judge Furman stated that the Advisory Committee discussed two recent Supreme Court decisions pertaining to the Rules of Evidence. First, in *Diaz v. United States*, 602 U.S. 526 (2024), the Court addressed whether Rule 704(b) prohibited expert testimony in a drug smuggling case that "most people" who transport drugs across the border do so knowingly. The Court found no error because the expert's testimony was based on probability and not certainty. The Advisory Committee determined that the case did not warrant an amendment to the rule and that the Court's result was consistent with the language and intent of the rule.

Second, in *Smith v. Arizona*, 602 U.S. 779 (2024), a forensic expert testified to a positive drug test by relying on the testimonial hearsay of another analyst, and the other analyst's findings were disclosed to the jury. The Court held that the expert's disclosure to the jury of testimonial hearsay violated the defendant's right to confrontation, even if the purpose of the disclosure was purportedly to illustrate the basis of the testifying expert's opinion. Here, too, the Advisory Committee determined that an amendment is not presently necessary. There was some concern about whether the case could be construed to apply to reliance in addition to disclosure. If there were a constitutional bar on an expert's reliance on other experts' findings, an amendment to Rule 703 to prohibit reliance on testimonial hearsay in a criminal case would likely be necessary. Judge Furman said that the Advisory Committee will continue to monitor developments and how the case is applied in the lower courts.

Rule 902 and Tribal Certificates. Judge Furman reported that the Advisory Committee received a suggestion to consider adding federally recognized Indian tribes to the list of entities in Evidence Rule 902(1), which provides that domestic public records that are sealed and signed are self-authenticating. The list does not include Indian tribes, which means that a party who seeks to offer a record from a federally recognized Indian tribe must use another route to authenticate such evidence.

The Advisory Committee previously considered the issue and did not take action, but recent developments have arguably made this a live issue again, most notably, the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. 894 (2020). In addition, at least two recent decisions by courts of appeals held that the prosecution unsuccessfully attempted to establish Indian status through the business records exception.

At the fall 2024 Advisory Committee meeting, some members thought that this is not a problem with the rules but rather a failure by prosecutors to do what they must to authenticate the documents under existing rules, such as properly lay a foundation for the business records exception. In addition, there was a concern about whether all federally recognized tribes have resources and recordkeeping akin to those of the entities currently encompassed in Rule 902(1). The Advisory Committee will discuss these issues at its Spring meeting with further input from the DOJ.

Judge Bates thanked Judge Furman and Professor Capra for their report.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Eid and Professor Hartnett presented the report of the Advisory Committee on Appellate Rules, which last met on October 9, 2024, in Washington, DC. The Advisory Committee presented several information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 193.

Information Items

Proposed amendments to Rule 29, dealing with amicus briefs, along with conforming amendments to Rule 32 and the Appendix of Length Limits, and proposed amendments to Form 4, the form used for applications to proceed in forma pauperis (IFP), were published for public comment in August 2024. The public comment period closes February 17. The Advisory Committee will be holding a hearing on the issues on February 14, where 16 witnesses are expected to testify.

Proposed Amendment to Form 4 (Affidavit Accompanying Motion for Permission to Appeal IFP). Judge Eid commented that the amended Form 4 is similar to, but less intrusive than, the existing form. She observed that only one comment had been submitted on the proposal (that comment is favorable), and five people are expected to testify about the proposal at the hearing. After considering comments and testimony and making any necessary changes, the Advisory Committee expects to present the proposed amended Form 4 for final approval in June.

Proposed Amendment to Rule 29 (Brief of an Amicus Curiae). Judge Eid reported that the Advisory Committee had received over a dozen comments on the Rule 29 proposal and at least 11 people are expected to testify about the proposal at the February hearing. Judge Eid explained that the proposal makes two main changes.

The first change relates to disclosures. Under the proposal, an amicus would have to disclose whether a party to the case provides it with 25% or more of the amicus's annual revenue. In addition, the current rule requires an amicus to disclose whether a nonmember made

contributions earmarked for a that brief. The proposal would extend this requirement to someone who recently became a member.

The second change relates to a motion requirement. The current rule permits an amicus to file a brief at the initial stage either by consent or by motion. The Advisory Committee's proposal would remove the consent option. Judge Eid noted that, at the Standing Committee's June 2024 meeting, members expressed concern that this proposal would create more work for judges by generating unnecessary motions. Judge Eid and Professor Hartnett reported these concerns to the Advisory Committee at its fall 2024 meeting; at that meeting, the Advisory Committee also heard that the Second, Ninth, and Tenth Circuits supported requiring a motion.

Judge Eid explained the second change's interaction with recusals. She explained that, in some circuits, filing an amicus brief by consent can block a case from being assigned to a judge and that this could occur without any judicial intervention (before the case is assigned to a panel). In such circuits, imposing a motion requirement would provide the opportunity for a judge to decide whether to disallow the brief because it would cause a recusal. Judge Eid noted that there is a tradeoff: imposing a motion requirement creates extra work but it creates the opportunity for judicial intervention. The Advisory Committee has asked its Clerk representative to survey the circuit clerks about their circuits' practices. The Advisory Committee is likely to consider proposing a rule that would eliminate the consent option unless a circuit opts to permit filings on consent.

A judge member asked Judge Bates whether the rules can allow circuits to opt out. Judge Bates, Judge Eid, and Professor Struve responded that it is not always an option but that in appropriate circumstances the rules can allow circuits to opt out.

Judge Bates noted that the question of changing this feature of the current rule initially arose because the Supreme Court changed its practice. The Supreme Court, though, accepts amicus briefs without any requirement. He observed that the proposed change to Rule 29 goes in the opposite direction.

A practitioner member supported setting a rule with which all circuits would be comfortable. He suggested a default rule requiring a motion but allowing circuits to permit filing by consent. Judge Eid responded that the Advisory Committee will consider that approach.

Professor Hartnett asked a judge member if she would be comfortable with a rule that includes an opt-out provision for circuits, given her concerns expressed at the last meeting. The judge member responded that an opt out would be a reasonable approach because courts may have different issues with the proposed rule and some courts receive more amicus briefs than others.

Rule 15 and the "Incurably Premature" Doctrine. Judge Eid reported that this item stems from a suggestion to fix a potential trap for the unwary. Under the incurably premature doctrine, if a motion to reconsider an agency decision makes that decision unreviewable in the court of appeals, then a petition to review that agency decision is not just held in the court of appeals awaiting the agency's decision on the motion to reconsider. Rather, the petition for review is dismissed, and a new petition for review must be filed after the agency decides the motion to reconsider. Judge Eid observed that Appellate Rule 4 used to work in a similar fashion, but it was

amended to provide that such a premature notice of appeal becomes effective when the post-judgment motion is decided.

Judge Eid reported that the Advisory Committee is considering whether to make a similar amendment to Rule 15. She noted that the Advisory Committee had previously studied such a proposal but that the earlier proposal had been opposed by the D.C. Circuit. Judge Eid predicted that the Advisory Committee might seek permission, at the Standing Committee's June meeting, to publish such a proposal for comment.

A judge member noted that a difference between Rule 4 and Rule 15 is that statutory jurisdictional provisions govern court review of the decisions of some agencies. She wondered whether a court could defer consideration of a petition that the court had no jurisdiction to decide when the petition was filed. In addition, based on the volume of petitions her court receives, this could be a burden on the clerk's office. She offered to raise the issue with her colleagues. Judge Eid thanked the member and invited her to ask her colleagues about the topic.

Intervention on Appeal. Judge Eid noted that the discussion of this item appears in the agenda book beginning on page 196. She observed that members of the Advisory Committee thought it would be helpful to have a rule addressing intervention on appeal, but that they also had concerns that adopting such a rule might increase the volume of requests to intervene on appeal. Judge Eid suggested that intervention does not typically pose difficult issues in connection with petitions in the court of appeals for review of agency determinations. Instead, problems have manifested in some cases where a plaintiff sues to challenge a government policy and then there is a subsequent change in administration of the government whose policy is under challenge. Problems have also arisen in some cases where a plaintiff seeks a "universal" remedy, that is, one that would benefit nonparties as well as parties. She said that the Advisory Committee continues to monitor developments and that the FJC is conducting research to help inform the Advisory Committee.

Judge Eid commented that the Advisory Committee thought it might be able to craft a rule that would structure the analysis, provide guidance, and limit the range of debates on the issue. Ultimately, a rule could make clear that intervention on appeal should be rare. The Advisory Committee is waiting for the FJC's research and may take up this item next year. A judge member noted the current lack of guidance for attorneys; this member suggested that a rule could usefully say: "intervention on appeal should be rare, requests must be timely, and intervening on appeal is not a substitute for amicus participation."

A member stated that he did not like the idea of avoiding rulemaking on a topic merely to discourage the practice that the potential rule would address. He suggested that it would be better to adopt a rule that would provide more guidance on the issue while including the caveat that intervention on appeal should be rarely used.

Rule 4 and Reopening Time to Appeal. Judge Eid reported that the Advisory Committee has begun considering a suggestion to address various issues involving reopening the time to appeal under Rule 4(a)(6). The suggestion seeks to clarify whether a single document can serve as a motion to reopen the time to appeal and then (once the motion is granted) as the notice of appeal. Relatedly, the suggestion seeks to clarify whether a notice of appeal must be filed after a motion

to reopen the time to appeal has been granted. Judge Eid said that the Advisory Committee has just begun to look at this issue.

Rule 8 and Administrative Stays. Judge Eid reported that the Advisory Committee is in the preliminary stages of considering a suggestion to amend Rule 8. A proposed rule could make clear the purpose and proper duration of an administrative stay.

A judge member recommended receiving input from chief circuit judges on the topic. He commented that Professor Rachel Bayefsky authored a superb article on administrative stays.

Other Items. Judge Eid reported that the Advisory Committee decided to remove several items from its agenda, including a suggestion to prohibit the use of all capital letters for the names of persons, a suggestion to move common local rules to national rules, a suggestion to create a set of common national rules that would collect the provisions that are the same across the different sets of national rules, a suggestion to standardize page equivalents for word limits, and a suggestion regarding standards of review.

Judge Bates thanked Judge Eid and Professor Hartnett for their report.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Connelly and Professors Gibson and Bartell presented the report of the Advisory Committee on Bankruptcy Rules, which last met on September 12, 2024, in Washington, DC. The Advisory Committee presented action items for publication of one rule and one official form, as well as four information items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 223.

Action Items

Publication of Proposed Amendment to Rule 2002 (Notices). Judge Connelly reported on this item. The text of the proposed amendment begins on page 229 of the agenda book, and the written report begins on page 224. Rule 2002 requires the clerk to provide notice of an extensive list of items or actions that occur in every bankruptcy case. Rule 2002(o) provides that the caption of the notices under this rule shall comply with Rule 1005, which governs the caption of the petition that initiates a bankruptcy case. Rule 1005 requires the petition's caption to include information such as the debtor's name, other names the debtor has used, and the last four digits of the debtor's social security number or taxpayer-identification number. By incorporating Rule 1005's requirements, Rule 2002(o) requires that Rule 2002 notices include this information also. Judge Connelly stated that including this information in such notices is onerous and exposes sensitive information.

The proposed amendment would change Rule 2002(o) to eliminate the cross-reference to Rule 1005 and instead require that the caption comply with Official Form 416B. The result would be to require an ordinary short title caption consisting of the name, case number, chapter of bankruptcy, and the title of item being noticed.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee gave approval to publish the proposed amendment to Rule 2002 for public comment.**

Publication of Proposed Amendment to Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy). Judge Connelly reported on this item. The text of the proposed amendment begins on page 231 of the agenda book, and the written report begins on page 225. Form 101 is the initial form for filing a bankruptcy case. The form currently has a field for disclosing the debtor's employer identification number, requesting "Your Employer Identification Number (EIN), if any." Commonly, pro se filers are mistakenly providing the EIN of their employers. When multiple debtors file petitions listing the same EIN, the system erroneously flags them as repeat filers.

The proposed amendment would change the language in Form 101 to say: "EIN (Employer Identification Number) issued to you, if any. Do NOT list the EIN of any separate legal entity such as your employer, a corporation, partnership, or LLC that is not filing this petition."

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee gave approval to publish the proposed amendment to Official Form 101 for public comment.**

Information Items

Judge Connelly reported on four topics being considered by the Advisory Committee. The written report begins on page 225 of the agenda book.

Suggestion to Require Full Redaction of Social Security Numbers in Court Filings. Judge Connelly reported that the Advisory Committee has been studying whether the Bankruptcy Rules should continue to provide for disclosure of the last four digits of social security numbers in bankruptcy filings but has decided not to take action at this time. Judge Connelly noted the invaluable work of the FJC, which conducted an extensive study on the disclosure of social security numbers in federal court filings.

The Advisory Committee also conducted its own study by identifying the official bankruptcy forms that disclose the last four digits of social security numbers. Currently, several official forms require the disclosure of these last four digits. The FJC surveyed stakeholders, asking for input about the possible impact of eliminating the last four digits on the forms. Judge Connelly said that it may be critical to obtain this information to precisely determine the individuals who are or have been in bankruptcy because this allows creditors to accurately file claims, know to take no action on debts due to the automatic stay, or know that a debt has been discharged. Indeed, the stakeholders surveyed said that the last four digits on the official forms are essential. The numbers on some forms were essential to all stakeholders, and the numbers on all forms were essential to some stakeholders. Judge Connelly observed that there does not appear to be an effective means for identifying individuals without the last four digits of social security numbers, since it is not uncommon for multiple individuals with the same name to file for bankruptcy.

The Advisory Committee thus decided not to take action because it did not identify a real-world harm from disclosure of the last four digits in bankruptcy cases but did identify a harm in not disclosing this information. Although the FJC study did find disclosures of some full social security numbers in bankruptcy cases, those disclosures occurred despite the current rules, so rule amendments would not address that issue. Judge Connelly commented that the Advisory Committee will monitor developments in the other advisory committees and may revisit the issue if a time comes when stakeholders can effectively identify debtors without the need for the last four social security number digits.

Suggestion to Propose a Rule Requiring Random Assignment of Mega Bankruptcy Cases Within a District. Judge Connelly reported that the Advisory Committee received suggestions for a rule to require random assignment of bankruptcy cases designated as mega bankruptcy cases. She noted that the Committee on the Administration of the Bankruptcy System and the Committee on Court Administration and Case Management are considering similar issues. Accordingly, the Advisory Committee will defer any action on this item until it receives guidance from the other committees.

Suggestions to Allow Appointment of Masters in Bankruptcy Cases and Proceedings. Judge Connelly observed that under Bankruptcy Rule 9031, special masters cannot be appointed by a bankruptcy court. Two suggestions propose an amendment to Rule 9031 to allow for the appointment of masters in bankruptcy cases. She recalled that the Advisory Committee has considered, and rejected, many similar suggestions in previous decades. The Advisory Committee continues to consider the issue with this history in mind. Judge Connelly also noted that the FJC will survey bankruptcy judges to help identify the need and potential use for masters. The Advisory Committee should have the survey results by the June meeting.

Judge Connelly said that one issue raised was whether bankruptcy judges, being non-Article-III judges, would have the authority to appoint masters.

Recommendation Concerning Proposed Amendment to Official Form 318 (Discharge of Debtor in a Chapter 7 Case) and Director's Forms 3180W (Chapter 13 Discharge) and 3180WH (Chapter 13 Hardship Discharge). Judge Connelly reported that the Advisory Committee received a suggestion for an amendment to the bankruptcy form Order of Discharge. The form establishes that a debtor has been discharged of its debts. The suggestion proposes adding language to the form that would notify the recipient that there may be unclaimed funds and that they can check the Unclaimed Funds Locator to ascertain whether they are entitled to any.

Currently, unclaimed funds are paid into the Treasury and kept until the claimant retrieves the funds. Judge Connelly acknowledged that this is a problem that needs to be addressed, but that the Advisory Committee decided to take no action on this particular suggestion. The Advisory Committee had several reasons, one of which is a timing issue. A bankruptcy discharge order is issued once the debtor is eligible for a discharge, but the unclaimed funds are not paid into the Treasury until a trustee's disbursements have gone stale. In a Chapter 7 case, this could be years after the debtor receives their personal discharge. In a Chapter 13 case, it could still be six months after the debtor's last payment to the trustee. In either event, there likely are not unclaimed funds available when the discharge order is issued. Thus, the proposed notice would be confusing or misleading.

Judge Bates thanked Judge Connelly and the Advisory Committee.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Rosenberg and Professors Marcus and Bradt presented the report of the Advisory Committee on Civil Rules, which last met on October 10, 2024, in Washington, DC. The Advisory Committee presented two action items and several information items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 268.

Judge Rosenberg reported that the Judicial Conference approved the proposed amendments to Rules 16 and 26 and the proposed new Rule 16.1. The Judicial Conference sent the proposals to the Supreme Court. If the Supreme Court approves the proposals and forwards them to Congress, the proposals will be on track to take effect on December 1, 2025, absent contrary action by Congress.

Action Items

Publication of Proposed Amendment to Rule 81(c) Concerning Jury-Trial Demands in Removed Actions. Judge Rosenberg reported on this item. The text of the proposed amendment begins on page 292 of the agenda book, and the written report begins on page 271. Before 2007, Rule 81(c) said: "If state law does not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time." This excused a jury demand only when the case was removed from a state court that never requires a jury demand. But in the 2007 restyling, the verb "does" was changed to "did." This restyling could produce confusion when a case is removed from a state court that has a jury demand requirement but permits that demand later in the litigation. Accordingly, the Advisory Committee considered amendment to remove any uncertainty about whether and when a jury demand must be made after removal.

At the Advisory Committee's October meeting, it recommended a proposed amendment to require a jury demand in all removed cases by the deadline set forth in Rule 38. A point made during that meeting was that even when a party fails to meet the Rule 38 deadline, the court may nevertheless order a jury trial under Rule 39(b).

The Advisory Committee unanimously voted to recommend for publication the draft amendment to Rule 81(c) and its accompanying committee note. The Advisory Committee rejected the alternative proposal to return to the language in place before the 2007 change.

Professor Marcus observed that the existing rule creates uncertainty about when a jury demand is required and said that this proposed amendment removes that uncertainty by requiring a jury demand in accordance with Rule 38. Professor Cooper agreed and clarified that a party need not make a jury demand after removal if the party already made a demand before removal.

A practitioner member asked if the first line in the proposed Rule 81(c)(3)(B) should be in the past tense ("If no demand was made") rather than the current draft language ("If no demand is made"). Professor Garner's initial response was that the phrase should be in the present perfect

tense ("has been made") because it refers to the present status of something that has occurred. The practitioner member noted that using the present perfect tense would match the following sentence.

Upon motion by a member, seconded by another, and without opposition: **The Standing Committee gave approval to publish the proposed amendment to Rule 81 for public comment**, with the change on page 292, line 14 in the agenda materials from "is" to "has been."

Publication of Proposed Amendment to Rule 41 (Dismissal of Actions). Judge Rosenberg reported on this item. The text of the proposed amendment begins on page 288 of the agenda book, and the written report begins on page 274. However, during the meeting a restyled version of the proposed amendment was displayed on the screen, reflecting input of the style consultants subsequent to the publication of the agenda book. Judge Rosenberg reported that courts widely disagreed on the interpretation of Rule 41(a). Although the rule is titled "Dismissal of Actions" and describes when a plaintiff may dismiss an action, many courts use the rule to dismiss less than an entire action. After several years of study, feedback, and deliberation, the Advisory Committee determined that the rule should be amended to permit dismissal of one or more claims in a case rather than permitting the dismissal of only the entire action. The Advisory Committee also concluded that the rule should be clarified to require that only current parties to the litigation must sign a stipulation of dismissal of a claim.

During the Subcommittee's outreach, there was no opposition to such an amendment, and the proposed change would provide nationwide uniformity and conform to the practice of most courts. Further, the proposed amendment would help simplify complex cases and support judicial case management. Accordingly, the Advisory Committee unanimously recommended for publication the proposed amendment to Rule 41.

Judge Rosenberg said that the proposed rule amendment differs slightly from the draft shown in the agenda book. Where the agenda book draft language refers to "a claim or claims" in lines 7-8, 19, and 41-42 (pages 288-90), the restyled amendment proposal refers instead to "one or more claims."

Professor Bradt said that a concern was raised regarding the use of the term "opposing party" in Rule 41(a)(1)(A)(i). The concern was that the term could be ambiguous with respect to who would be the party whose service of an answer or a motion for summary judgment would trigger the end of the period in which one could unilaterally dismiss a claim. The Advisory Committee ultimately declined to change this language because of its common use in other rules, all of which have a fairly clear definition of opposing party as being the party against whom the claim is asserted.

Judge Bates asked whether it would be inconsistent to use instead the term "opposing party on the claim." Professor Bradt recalled that the Advisory Committee discussed similar suggestions at its October meeting. The Advisory Committee agreed that adding such language would not introduce any problems but that the additional language would be redundant. Professor Kimble emphasized the importance of using consistent language in the rules.

Judge Rosenberg asked about adding language in the committee note to make clear that the rule refers to the opposing party to the claim. Professor Kimble responded that he would not have

a similar concern if the additional language were placed in the committee note. Professor Bradt said that the Advisory Committee declined to add the additional language to promote consistent usage in the rules and noted that no responses to the Advisory Committee's outreach expressed any confusion. He said that the Advisory Committee could learn about confusion during the public comment period. Professor Cooper opposed adding the additional language to the rule text but suggested using "party opposing the claim" if the Advisory Committee decides to address the matter in the committee note.

Judge Rosenberg asked Judge Bates if he thought an additional sentence for the committee note should be drafted. Judge Bates saw no reason not to draft the additional language for the committee note if Judge Rosenberg, Professor Marcus, and Professor Bradt thought the addition would be beneficial.

A practitioner member asked about the conforming change in Rule 41(d). He observed that term "action" still appears in the rule. He thought that "of that previous action" in Rule 41(d)(1) was unclear (because it is intended to refer to the initial phrase in Rule 41(d), which as amended would now say "a claim" rather than "an action") and suggested that Rule 41(d) could instead use the phrase "of the previous action where the claim was raised." In addition, he observed that the draft committee note stated that references to action have been replaced and suggested that this language be adjusted if the rule retains some references to actions.

Professor Bradt responded that it was intentional to retain "action" in Rule 41(d) to make clear that the rule refers to a new case being filed. He said that the member's suggested additional language would not cause harm and offered instead "of that previous action in which one or more claims was voluntarily dismissed." Professor Bradt asked the member if this would clarify the rule. The member said that he was not devoted to any specific language but thought some clarification would be helpful and added that "the previous action" may be preferable to "that previous action."

Professor Kimble suggested "that previous action in which the claim was voluntarily dismissed." Professor Bradt and the member agreed. Professor Garner asked if the party would become responsible for all the costs of the action if one claim were dropped. Professor Bradt responded that ordinarily the party would only be responsible for the cost associated with the dismissed claim, but the court would retain the ability to impose the costs of the entire action. Professor Garner said that, as a style matter, "the" is preferable to "that." This would yield the phrase "of the previous action in which a claim was voluntarily dismissed."

Judge Bates questioned whether "voluntarily" would be appropriate to use in Rule 41(d). Professor Bradt responded that Rule 41(d) applies to voluntary dismissals but not involuntary dismissals and said that the proposed amendment does not seek to change that feature of Rule 41(d). Professor Cooper agreed that Rule 41(d) covers all dismissals under Rule 41(a), even if the plaintiff needs a court order, but Rule 41(d) does not include involuntary dismissals under Rule 41(b). Judge Bates observed that the headings of Rule 41(a)(1) and (2) distinguish between voluntary dismissals "By the Plaintiff" (Rule 41(a)(1)) and voluntary dismissals "By Court Order" (Rule 41(a)(2)).

Professors Cooper and Kimble commented that "previous" is unnecessary. To clarify the committee note, Professor Bradt suggested one additional word: adding "some" before "references

to 'action.'" He asked if this would clarify that the proposed change does not eliminate all references to action. Professor Capra disagreed with adding "some" to the committee note and suggested that it refer to the provisions actually changed.

Professor King suggested working on the proposal further and seeking publication at the Standing Committee's June meeting. Professor Capra agreed with Professor King. Professor Kimble also agreed and said that the style consultants would like to take more time to consider the proposed language. Judge Bates observed that the Standing Committee could consider the proposal with updated language at its June meeting for publication in August. Judge Rosenberg and Professor Bradt agreed with this plan.

Professor Bradt summarized the items that the Advisory Committee will work on. First, revising the committee note to clarify that some but not all references to "action" are being replaced. Second, considering the addition of rule text or a sentence in the committee note to clarify what is meant by "opposing party" in Rule 41(a)(1)(A)(i). Third, revising the proposed amendment to Rule 41(d)(1) to clarify its application to voluntary dismissals with or without court orders and to make clear the court's authority in the subsequent action to require the plaintiff to pay all or part of the costs related to the prior action in which they voluntarily dismissed the claim.

Professor Hartnett wondered how "and remain in the action" in the proposed Rule 41(a)(1)(A)(ii) interacts with Rule 54(b). For example, consider a situation where a plaintiff sues two defendants, and the court grants one defendant's motion to dismiss the claims against it. Absent a Rule 54(b) certification, that defendant remains in the action – for purposes of the application of the final-judgment requirement for taking an appeal – until the disposition of the claims against the remaining defendant. However, Professor Hartnett thought, the Advisory Committee appears to intend "remain in the action" to mean something different in Rule 41. Professor Hartnett expressed concern that this could cause confusion.

Professor Bradt asked if Professor Harnett had a proposal to solve this issue. Professor Hartnett said his initial reaction was to drop the proposed additional language. Professor Marcus explained that the proposal was in response to cases where parties no longer involved in the case refused to stipulate to a dismissal. Professor Bradt added that a problem also arises where a party no longer involved in the case cannot be found to obtain their signature for a dismissal.

Professor Bradt said that the Advisory Committee will continue to work on the proposed amendment and will present a revised proposal at the Standing Committee's June meeting. Judge Rosenberg agreed.

Information Items

Judge Rosenberg reported on the work of the Advisory Committee's subcommittees as well as a few other information items. These items are described in the written report beginning on page 276 of the agenda book.

Rule 45(b) and the Manner of Service of Subpoenas. Judge Rosenberg reported that the Discovery Subcommittee continues to consider the problems that can result from Rule 45(b)(1)'s directive that service of a subpoena depends on "delivering a copy to the named person." As to

potential alternative methods of service, the Subcommittee determined to leave the decision of what to employ for a given witness to the presiding judge.

The Subcommittee is also considering the requirement that when a subpoena requires attendance by the person served, the witness fees and mileage be "tendered" to the witness. The Subcommittee is studying two options. The first option is retaining the obligation to tender fees but not as part of service. The second option is eliminating the obligation to tender the fees.

Judge Rosenberg invited feedback on the issues of tendering fees at time of service and also whether the rule should be amended to require that the subpoena be served at least 14 days before the date on which the person is commanded to attend. Professor Marcus noted that the Subcommittee will also be looking at filing under seal.

Professor King observed that Rule 45(b) is similar to Criminal Rule 17(d) (on service of subpoenas in criminal cases). She suggested that the committees coordinate during the drafting process. However, she acknowledged that different considerations may affect the criminal and civil service rules.

Rule 45(c) and Subpoenas for Remote Testimony. Judge Rosenberg reported that the Advisory Committee received a suggestion to relax the constraints on the use of remote testimony. The Advisory Committee will monitor comments submitted on the proposed bankruptcy rule amendments that would permit the use of remote testimony for contested matters in bankruptcy court.

Judge Rosenberg said that the Advisory Committee will continue to consider an amendment to Rule 45(c) to clarify that a court can use its subpoena power to require a distant witness to provide testimony once it determines that remote testimony is justified under the rules. This issue came to the Advisory Committee's attention because of a Ninth Circuit ruling, *In re Kirkland*, 75 F.4th 1030 (9th Cir. 2023), holding that current Rule 45 does not permit a court that finds remote testimony justified under Rule 43 to compel a distant witness to provide that testimony by subpoena. The Subcommittee is inclined to recommend an amendment that would provide that when a witness is directed to provide remote testimony, the place of attendance is the place the witness must go to provide that testimony.

Judge Bates observed that no public comments had been submitted so far on the bankruptcy rule amendment relating to remote testimony in contested matters.

A judge member said that he disagreed with the Ninth Circuit's decision but that given the ruling, he thought an amendment to the rule is necessary. He asked how an amendment might affect the definition of unavailability in Rule 32 (concerning use of depositions). Professor Marcus responded that the Committee is discussing the issue of unavailability under Rule 32 as well as under Evidence Rule 804 (concerning the hearsay exception for unavailability). He explained that the Committee did not intend the change to Rule 45 to affect the interpretation of unavailability under Rules 32 or 804 and suggested that the committee note could make that clear.

Another judge member commented that even if no comments are received on the bankruptcy rule, many others are experimenting with remote proceedings, such as state courts and immigration courts. He suggested that there was no good reason to delay in moving ahead with

remote proceedings. Judge Rosenberg responded that the Subcommittee initially considered proposing changes to Rule 45 and Rule 43 together but now thinks it will take more time to discuss changes to Rule 43 because a proposed change to Rule 43 would be more controversial. The Advisory Committee was in the process of gathering other perspectives on remote testimony, like those from the American Association for Justice and the Lawyers for Civil Justice. Professor Marcus emphasized that the Committee is not delaying consideration of remote testimony but rather the Committee feels urgency to move forward with an amendment to address *In re Kirkland*.

A member cautioned against overreading the lack of comments received so far for the bankruptcy rule amendment, since the amendment relates only to contested matters and not adversary proceedings. Further, bankruptcy courts have comfortably used remote technology for a long time. The bankruptcy responses therefore provide little guidance on a possible reaction to remote proceedings in non-bankruptcy civil cases. Professor Marcus agreed. Judge Connelly said that although no comments had been submitted yet, the Bankruptcy Rules Committee expects comments before the end of the notice period. Judge Connelly also noted that the bankruptcy rule amendments may have limited impact because contested matters are often akin to motion practice in district court.

Judge Bates observed that the Advisory Committee was considering issues across Rules 43 and 45. And because remote testimony is a broader issue than the issue regarding subpoenas, he urged the Advisory Committee to be cognizant of that and not let the subpoena consideration drive the analysis.

Rule 55 and the Use of the Verb "Must" with Regard to Action by Clerk. Judge Rosenberg reported that Rule 55(a) says that if the plaintiff can show that the defendant has failed to plead or otherwise defend, "the clerk must enter the party's default." Rule 55(b)(1) says that if "the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk … must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing." The Advisory Committee had found that the command in Rule 55(a) does not correspond to what is happening in many districts. FJC research shows wide variations among district courts in how they handle applications for entry of default or default judgment.

The Advisory Committee discussed whether to amend Rule 55. Some members favored changing "must" to "may" to protect clerks from pressure when there are serious questions about whether entry is appropriate. However, some members thought that "may" would create ambiguity. Judge Rosenberg said that the Advisory Committee is in the early stages of discussing this issue. Professor Marcus added that this command that some clerks find unnerving has been in the rule since 1938.

A judge member thought that there are two separate issues: the pressure on clerks to make a decision they feel uncomfortable making and whether entry should be mandatory. Professor Marcus responded that a number of districts have provisions allowing the clerk to act or refer the matter to the court.

At this point in the Civil Rules Committee's report, the discussion was paused in order to allow the Criminal Rules Committee to make its report (described below). The Civil Rules Committee's presentation resumed thereafter with the discussion of third party litigation funding.

Third Party Litigation Funding. Judge Rosenberg reported that a subcommittee was recently appointed to study the topic. Third party litigation funding first appeared on the Advisory Committee's agenda in 2014, primarily in the context of multidistrict litigation. Since then, litigation funding activity has increased and evolved. The Subcommittee has met once so far to plan its examination of the topic. It will examine, among other things, the model in place in the District of New Jersey, which adopted a local rule calling for disclosure. The Wisconsin legislature included a disclosure rule in its tort reform discovery package. The Subcommittee is only studying and monitoring the issue and does not anticipate making any proposals in the near future.

A practitioner member noted that disclosures have been required by some judge-made rules in Delaware courts, and also suggested that it may be helpful to examine arbitration practices, where mandatory disclosure of third-party litigation funding is the norm. Judge Rosenberg asked if discovery ensues after such disclosures and whether the disclosures are ex parte. The member replied that he did not know about discovery, but he thought that the disclosures are not ex parte because they are designed to provide information for conflict-of-interest purposes.

Another practitioner member observed that in his practice, he often wonders if there is a funder involved and it is very difficult to get discovery about that information. He commented that there may be reasons why information on funding should never be disclosed to a jury, but he expressed concern that funders exercise control over claims. The attorney may even be associated with the funder before the attorney is associated with their client. The member said that funders can make resolving a case more difficult. He recounted a case where a funder loaned a company a large sum of money secured by existing and future claims, caused the company to file claims, and then prevented the company from settling their claims. He thought that some sort of discovery into the funder relationship should be permitted.

Judge Rosenberg invited the member to share persons or organizations with whom it would be helpful to speak. She said that the Subcommittee is eager to learn how pervasive funding is, what constitutes litigation funding, how it could be defined, and what, if anything, the rulemakers should do about it. The Subcommittee knows that funding can be problematic from a recusal standpoint and a control standpoint, but it needs to understand the breadth and pervasiveness of the problem.

Professor Marcus observed that a court presumably could order discovery on funding even without a new rule on point and he asked why they do not always do so. As to recusal, Professor Marcus recalled a judge during a prior discussion stating that not very many judges invest in hedge funds. He asked what a judge is supposed to do upon learning of funding. A practitioner member replied that the Subcommittee should look into the breadth of litigation funders because he suspected that litigation funders include not only hedge funds, but also other entities such as insurance companies. Thus, the member said, funding does pose potential recusal issues. He also said that in his experience the trend is generally not to allow discovery on the issue unless a party can come forward with some specific reason to believe that something untoward is going on.

Another practitioner member agreed. He said that an objection is often made arguing that funding arrangements are matters between the funder and client, and the opposing party should not receive the information even if it is needed to determine whether the court should recuse. The member framed this as a chicken and egg problem: the opposing party may be able to articulate a

basis for funding concerns only after receiving information about the funding arrangement. He repeated that most courts do not allow discovery into the issue because it is seen as a fishing expedition.

Professor Hartnett commented on the disclosure rule in the District of New Jersey. He said that he is a member of the Lawyers' Advisory Committee that developed and drafted the rule ultimately promulgated by the district. He offered to facilitate a meeting with the Lawyers' Advisory Committee. Judge Rosenberg said that the FJC has been in touch with the district's Clerk of Court to learn the types of disclosures being made under the local rule and how judges use the information disclosed.

Professor Coquillette observed that this is another area where a rules committee's work overlaps with another rulemaking system because this issue is covered by state disciplinary rules, particularly when lawyers and their clients have differing interests.

A member cautioned that the term third party litigation funding captures a broad and varied set of arrangements. It may be on the plaintiff or defense side, it may be framed as insurance, and parties offering funding can include hedge funds and private equity firms. To craft a rule, even if it relates only to disclosures, one must determine what the funding device is and what type of concern it raises. If the concern is about control, the member agreed with Professor Coquillette that there could be other ways of addressing that concern or that any rulemaking could be narrow and targeted. But he thought that unless a disclosure rule was limited to seeking a very narrow set of information about control, it could be difficult to craft a rule that would be both meaningful and long-lasting. Judge Bates recalled that the scope of third-party litigation funding was an initial question that the Advisory Committee confronted many years ago. The member also noted that some states have abolished champerty as an operative doctrine, while other states still enforce champerty restrictions.

Cross-Border Discovery Subcommittee. Judge Rosenberg reported that the Subcommittee was formed in response to a proposal urging study of cross-border discovery with an eye toward possible rule changes to improve the process. The Subcommittee is focused on foreign discovery under 28 U.S.C. § 1781 and the Hague Convention from litigants that are parties to U.S. litigation. The Subcommittee has met with bar groups, and Subcommittee members will attend the Sedona Conference Working Group 6, which focuses on cross-border discovery issues. The Subcommittee will continue to reach out to groups and participate in relevant meetings, though it does not anticipate making any proposals in the near future. Professor Marcus confirmed that he will attend the Sedona Conference meeting and said that it is not clear whether there is widespread support for rulemaking in this area.

Rule 7.1 Subcommittee. Judge Rosenberg reported that the Subcommittee is considering whether to expand the disclosures required of nongovernmental corporations. She said that the current rule, which requires that nongovernmental corporations disclose any parent corporation and any publicly held corporation owning 10% or more of its stock, does not provide enough information for judges to evaluate their statutory obligations in all cases. The Subcommittee seeks to ensure that any proposed rule helps judges evaluate their obligations and is consistent with recently issued Codes of Conduct Committee guidance. The guidance indicates that a judge has a

financial interest requiring recusal if the judge has a financial interest in a parent that "controls" a party. The current rule likely requires disclosure of most such circumstances but not all.

Judge Rosenberg said that the Subcommittee is considering an amendment requiring disclosure based on a financial interest. In addition to the current disclosure requirements, the amendment would also require corporate parties to disclose any publicly held business organization that directly or indirectly controls the party. The Subcommittee hopes to present a proposed amendment and committee note for Advisory Committee consideration at the Advisory Committee's April meeting. Professor Bradt added that the Subcommittee continues outreach to likely affected parties, including organizations of general counsel.

Use of the Term "Master" in the Rules. Judge Rosenberg reported that the American Bar Association had submitted a suggestion to remove the word "master" from Rule 53 and other places. The Academy of Court-Appointed Neutrals and the American Association for Justice submitted supporting suggestions. At its October meeting, the Advisory Committee decided to keep the matter on its agenda for monitoring, but it does not anticipate making any proposals in the near future.

Professor Marcus noted that "master" appears in many rules. It appears in Rule 53, at least six other Civil Rules, the Supreme Court's rules, and several federal statutes. Professor Marcus asked whether the term should be removed from the Civil Rules, and if so, what should replace it. The Academy of Court-Appointed Neutrals suggested "court-appointed neutral," but this does not seem to describe persons who can do the many things that Rule 53 masters can do, such as make rulings.

Professor Garner commented that there are about 12 or 13 different contexts in which master historically has been used. He thought that the suggestions may be focusing on one historical use of the term. Professor Garner authored an article on the topic and offered to share it with the Advisory Committee.

A judge member commented that the issue is whether the term should be used or not. This member thought that if there are many appropriate uses of the term, then that would be a reason not to make a change. But if the term has become offensive, then the Advisory Committee should amend the rules. A practitioner member agreed that this should be the focus. This member stressed that it is important to look for a replacement term that would have the same utility: the term "master" has become a term of art with a particular meaning in litigation that terms like "neutral" do not capture. The member said that the term "master" is obsolete but that it is difficult to think of a replacement.

Another judge member asked whether states continue to use the term and, if not, what terms they have replaced it with. Professor Marcus recalled that a submission referred to recent changes elsewhere and noted that the Academy of Court-Appointed Neutrals was previously called the Academy of Court-Appointed Masters. He also said that the AAJ suggestion did not suggest a proposed substitute term. Professor Marcus suggested one possibility is waiting to see what term becomes familiar and recognized in litigation.

Professor Coquillette noted that treatises exist in online databases that use Boolean search operators. Changing key terms will complicate the use of these word retrieval systems.

A judge member also noted that the Supreme Court uses the term, and the Court's usage would not be altered by changes to the national rules for the lower federal courts.

Professor Capra said that recent changes include New Jersey now using the term "special adjudicator," and New York using "referee."

Random Case Assignment. Judge Rosenberg reported that the Advisory Committee has received several proposals to require random district judge assignment in certain types of cases. In March 2024, the Judicial Conference issued guidance to all districts concerning civil actions that seek to bar or mandate statewide enforcement of a state law or nationwide enforcement of a federal law, whether by declaratory judgment or injunctive relief. In such cases, judges would be assigned by a district-wide random selection. Judge Rosenberg stated that the Advisory Committee is monitoring the implementation of the guidance, but that it is premature to make any rule proposals in the near future.

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

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Dever and Professors Beale and King presented the report of the Advisory Committee on Criminal Rules, which last met on November 6-7, 2024, in New York, NY. The Advisory Committee presented several information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 320.

Information Items

Rule 53 and Broadcasting Criminal Proceedings. Judge Dever noted that Rule 53 provides that "[e]xcept as otherwise provided by a statute or these rules, the court must not permit … the broadcasting of judicial proceedings from the courtroom." The Rule 53 Subcommittee previously considered but did not act on a suggestion from some members of Congress suggesting that a clause be added excluding from the rule any trial involving Donald J. Trump. Subsequently, a consortium of media organizations proposed that Rule 53 be revised to permit the broadcasting of criminal proceedings, or to at least create an "extraordinary case" exception to the prohibition on broadcasting. A subcommittee was formed to consider that suggestion.

The Subcommittee met a number of times and gathered information about Judicial Conference Policy § 420(b), which permits the court to permit broadcasting of civil and bankruptcy non-trial proceedings in which no testimony will be taken. The Subcommittee also received an excellent FJC survey on state practices related to broadcasting and attempted to find empirical studies on the effect of broadcasting on criminal proceedings. Ultimately, the Subcommittee unanimously recommended no change to Rule 53, citing concerns about due process, fairness, privacy, and security. With one dissenting vote, the Advisory Committee decided not to propose amending Rule 53.

Professor King noted that, after the agenda book for the Advisory Committee's fall meeting was published, the Advisory Committee received an additional two submissions related to broadcasting. Professor Beale noted that one of those submissions was from the proponent of the original Rule 53 proposal. She noted that the Advisory Committee welcomed comments on the topic.

A judge member expressed interest in the FJC's research on remote public access to court proceedings. This judge member expressed skepticism about the assertion that the risks of broadcasting are somehow greater in federal court proceedings than in state court proceedings (where the risks seem to have been overcome). The member also wondered why the DOJ had abstained from voting on whether to remove the Rule 53 proposal from the Committee's study agenda.

Rule 17 Subpoena Authority. Judge Dever reported that the Advisory Committee was continuing to consider a proposal from the New York City Bar Association to amend Rule 17. The Rule 17 Subcommittee has learned of a wide range of practices under Rule 17 and associated caselaw. The Subcommittee will continue to meet and will present further information at the Advisory Committee's April meeting.

References to Minors by Pseudonyms and Full Redaction of Social Security Numbers. Judge Dever noted that Rule 49.1(a)(3) currently requires filings referring to a minor to include only that minor's initials unless the court orders otherwise. Rule 49.1(a) also provides that only the last four digits of a social security number may appear in public filings. The DOJ and two bar groups have proposed amending the rule to require that minors be referred to by a pseudonym rather than initials in order to provide greater protection of their privacy. Meanwhile, Senator Wyden has suggested amending the rule with respect to social security numbers. The relevant Subcommittee expects to present a proposal to the Advisory Committee at its April meeting.

Professor Beale noted that if Rule 49.1 is amended to require use of pseudonyms for minors, this would create disuniformity unless the other privacy rules are similarly amended. She noted that DOJ policy is to use pseudonyms, and federal defenders said they mostly use pseudonyms already as well. Professor Beale thought that the rules should reflect this practice. Given that the Criminal Rules Committee would consider this proposal at its Spring meeting, she expressed a hope that the other advisory committees would do so as well.

As to Senator Wyden's concern about the inclusion of the last four digits of social security numbers in court filings, Judge Dever stated that disclosure of the last four digits can impact a person's privacy interests. He recognized that different issues arise with respect to the Bankruptcy Rules; but the Criminal Rules Committee thought that, outside that context, removing the last four digits from public filings makes sense.

Professor Beale said that the Advisory Committee received feedback from federal defenders, the DOJ, and the Clerk of Court liaison, none of whom see a need for the last four digits in public filings. Where reference to a social security number is actually necessary (for example, in a fraud case), it can be filed under seal. Professor Beale acknowledged that references to social security numbers can be necessary in bankruptcy cases. But for the other rule sets, she suggested,

the time has come to re-examine the risks of disclosing the last four digits of the social security number.

Summing up, Judge Bates noted that the Criminal Rules Committee will be considering the privacy issues related to pseudonyms for minors and full redaction of social security numbers and encouraged the Appellate and Civil Rules Committees to consider the issues as well.

Professor Marcus noted that in civil proceedings permitting a party to proceed anonymously is controversial. He wondered whether the considerations are different for minors. Judge Bates clarified that the issue before the Criminal Rules Committee is not as to a party; it would be very rare for a minor to be a defendant in a federal prosecution.

Ambiguities and Gaps in Rule 40. Judge Dever reported that a Subcommittee was established to address possible ambiguities in Rule 40, which relates to arrests for violating conditions of release set in another district. Magistrate Judge Bolitho raised this issue, and the Magistrate Judges Advisory Group submitted a detailed letter expressing its concerns. Judge Harvey was appointed to chair the Subcommittee.

Rule 43 and Extending the Authority to Use Videoconferencing. Judge Dever recalled that, over the years, the Advisory Committee has considered many suggestions submitted by district judges concerning the use of videoconference technology in Rule 11 proceedings, sentencings, and hearings on revocation of probation or supervised release. By contrast, neither the National Association of Criminal Defense Lawyers nor the DOJ had submitted such suggestions.

During the discussion at the Advisory Committee's last meeting, the members generally did not support changing the rules for Rule 11 or sentencing proceedings, although one member noted the long distances that participants must travel in some districts.

A Subcommittee has been appointed to study the topic. The Subcommittee intends to explore the universe of proceedings that the rules do not already cover, since the rules already permit videoconferencing for some proceedings, like initial appearances, arraignments, and Rule 40 hearings.

A judge member supported considerably relaxing Rule 43. He thought that videoconferencing should be available for noncritical proceedings if the defendant consents but not for trials, guilty pleas, or sentencings. Judge Dever responded that Rule 43(b)(3) already permits hearings involving only a question of law to proceed without the defendant present. The Subcommittee will discuss other types of proceedings.

Contempt proceedings. Judge Dever reported that the Advisory Committee received a proposal to substantially change Criminal Rule 42 concerning contempt proceedings. The proposal also advocated revisions to various federal statutes. The Advisory Committee removed the proposal from its agenda.

Judge Bates thanked Judge Dever for the report.

OTHER COMMITTEE BUSINESS

The legislation tracking chart begins on page 378 of the agenda book. The Rules Law Clerk provided a legislative update, noting that the 118th legislative session ended shortly before the Standing Committee's meeting.

Action Item

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

CONCLUDING REMARKS

Judge Bates thanked the Standing Committee members and other attendees. The Standing Committee will next convene on June 10, 2025, in Washington, DC.

TAB 3A2

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 (Committee or Standing Committee) met on January 7, 2025. New member Judge Joan N. Ericksen was unable to participate.

Representing the advisory committees were Judge Allison H. Eid (10th Cir.), Chair, and Professor Edward Hartnett, Reporter, Advisory Committee on Appellate Rules; Judge Rebecca Buehler Connelly, chair, Professor S. Elizabeth Gibson, Reporter, and Professor Laura B. Bartell, Associate Reporter, Advisory Committee on Bankruptcy Rules; Judge Robin L. Rosenberg, Chair, Professor Richard L. Marcus, Reporter, Professor Andrew Bradt, Associate Reporter, and Professor Edward Cooper, consultant, Advisory Committee on Civil Rules; Judge James C. Dever III, Chair, Professor Sara Sun Beale, Reporter, and Professor Nancy J. King, Associate Reporter, Advisory Committee on Criminal Rules; and Judge Jesse M. Furman, Chair and Professor Daniel Capra, Reporter, Advisory Committee on Evidence Rules.

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

Deputy Director, Federal Programs Branch, Civil Division, Department of Justice, on behalf of Deputy Attorney General Lisa O. Monaco.

In addition to its general business, including a review of the status of pending rule amendments in different stages of the Rules Enabling Act process, the Standing Committee received and responded to reports from the five advisory committees. The Committee also received updates on joint committee business that involve ongoing and coordinated efforts in response to suggestions on: (1) expanding access to electronic filing by self-represented litigants, (2) adopting nationwide rules governing admission to practice before the U.S. district courts, and (3) requiring complete redaction of Social Security numbers (SSNs).

FEDERAL RULES OF APPELLATE PROCEDURE

Information Items

The Advisory Committee on Appellate Rules met on October 9, 2024. The Advisory Committee is considering several issues, including possible amendments to Rule 15 (Review or Enforcement of an Agency Order—How Obtained; Intervention) to address the "incurably premature" doctrine regarding review of agency action, Rule 4 (Appeal as of Right—When Taken) concerning reopening of the time to take a civil appeal, and Rule 8 (Stay or Injunction Pending Appeal) to address the purpose and length of administrative stays, and suggestions for a new rule governing intervention on appeal. The Advisory Committee removed from its agenda suggestions regarding standards of review, use of capital letters and diacritical marks in case captions, incorporation of widely adopted local rules into the national rules, and standardizing page equivalents for word limits. The Advisory Committee will hold a February 2025 hearing on its two proposals that are out for public comment; one proposal concerns Rule 29's amicus brief requirements and the other concerns the information required on Form 4 for seeking in forma pauperis status.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules and Form Approved for Publication and Comment

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rule 2002 (Notices) and Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy) with a recommendation that they be published for public comment in August 2025. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 2002 (Notices)

The proposed amendment to Rule 2002(o) would simplify the caption of most notices given under Rule 2002 by requiring that they include only the court's name, the debtor's name, the case number, the chapter under which the case was filed, and a brief description of the document's character. Notably, most Rule 2002 notices would no longer be required to include the last four digits of the debtor's SSN or individual taxpayer identification number.

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

Question 4 in Part 1 of Official Form 101 would be amended to clarify that the question is attempting to elicit only the Employer Identification Number (EIN), if any, of the individual filing for bankruptcy and not the EIN of any other person. The modification will guide debtors to avoid the error of providing their employer's EIN. Because multiple debtors could have the same employer, deterring such debtors from erroneously providing their employer's EIN will avoid triggering an erroneous automated report that the debtor has engaged in repeat filings.

Information Items

The Advisory Committee on Bankruptcy Rules met on September 12, 2024. In addition to the recommendation discussed above, the Advisory Committee considered suggestions for an amendment to allow appointment of masters in bankruptcy cases and proceedings and for a new rule concerning random assignment of mega bankruptcy cases within a district, which the

Advisory Committee will revisit after the Committee on the Administration of the Bankruptcy System has concluded its consideration of potential related policy (*see* Report of the Committee on the Administration of the Bankruptcy System, at Agenda E-3). The Advisory Committee removed from its agenda a suggestion to add language concerning the possibility of unclaimed funds to the forms for orders of discharge in cases under chapters 7 and 13. After careful study of a suggestion to require complete redaction of SSNs (rather than redaction of all but the last four digits, as currently required by the national rules), and after considering bankruptcy stakeholders' expressed need for the last four digits of the SSN, the Advisory Committee decided to take no action on the suggestion at this time; however, the Advisory Committee will continue to monitor discussions of this suggestion in the other advisory committees.

FEDERAL RULES OF CIVIL PROCEDURE

Rule Approved for Publication and Comment

The Advisory Committee on Civil Rules submitted proposed amendments to Rule 81 (Applicability of the Rules in General; Removed Actions) and Rule 41 (Dismissal of Actions) with a recommendation that they be published for public comment in August 2025. The Standing Committee unanimously approved the Advisory Committee's recommendation concerning Rule 81 (with a stylistic change) and offered feedback on the language of the proposed amendment to Rule 41. The Advisory Committee will bring the Rule 41 proposal back for approval at the Standing Committee's June 2025 meeting.

The proposed amendment to Rule 81(c) would provide that a jury demand must always be made after removal if no such demand was made before removal and a party desires a jury trial, and the Rule 41 proposal would clarify that Rule 41(a) is not limited to authorizing dismissal only of an entire action but also permits the dismissal of one or more claims in a multi-

claim case and that a stipulation of dismissal must be signed by only all parties who have appeared and remain in the action.

Information Items

The Advisory Committee on Civil Rules met on October 10, 2024. In addition to the recommendations discussed above, the Advisory Committee continued to discuss proposals to amend Rule 45 (Subpoena) regarding the manner of service of subpoenas and the tendering of witness fees at time of service. The Advisory Committee is also studying possible amendments concerning remote testimony; one possible amendment to Rule 45 would clarify the court's subpoena authority with respect to remote trial testimony, while a different possible amendment to Rule 43 (Taking Testimony) would relax the standards governing permission for remote trial testimony. The Advisory Committee heard updates from its subcommittee on Rule 7.1 (Disclosure Statement). The Advisory Committee also continues to study suggestions on Rule 55 (Default; Default Judgment), cross-border discovery, and the use of the term "master" in the Civil Rules, and has commenced a renewed study of the topic of third-party litigation funding. On the random assignment of cases, the Advisory Committee noted the Judicial Conference's March 2024 adoption of policy on this topic (JCUS-MAR 2024, p. 8) and will continue to study the districts' response to this policy.

FEDERAL RULES OF CRIMINAL PROCEDURE

Information Items

The Advisory Committee on Criminal Rules met on November 6-7, 2024. The Advisory Committee continued to discuss a proposal to expand the availability of pretrial subpoenas under Rule 17 (Subpoena) and heard the views of 12 invited speakers who provided comments on a possible draft amendment. In addition, the Advisory Committee established two new subcommittees to consider proposals for amendments to clarify Rule 40 (Arrest for Failing to

Appear in Another District or for Violating Conditions of Release Set in Another District) and for amendments to Rule 43 (Defendant's Presence) to extend the district courts' authority to use videoconferencing with the defendant's consent.

The Advisory Committee is actively considering proposals to amend Rule 49.1 (Privacy Protection for Filings Made with the Court) to protect minors' privacy by requiring the use of pseudonyms and to require complete redaction of SSNs (rather than redaction of all but the last four digits).

The Advisory Committee decided to remove from its agenda a proposal to amend Rule 53 (Courtroom Photographing and Broadcasting Prohibited) to allow broadcasting of criminal proceedings under some circumstances and a proposal to revise the procedures for contempt proceedings under Rule 42 (Criminal Contempt).

FEDERAL RULES OF EVIDENCE

Information Items

The Advisory Committee on Evidence Rules met on November 8, 2024. The Advisory Committee discussed possible amendments relating to the admissibility of evidence generated by artificial intelligence. The discussion focused on two areas: the admissibility of machine-learning evidence offered without the accompanying testimony of an expert, and challenges to the admissibility of asserted "deepfakes" (that is, fake audio and/or visual recordings created through the use of artificial intelligence). To address the first topic, the Advisory Committee is developing a proposed new Rule 707 that would apply to machine-generated evidence standards akin to those in Rule 702 (Testimony by Expert Witnesses); the Advisory Committee will recommend to the Civil and Criminal Rules Committees that they consider any associated issues concerning disclosures relating to machine-learning evidence. The Committee is not currently intending to bring forward for

publication a proposal addressing the second topic (deepfakes) but will work on a possible amendment to Rule 901 (Authenticating or Identifying Evidence) that could be brought forward in the event that developments warrant rulemaking on the topic.

The Advisory Committee is considering a possible amendment to Rule 609 (Impeachment by Evidence of a Criminal Conviction) to tighten the standard for admission in criminal cases of evidence of a defendant's prior felony conviction. It has also begun to study a proposal to amend Rule 902 (Evidence That Is Self-Authenticating) to add federally recognized Indian tribes to Rule 902(1)'s list of governments the public documents of which are self-authenticating.

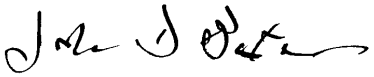
The Advisory Committee decided to remove from its agenda a proposal to amend Rule 702 (Testimony by Expert Witnesses) regarding peer review and a suggestion regarding a possible amendment or new rule to address allegations of prior false accusations of sexual misconduct. In addition, the Advisory Committee decided to table a suggestion for a proposed amendment to Rule 404 (Character Evidence, Other Crimes, Wrongs, or Acts) concerning evidence of other crimes, wrongs, or acts the relevance of which depends upon inferences about propensity. Finally, the Advisory Committee determined that the decisions in *Smith v. Arizona*, 602 U.S. 779 (2024), and *Diaz v. United States*, 602 U.S. 526 (2024), do not currently require any amendments to Rule 703 (Bases of an Expert's Opinion Testimony) or Rule 704 (Opinion on an Ultimate Issue), but it will monitor the lower court caselaw applying those decisions.

JUDICIARY STRATEGIC PLANNING

The Committee was asked by Chief Judge Michael A. Chagares (3d Cir.), the judiciary's planning coordinator, to identify any changes it believes should be considered in updating the *Strategic Plan for the Federal Judiciary* in 2025. Recommendations on behalf of the Committee

regarding the judicial workforce and preserving public trust in the judiciary were communicated to Chief Judge Chagares by letter dated January 15, 2025.

Respectfully submitted,



John D. Bates, Chair

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Troy A. McKenzie
Patricia Ann Millett
Lisa O. Monaco
Andrew J. Pincus
D. Brooks Smith
Kosta Stojilkovic
Jennifer G. Zipps

TAB 4

TAB 4A

MEMORANDUM

DATE: March 7, 2025

TO: Advisory Committee on Bankruptcy Rules

FROM: Catherine T. Struve

RE: Project on service and electronic filing by self-represented litigants

As the Committee knows, the project on service and electronic filing by self-represented litigants ("SRLs") has two basic goals. As to service, the goal is to eliminate the requirement of separate (paper) service (of documents after the case's initial filing) on a litigant who receives a notice of filing through the court's electronic-filing system or a court-based electronic-noticing program. As to filing, the idea is to make two changes compared with current practice: (1) to presumptively permit SRLs to file electronically (unless a court order or local rule bars them from doing so) and (2) to provide that a local rule or general court order that bars SRLs from using the court's electronic-filing system must include reasonable exceptions or must permit the use of another electronic method for filing documents and receiving electronic notice of activity in the case.

During the fall 2024 advisory committee discussions, the Bankruptcy Rules Committee decided that it was not ready to endorse either aspect of this program for adoption as part of the Bankruptcy Rules. By contrast, the Civil, Appellate, and Criminal Rules Committees – which met subsequently – indicated willingness to proceed with the proposed amendments. At its January 2025 meeting, the Standing Committee discussed whether it would be justifiable to proceed with proposed amendments to the Civil, Appellate, and Criminal Rules if the Bankruptcy Rules were not correspondingly amended. The Standing Committee did not express opposition to such an approach.

However, it has been suggested that it may be worthwhile for the Bankruptcy Rules Committee to assess whether the decisions of the other three advisory committees might provide a reason to reconsider its skepticism about the proposed amendments. Given that the Bankruptcy Rules Committee did not know of the other committees' views at the time of its fall 2024 discussion, the spring 2025 meeting provides an opportunity revisit and re-weigh the costs and benefits of proceeding with the proposals. In the event that the Committee were to change its view and propose amending the Bankruptcy Rules in tandem with the other sets of rules, it would need to consider amendments to Bankruptcy Rules 5005, 8011, and 9036. In the event that

the Committee were to adhere to its fall 2024 view, it would need to consider how best to dovetail the (unchanged) approach of the Bankruptcy Rules with the (changed) approach of the Civil and Appellate Rules. Such dovetailing would entail an amendment to Rule 7005 and perhaps an amendment to Rule 8011.

To illustrate the choices, I sketch below two different packages of amendments to the Bankruptcy Rules. Part I sets out a package of amendments that would parallel the proposed amendments that will be considered by the Civil, Appellate, and Criminal Rules Committees.[1] Part I thus illustrates what the Bankruptcy Rules proposal might look like if the Bankruptcy Rules Committee were to change its position and decide to participate in the proposed filing and service changes. Part II discusses a package of amendments that would be necessary or advisable in the event that the Bankruptcy Rules Committee instead adheres to its decision not to implement the proposed filing and service changes at this time. As Part II illustrates, the linkages between the Bankruptcy Rules and the Civil and Appellate Rules mean that some amendments to the Bankruptcy Rules will be necessary either way.

Because this memo is lengthy, here is a table of contents:

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1 I enclose my memorandum to those Committees, which sets out sketches of those proposed rules.

I. Option One: Changing the filing and service rules for SRLs in the bankruptcy courts

If the Bankruptcy Rules Committee were to change its decision and opt to participate in the proposed package of filing and service changes, this would entail amendments to Bankruptcy Rules 5005, 8011, and 9036 (but not Bankruptcy Rule 7005).[2] Sketches of those amendments follow.

A. Rule 5005

Bankruptcy Rule 5005 is a general provision that applies across different types of bankruptcy cases. To bring the Bankruptcy Rules into accord with the goals of the pro se e-filing and service project, the following amendments to Rule 5005 could be considered:

Rule 5005. Filing Papers and Sending Copies to the United States Trustee

(a) Filing Papers.

* * *

2 In the interest of completeness, I note that Rule 8001(c) also arguably implicates some of the issues addressed by this project. Rule 8001(c) provides: "**(c) Requirement to Send Documents Electronically.** Under these Part VIII rules, a document must be sent electronically, unless: (1) it is sent by or to an individual who is not represented by counsel; or (2) the court's local rules permit or require mailing or delivery by other means."

One might at first glance wonder why Rule 8001(c) exists. It requires that documents be sent electronically, and one might wonder whether this requirement needs explicit inclusion in the Rules. All attorneys are required to use the court's electronic-filing system, and the court sends notices via that system to all who are registered to receive such notices, so nearly all documents in a case will be sent electronically simply by the operation of that system. But perhaps bankruptcy appeals feature situations in which a litigant must send a document without filing it, in which event the directive to send the document electronically would still serve some independent purpose.

Rule 8001(c) also distinguishes between service on SRLs and service on others. Perhaps the idea is that attorneys will always be able to use email and receive email, while self-represented litigants might or might not be reliable users of email. Perhaps that justifies maintaining current Rule 8001(c) as drafted.

Thus, this footnote is included for completeness rather than to suggest that Rule 8001(c) should necessarily be considered for amendment.

(3) Electronic Filing and Signing.

(A) By a Represented Entity--Generally Required; Exceptions.

An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for cause or is allowed or required by local rule.

(B) By ~~an Unrepresented~~ a Self-Represented[3] Individual[4]--When Allowed or Required.

(i) In General. ~~An~~ A self-represented individual ~~not represented by an attorney: (i)~~ may ~~file electronically only if allowed by~~ use the court's electronic-filing system [to file papers[5] and receive

3 The current rules use "unrepresented" to refer to a litigant who does not have a lawyer. With the concurrence of the style consultants, I propose that we instead use "self-represented." "Self-represented" recognizes that the litigant is advocating on the litigant's own behalf. The Latin term "pro se" means "for oneself," which is closer to "self-represented" than "unrepresented." Courts and legal organizations increasingly use "self-represented" to describe pro se litigants. See, e.g., https://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/self-represented-litigants. And the entry in Black's Law Dictionary for "pro se litigant" includes "self-represented" but not "unrepresented": "pro se litigant (1857) One who represents oneself in a court proceeding without the assistance of a lawyer <the third case on the court's docket involving a pro se>. — Often shortened to pro se, n. — Also termed pro per; self-represented litigant; litigant in propria persona; litigant pro persona; litigant pro per; litigant in person; (rarely) pro se-er." Black's Law Dictionary (12th ed. 2024) (Bryan A. Garner, Ed. in Chief).

4 The Bankruptcy Rules use the word "individual" in a number of places – presumably because the Bankruptcy Code uses "individual" – and I follow that convention in this memo. I note, however, that Civil Rule 5 uses "person."

5 Previous drafts have used "document," but it came to my attention that the rules we are thinking of amending take two different approaches. Bankruptcy Rule 5005, Civil Rule 5, Criminal Rule 49, and (in the main) Appellate Rule 25 use the word "paper," while Bankruptcy Rules 8011 and 9036 use the word "document." On the theory that internal consistency within a

notice of activity in the case][6] unless a court order or local rule~~; and~~ prohibits the person from doing so. A self-represented individual ~~(ii)~~ may be required to file electronically only by ~~court~~ order in a case~~,~~ or by a local rule that includes reasonable exceptions.

(ii) Local Provisions Prohibiting Access. If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits self-represented [individuals] from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of

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rule may be more valuable on this point than consistency across rules, this memo and my companion memo on the Civil, Criminal, and Appellate Rules use "paper" when sketching amendments to Bankruptcy Rule 5005, Civil Rule 5, Criminal Rule 49, and Appellate Rule 25, but use "document" when sketching amendments to Bankruptcy Rules 8011 and 9036. Of course, the style consultants will be key guides on this issue.

6 The previous draft of (B)(i) (in the sketch of Civil Rule 5) said "may file electronically." The style consultants pointed out that a reader might think there is a lack of parallelism between this phrase in (B)(i) and the reference in (B)(ii) to the requirement for providing alternatives to CM/ECF access – namely "another electronic method for filing documents and receiving electronic notice of activity in the case." Substantively, one could argue the two are in parallel, because one who is allowed to use the court's electronic-filing system will also receive electronic notices from the court's electronic-filing system. So in (B)(i) one could simply say "use the court's electronic-filing system" (line 13) and it would be implicit that this would also encompass electronic noticing. But it could be useful to also include the bracketed language on lines 13-14, especially since spelling things out may assist SRLs. Moreover, including the language will help clarify to a court that the default is to allow an SRL to receive electronic notice of all filings in the case (not merely the orders issued by the court).

another electronic method for filing [papers] and for receiving electronic notice [of activity in the case].[7]

(iii) Conditions and Restrictions[8] on Access. A court may set reasonable conditions and restrictions on self-represented [individuals'] access to the court's electronic-filing system.

(iv) Restrictions on a Particular [Individual]. A court may deny a particular [individual] access to the court's electronic-filing system and may revoke an

7 On lines 26-27, the style consultants suggest that the bracketed language could be deleted. However, it has been pointed out that there are substantive values served by retaining the language. As to the phrase "filing papers," retaining the word "papers" may help satisfy the concerns of some that the new rules are opening up the process to allow debtors to file inappropriate materials. As to the phrase "notice of activity in the case," including it may be useful at this time because currently some courts allow a self-represented debtor to receive notice electronically of items served from the clerk of court but will not allow the same unrepresented debtor to receive notice of items filed electronically by parties.

8 The style consultants question whether "conditions and restrictions" is redundant. My initial reason for including both terms is that "conditions" on access occur when the court says that SRLs can only use the system on certain conditions (e.g., on condition that they first take a course), while "restrictions" on access occur when the court says that certain types of SRLs can't use the system (like SRLs who are incarcerated). Professor Kimble suggests, though, that "if you say that X can't use the system, then you're saying that a condition of using the system is that you're not X." He wonders whether there are "other instances in the rules of using 'conditions' without 'restrictions.'"

Two responses to this style suggestion occur to me – one semantic and one practical. The semantic response is that there are examples of existing rules that use a similar distinction. See, e.g., Bankruptcy Rule 4001 (distinguishing between prohibitions and conditions with respect to use, sale, or lease of property). More importantly, the practical response is that this provision is designed to speak not only to clerk's offices but also to self-represented litigants. Using both terms will help to head off arguments by a self-represented litigant that a particular condition or restriction is not authorized under the rules.

[individual]'s previously granted access for not complying with the conditions authorized in (iii).

(C) Signing. A filing made through a person's electronic-filing account and authorized by that person, together with the person's name on a signature block, constitutes the person's signature.

(D) Same as a Written Paper. A paper filed electronically is a written paper for purposes of these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107.

(b) Sending Copies to the United States Trustee.

(1) Papers Sent Electronically. All papers required to be sent to the United States trustee may be sent by using the court's electronic-filing system in accordance with Rule 9036,[9] unless a court order or local rule provides otherwise.

(2) Papers Not Sent Electronically. If an entity other than the clerk sends a paper to the United States trustee without using the court's electronic-filing system, the entity must promptly file a statement identifying the paper and stating the manner by which and the date

9 I do not think any change is needed to Rule 5005(b)(1), because the phrase "using the court's electronic-filing system in accordance with Rule 9036" – when taken in conjunction the changes to Rule 9036 discussed below – will encompass situations where the self-represented litigant makes a paper filing that is then uploaded into the court's electronic-filing system by the clerk.

it was sent. The clerk need not send a copy of a paper to a United States trustee who requests in writing that it not be sent.

* * *

Committee Note

Rule 5005(a)(3)(B) is amended to address electronic filing by self-represented litigants. (Concurrent amendments are made to Rules 8011 and 9036 and to Civil Rule 5, Criminal Rule 49, and Appellate Rule 25.) The amendments expand the availability of electronic modes by which self-represented litigants can file documents with the court and receive notice of filings that others make in the case.

Under amended Rule 5005(a)(3)(B)(i), the presumption is the opposite of the presumption set by the prior rule. That is, under the amended rule, self-represented litigants are presumptively authorized to use the court's electronic-filing system to file documents in their case subsequent to the case's commencement. If a district court or BAP wishes to restrict self-represented litigants' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 5005(a)(3)(B)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 5005(a)(3)(B)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 5005(a)(3)(B)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for self-represented litigants to the court's electronic-filing system, or (2) providing self-represented litigants with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program).

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing system. Rule 5005(a)(3)(B)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant

or case" to make clear that 5005(a)(3)(B)(ii) does not restrict a court from entering an order barring a specific self-represented litigant from accessing the court's electronic-filing system.

Rule 5005(a)(3)(B)(iv) provides that the court may deny a specific self-represented litigant access to the court's electronic-filing system, and that the court may revoke a self-represented litigant's access to the court's electronic-filing system.

B. Rule 8011

Bankruptcy Rule 8011's provisions on filing and service govern in appeals to the district court or Bankruptcy Appellate Panel (BAP). To bring the Bankruptcy Rules into accord with the goals of the SRL e-filing and service project, the following amendments to Rule 8011 could be considered. You will note that I am not suggesting the inclusion of the new provision about service of documents not filed with the court.[10] That is because I could not think of documents that would meet that description in the context of a bankruptcy appeal.

Rule 8011. Filing and Service; Signature

(a) Filing.

(1) With the Clerk. A document required or permitted to be filed in a district court or BAP must be filed with the clerk of that court.

(2) Method and Timeliness.

(A) Nonelectronic Filing.

* * *

(B) Electronic Filing.~~(i)~~[11] By a Represented Person--Generally Required; Exceptions. An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for cause or is allowed or required by local rule.

10 Cf. proposed Civil Rule 5(b)(4).

11 I suggest this re-numbering in order to avoid running out of levels of numbering and lettering.

~~(ii)~~ **(C) Electronic Filing By ~~an Unrepresented~~ a Self-Represented Individual--When Allowed or Required.**

(i) In General. ~~An~~ A self-represented individual ~~not represented by an attorney: •~~ may ~~file electronically only if allowed by~~ use the court's electronic-filing system [to file documents and receive notice of activity in the case] unless a court order or ~~by~~ local rule prohibits the individual from doing so.~~; and~~ A self-represented individual ~~•~~ may be required to file electronically only by ~~court~~ order in a case~~,~~ or by a local rule that includes reasonable exceptions.

(ii) Local Provisions Prohibiting Access. If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits self-represented [individuals] from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing [documents] and for receiving electronic notice [of activity in the case].

(iii) Conditions and Restrictions on Access. A court may set reasonable conditions and restrictions on self-represented [individuals'] access to the court's electronic-filing system.

(iv) Restrictions on a Particular [Individual]. A court may deny a particular [individual] access to the court's electronic-filing system

and may revoke an [individual]'s previously granted access for not complying with the conditions authorized in (iii).

~~(iii)~~ **(D) Electronically Filed Same as a Written Paper.** A document filed electronically is a written paper for purposes of these rules.

~~(C)~~ (E) **When Paper Copies Are Required.** No paper copies are required when a document is filed electronically. If a document is filed by mail or by delivery to the district court or BAP, no additional copies are required. But the district court or BAP may, by local rule or order in a particular case, require that a specific number of paper copies be filed or furnished.

(3) Clerk's Refusal of Documents. The court clerk must not refuse to accept for filing any document solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(b) Service of All Documents Required. Unless a rule requires service by the clerk or the document will be served under (c)(1), a party must, at or before the time of the filing of a document, serve it on the other parties to the appeal. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Service by a Notice of Filing Sent Through the Court's Electronic-Filing System. A notice of filing sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But a court may provide by local rule that if a paper is filed under seal, it must be served by other means.

~~(1) Nonelectronic~~ **(2) Service by Other Means.** ~~Nonelectronic service~~ A paper may also be served under this rule by ~~any of the following~~:

(A) personal delivery;

(B) mail; ~~or~~

(C) third-party commercial carrier for delivery within 3 days~~.~~; or

~~(2) Service By Electronic Means. Electronic service may be made by:~~

~~(A) sending a document to a registered user by filing it with the court's electronic-filing system; or~~

~~(B) using other~~ (D) electronic means that the person served has consented to in writing.

(3) When Service Is Complete.

(A) Service under (c)(1) is complete as of the date of the notice of filing.

(B) Service by other electronic means is complete on sending, unless the person making service receives notice that the document was not received by the person served.

(C) Service by mail or by third-party commercial carrier is complete on mailing or delivery to the carrier. ~~Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served.~~

(4) Definition of "Notice of Filing." The term "notice of filing" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing

system to inform them of activity on the docket.

(d) Proof of Service.

(1) Requirements. A document presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

(A) an acknowledgement of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) the mail or electronic address, the fax number, or the address of the place of delivery--as appropriate for the manner of service--for each person served.

(2) Delayed Proof of Service. A district or BAP clerk may accept a document for filing without an acknowledgement or proof of service, but must require the acknowledgment or proof of service to be filed promptly thereafter.

(3) For a Brief or Appendix. When a brief or appendix is filed, the proof of service must also state the date and manner by which it was filed.

(e) Signature Always Required.

(1) Electronic Filing. Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the counsel's electronic signature. A filing made through a person's electronic-filing account and authorized by that person--together with that person's name on a signature

block--constitutes the person's signature.

(2) Paper Filing. Every document filed in paper form must be signed by the person filing it or, if the person is represented, by the person's counsel.

Committee Note

Rule 8011 is amended to address two topics concerning self-represented litigants. (Concurrent amendments are made to Rules 5005 and 9036 and to Civil Rule 5, Criminal Rule 49, and Appellate Rule 25.) Rule 8011(a) is amended to expand the availability of electronic modes by which self-represented litigants can file documents with the court and receive notice of filings that others make in the case. Rule 8011(c) is amended to address service of documents filed by a self-represented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Rule 8011(c)'s treatment of service is also reorganized to reflect the primacy of service by means of the electronic notice.

Subdivision (a)(2)(C). Under new Rule 8011(a)(2)(C)(i), the presumption is the opposite of the presumption set by the prior Rule 8011(a)(2)(B)(ii). That is, under new Rule 8011(a)(2)(C)(i), self-represented litigants are presumptively authorized to use the court's electronic-filing system to file documents in their case subsequent to the case's commencement. If a district court or BAP wishes to restrict self-represented litigants' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 8011(a)(2)(C)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 8011(a)(2)(C)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 8011(a)(2)(C)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for self-represented litigants to the court's electronic-filing system, or (2) providing self-represented litigants with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program).

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-

incarcerated litigants and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing system. Rule 8011(a)(2)(C)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 8011(a)(2)(C)(ii) does not restrict a court from entering an order barring a specific self-represented litigant from accessing the court's electronic-filing system.

Rule 8011(a)(2)(C)(iv) provides that the court may deny a specific self-represented litigant access to the court's electronic-filing system, and that the court may revoke a self-represented litigant's access to the court's electronic-filing system.

Subdivision (b). Existing Rule 8011(b) generally requires that a party, "at or before the time of filing a document, [must] serve it on the other parties to the appeal." The existing rule exempts from this requirement instances when "a rule requires service by the clerk." The rule is amended to add a second exemption, for instances when "the document will be served under (c)(1)." This amendment is necessary because new Rule 8011(c)(1) encompasses service by the notice of filing that results from the clerk's uploading into the system a paper filing by a self-represented litigant. In those circumstances, service will not occur "at or before the time of filing a document," but it will occur when the court's electronic-filing system sends the notice to the litigants registered to receive it.

Subdivision (c). Rule 8011(c) is restructured so that the primary means of service – that is, service by means of the court's electronic-filing system – is addressed first, in subdivision (c)(1). Existing Rule 8011(c)(1) becomes new Rule 8011(c)(2), which continues to address alternative means of service. New Rule 8011(c)(4) defines the term "notice of filing" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket.

Subdivision (c)(1). Amended Rule 8011(c)(1) eliminates the requirement of separate (paper) service on a litigant who is registered to receive a notice of filing from the court's electronic-filing system. Litigants who are registered to receive a notice of filing include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 8011(c)(2)(A)'s provision for service by "sending a document to a registered user by filing it with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

The last sentence of amended Rule 8011(c)(1) states that a court may provide by local rule that if a paper is filed under seal, it must be served by other means. This sentence is

designed to account for districts or BAPs in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system.

Subdivision (c)(2). Subdivision (c)(2) carries forward the contents of current Rules 8011(c)(1) and (2), with two changes.

The subdivision's introductory phrase ("Nonelectronic service may be by any of the following") is amended to read "A paper may also be served under this rule by." This locution ensures that what will become Rule 8011(c)(2) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to a litigant who will be filing non-electronically but who wishes to effect service on their opponent before the time when the court will have uploaded the filing into the court's system (thus generating the notice of filing).

Prior Rule 8011(c)(2)(A)'s reference to "sending a document to a registered user by filing it with the court's electronic-filing system" is deleted, because this is now covered by new Rule 8011(c)(1).

Subdivision (c)(3). Rule 8011(c)(3) ("When Service is Complete") is amended to distinguish between service under new Rule 8011(c)(1) – that is, service by means of the notice of electronic filing, which is complete as of the notice's date – and service by "other electronic means," which continues to be complete on "sending, unless the person making service receives notice that the document was not received by the person served." Experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system.

Subdivision (c)(4). New Rule 8011(c)(4) defines the term "notice of filing" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of filing" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

C. Rule 9036

Bankruptcy Rule 9036 governs the electronic transmission of notices and documents by the bankruptcy court or other parties. To bring the Bankruptcy Rules into accord with the goals of the pro se e-filing and service project, the following amendments to Rule 9036 could be considered:

Rule 9036. Electronic Notice and Service

(a) In General. This rule applies whenever these rules require or permit sending a notice or serving a document by mail or other means.

(b) Notices from and Service by the Court.

(1) To Registered Users. The clerk may send notice to or serve a registered user by filing the notice or document with the court's electronic-filing system.

(2) To All Recipients. For any recipient, the clerk may send notice or serve a document by electronic means that the recipient consented to in writing, including by designating an electronic address for receiving notices. But these exceptions apply:

(A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk must use that address;[12] and

(B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the

12 As shown in the text, under both the current Rule 9036 and this sketch of an amended Rule 9036, the clerk is directed to use the BNC address for all notices. At some point, the Committee may wish to address what happens when the address designated on the proof of claim differs from the BNC address. That issue appears to be beyond the scope of the SRL project, but of course I defer to the Committee as to whether it may wish to fold consideration of that question into the project in the event that it selects the Option One discussed in this memo (which as sketched here would entail amendments to Rule 9036).

notice to or serve the document electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f).

(c) Notices from and Service by an Entity. ~~An entity may send notice or serve a document in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B).~~

(1) Notice of Filing Sent Through the Court's Electronic-Filing System. A notice of filing sent to a person registered to receive it through the court's electronic-filing system constitutes notice or service on that person as of the date of the notice of filing. But a court may provide by local rule that if a paper is filed under seal, neither service nor notice occurs under this Rule 9036(c)(1).[13]

(2) Electronic Means Consented To. An entity may also send notice or serve a document by electronic means that the recipient consented to in writing, including by designating an electronic address for receiving notices.

(3) Definition of "Notice of Filing." The term "notice of filing" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case

13 This formulation ("neither service nor notice occurs") differs from the language currently proposed for the other rules. See, e.g., proposed Rule 8011(c)(1) ("But a court may provide by local rule that if a paper is filed under seal, it must be served by other means."). The difference arises because it seems awkward to say "it must be served or noticed by other means." The style consultants may have guidance to share on this point.

participants through the court's electronic-filing system to inform them of activity on the docket.

(d) When Notice or Service Is Complete; Keeping an Address Current.

(1) Notice of Filing Sent Through the Court's Electronic-Filing System. Notice – or service – by a notice of filing sent to a person registered to receive it through the court's electronic-filing system is complete as of the date of the notice of filing.

(2) Other Electronic Means. Electronic notice or service by other electronic means is complete upon ~~filing or~~ sending but is not effective if the filer or sender receives notice that it did not reach the person to be notified or served.

(3) Keeping an Address Current. The recipient must keep its electronic address current with the clerk.

(e) Inapplicability. This rule does not apply to any document required to be served in accordance with Rule 7004.

Committee Note

Rule 9036 is amended to address service by self-represented litigants. (Concurrent amendments are made to Rules 5005 and 8011 and to Civil Rule 5, Criminal Rule 49, and Appellate Rule 25.) Rule 9036(c) is amended to address service of documents filed by a self-represented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Conforming amendments are made to Rule 9036(d).

Subdivision (c). Rule 9036(c) previously stated simply that "[a]n entity may send notice or serve a document in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B)." That provision could be read to exclude instances when a self-represented litigant files a

document in paper form and the clerk's office scans the document and uploads it into the court's electronic-filing system. Thus read, the previous rules required separate (paper) service in such instances, even on litigants who were registered to receive a notice of filing from the court's electronic-filing system. New Rule 9036(c) restates the substance of the service options previously incorporated by reference to Rule 9036(b), but does so in a way that changes the rule concerning service by a litigant who makes a filing other than through the court's electronic-filing system.

New Rule 9036(c)(1) eliminates the requirement of separate (paper) service on a litigant who is registered to receive a notice of filing from the court's electronic-filing system. Litigants who are registered to receive a notice of filing include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Prior Rule 9036(c)'s provision for notice or service "in the same manner that the clerk does under" Rule 9036(b)(1) had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file a document with the court by a means other than through the court's electronic-filing system.) The last sentence of amended Rule 9036(c)(1) states that a court may provide by local rule that if a paper is filed under seal, notice or service must occur by other means. This sentence is designed to account for districts or BAPs in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system.

What is now Rule 9036(c)(2) carries forward the prior option to effect notice or service by consented-to electronic means.

New Rule 9036(c)(3) defines the term "notice of filing" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of filing" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

Subdivision (d). New subdivision (d)(2) carries forward the rule's prior treatment of the timing of notice or service by electronic means other than the court's electronic-filing system. New subdivision (d)(1) addresses the timing of notice or service through the court's electronic-filing system.

Previously, Rule 9036(d) provided simply that "Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be notified or served." The adoption of new Rule 9036(c)(1) requires a change to Rule 9036(d): Under new subdivision (c)(1), when a litigant files a paper other than through the court's electronic-filing system, service on a litigant who is registered to receive a

notice of filing through the court's electronic-filing system occurs by means of the notice of filing. But that service does not occur "upon filing" when the filing is made other than through the court's electronic-filing system. There can be a short time lag between the date the litigant files the document with the court and the date that the clerk's office uploads it into the court's electronic-filing system. Thus, new subdivision (d)(1) provides that notice – or service – by a notice of filing sent to a person registered to receive it through the court's electronic-filing system is complete as of the date of the notice of filing.

Although new subdivision (d)(2) carries forward – for notice or service by other electronic means – the prior rule's provision that such notice or service is not effective if the sender "receives notice that it did not reach the person to be notified or served," no such proviso is included in new subdivision (d)(1). This is because experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system.

II. Option Two: Maintaining the current filing and service rules for SRLs in the bankruptcy courts

If the Bankruptcy Rules Committee were to adhere to its decision not to participate in the proposed package of filing and service changes, this would require an amendment to Bankruptcy Rule 7005 and might also make an amendment to Bankruptcy Rule 8011 advisable. But no amendments would be needed to Bankruptcy Rule 5005 or 9036.

Part II.A sketches a possible amendment to Rule 7005. Part II.B.1 considers how to treat bankruptcy appeals. Part II.B.2 discusses possible amendments to Rule 8011 that would treat bankruptcy appeals the same as other matters in the district court, while Part II.B.3 suggests that, if instead the decision is made to treat bankruptcy appeals the same as proceedings in the bankruptcy court, this could be accomplished by means of amendments to Rule 8011 and Appellate Rule 6.

A. Rule 7005

Rule 7005 currently incorporates by reference the provisions of Civil Rule 5. To avoid incorporating into the Bankruptcy Rules the new features of proposed amended Civil Rule 5, something like the following amendment to Bankruptcy Rule 7005 should be considered:

Rule 7005. Serving and Filing Pleadings and Other Papers

Fed. R. Civ. P. 5 applies in an adversary proceeding<u>, except that:</u>

<u>(1) Rule 5005(a)(3)(B) – not Fed. R. Civ. P. 5(d)(3)(B) – governs</u>

electronic filing by a self-represented individual; and

(2) The reference in Fed. R. Civ. P. 5(d)(1)(B) to service "under Rule 5(b)(2)" – and the reference in Fed. R. Civ. P. 5(b)(2) to "A notice of filing sent to a person registered to receive it through the court's electronic-filing system" – mean service by sending a paper to a registered user by filing it with the court's electronic-filing system.

Committee Note

For adversary proceedings in bankruptcy, Rule 7005 incorporates by reference Civil Rule 5, including the latter's provisions on filing and service. Changes to Civil Rule 5 necessitate some adjustment to this incorporation by reference.

The concurrent amendments to Civil Rule 5 address two topics concerning self-represented litigants. Civil Rule 5(b) is amended to address service of documents (subsequent to the complaint) filed by a self-represented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, Civil Rule 5(b) is amended so that it no longer requires separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Civil Rule 5(d) is amended to expand the availability of electronic modes by which self-represented litigants can file documents with the court and receive notice of filings that others make in the case.

These changes to Civil Rule 5 are not yet appropriate for adoption as mandates for the bankruptcy courts. It currently appears to be rare for bankruptcy courts to permit self-represented litigants to use the court's electronic-filing system; thus, a rule requiring the bankruptcy courts to permit such access or to provide alternative modes of electronic access could cause greater disruption in bankruptcy courts than in the district courts or courts of appeals.

Moreover, a given bankruptcy case may include multiple self-represented litigants. Under the amendments to Civil Rule 5, any self-represented litigant who is neither enrolled in the court's electronic-filing system nor enrolled in a court-provided electronic-noticing program would continue to be served by means other than electronic notice from the court. But in a case that includes two or more such litigants, those self-represented litigants might be misled by amended Civil Rule 5 into omitting to make traditional service on the other self-represented litigants. Admittedly, this risk appears not to have materialized in disruptive ways in the district courts that have already eliminated the requirement of paper service on litigants who receive notices from the court's electronic-filing system. It may be the case that self-represented litigants learn their particular service obligations on other self-represented litigants from an order entered

in the case or by calling the clerk's office, and therefore duly serve any self-represented litigants in the case who need such service. But the lack of known problems in these district courts might also stem from the rarity – in the district courts – of cases featuring more than one self-represented litigant who is neither registered with the court's electronic-filing system nor registered to receive electronic notices from the court. Because such cases are less rare in the bankruptcy courts, problems might be more likely to result in those courts.

To avoid this risk, the Bankruptcy Rules will continue to require that all self-represented litigants make traditional service on all other litigants. While this will continue to require redundant paper service (by self-represented litigants who are not using the court's electronic-filing system) on the many participants in a bankruptcy proceeding who neither need nor want such paper copies, it will avoid the risk that a self-represented litigant would fail to make the required traditional service on another self-represented litigant who needs it.

Accordingly, Rule 7005 is amended to provide that Rule 5005(a)(3)(B) – not Fed. R. Civ. P. 5(d)(3)(B) – governs electronic filing by a self-represented individual. The amendments to Rule 7005 also provide that Civil Rule 5(d)(1)(B) reference to service "under Rule 5(b)(2)" and Civil Rule 5(b)(2)'s reference to "[a] notice of filing sent to a person registered to receive it through the court's electronic-filing system" mean service by sending a paper to a registered user by filing it with the court's electronic-filing system.

B. Rule 8011

Assuming that the Bankruptcy Rules maintain their current approach to self-represented litigants' service and electronic filing, it is necessary to consider which approach – the current one or the one that will be newly adopted for the Civil and Appellate Rules – will govern in bankruptcy appeals.

Part II.B.1 discusses policy arguments for and against the various possible approaches, and suggests that the best approach may be to treat bankruptcy appeals the same way as other matters that are heard in the district courts and courts of appeals. This approach is illustrated in the sketch set out in Part II.B.2. An alternative would be to treat bankruptcy appeals the same way on appeal as they are treated in the bankruptcy courts. This approach is discussed in Part II.B.3.

1. Policy choices

Before setting out the sketches, it is useful to consider the policy arguments for and against each one. At the outset, it seems useful to note that whatever choice is made on filing and service for SRLs in bankruptcy appeals, the application of those choices will be to a relatively small number of cases and litigants. For example, in the year ending September 30, 2023:

- In the federal district courts, of 339,731 civil cases filed, 1,346 were bankruptcy appeals and another 140 were matters withdrawn from the bankruptcy courts.

- In the five Bankruptcy Appellate Panels as group, 320 appeals were commenced.

- In the federal courts of appeals in the year ending September 30, 2023, of 39,987 total appeals filed, 657 were bankruptcy appeals.

So bankruptcy appeals are quite rare compared to original proceedings in either the bankruptcy courts or the district courts. (In addition, one might speculate that self-represented litigants may be less likely to litigate actively in bankruptcy appeals than in proceedings in the bankruptcy courts. This might be true, for example, to the extent that appeals in bankruptcy cases are more likely to be taken in high-stakes and complex matters. But this is, of course, pure speculation; I haven't found figures concerning the number of SRLs involved in bankruptcy appeals.)

In sum, the group of litigants *in bankruptcy appeals* who would be affected by any rule change is small. And so one might argue that the stakes of the choices discussed in this part are relatively low, and that one might place a premium on choosing the options that best promote clarity and administrability.

a. SRL e-filing access in bankruptcy appeals

I can see some arguments in favor of having the practice on appeal[14] track the ordinary practice of the relevant appellate court, at least as to electronic-filing access. That is to say, a court that ordinarily allows SRLs to use its electronic-filing system presumably would experience no difficulties in allowing SRLs to do so in bankruptcy appeals as well. And an SRL would be unlikely to be confused by such an approach; it seems easy to understand that one level of court might permit such access even though another level of court bars it. In fact, such a phenomenon currently exists today, given the relatively greater openness to such access shown by the local practices of the courts of appeals (compared with the district courts) and of the district courts (compared with the bankruptcy courts).

We should also take account of the fact that in some circuits bankruptcy appeals may go to a BAP instead of to a district court. Thus, we should consider how any proposed amendment would affect BAPs.[15] Three of the BAPs have posted provisions indicating that they currently

14 I envision that the filing of the notice of appeal would occur in accordance with the practice in the lower court – here, the bankruptcy court. So by practice on appeal, I mean events after the filing of the notice of appeal.

15 There may well be close connections between the court of appeals for a circuit and the BAP for that circuit. See, e.g., Eighth Circuit BAP Rule 8024A(a)(1) ("The Clerk of the United

take approaches to SRL e-filing that would be compatible with proposed Civil Rule 5:

- First Circuit BAP. See General Order No. 2 Rule 1(c): "Use of the ECF System is voluntary for all litigants proceeding without representation by an attorney …." See also id. Rule 2(c) (offering additional filing methods for SRLs).

- Ninth Circuit BAP. See Administrative Order Regarding Electronic Filing in BAP Cases Rule 2(d): "Any litigant who is not a licensed attorney authorized to practice before the BAP may file a motion requesting leave to register for CM/ECF."

- Tenth Circuit BAP Rule 8001-1(b): "Individuals not represented by an attorney … may, but are not required to, file using the ECF system."

The Eighth Circuit BAP's approach is compatible with the proposed Civil Rule 5 approach in that it's receptive to SRL e-filing, but in fact this BAP's rule goes beyond the current proposal by making e-filing mandatory for non-incarcerated SRLs. See Eighth Circuit BAP Rule 8011A: "All documents, other than those filed by an inmate, shall be filed electronically…."[16] The apparently mandatory aspect of this BAP's program is incompatible with proposed Civil Rule 5, but note that it's also in violation of current Bankruptcy Rule 8011(a)(2)(B)(ii), which provides that SRLs "may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions."

The Sixth Circuit BAP may already be taking an approach that's consistent with the proposed rule, but that's not clear from this BAP's published materials, so further checking might be advisable. Sixth Circuit BAP Rule 8011-1 states: "…. The 'Sixth Circuit Guide to Electronic Filing' is adopted to govern the filing of documents in cases filed with the BAP." Arguably, this evinces an intent to track whatever the Sixth Circuit does concerning e-filing. And the Sixth Circuit now permits pro se litigants to file by email. But it does so in a local rule, not in the Sixth Circuit Guide to Electronic Filing. So without checking further with the BAP, it is not possible to be sure what the BAP's current practice is. And it's not clear whether the Sixth Circuit offers an electronic noticing program as such; it does allow people in general to sign up for email notices from PACER concerning a case, but that's different from an e-noticing program. So the proposed amendments might effect more of a change to practice in the Sixth Circuit Court of Appeals and BAP than in some other circuits.

I am less able to think of arguments in favor of having the e-filing practice on appeal

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States Court of Appeals for the Eighth Circuit shall serve as the Clerk of the United States Bankruptcy Appellate Panel for the Eighth Circuit.").

16 By contrast, the Eighth Circuit makes it optional for pro se filers in the court of appeals: "Use of the CM/ECF system for filing is mandatory for attorney filers. It is voluntary for non-attorney filers." https://media.ca8.uscourts.gov/files/faq.pdf .

track that of the bankruptcy court below, though I welcome any suggestions.

b. Service by SRLs in bankruptcy appeals

As to service, the question is whether it makes sense to change the approach to service by non-electronically-filing SRLs on CM/ECF participants in bankruptcy appeals to the district courts and BAPs. It seems to me that adopting the new service approach for such appeals could be okay if the circumstances of bankruptcy appeals differ sufficiently from those of litigation in the bankruptcy court itself. The main impediment to changing the service approach in the bankruptcy court is the concern that there may be multiple SRLs in the same proceeding, and that if multiple SRLs are in fact not participating in CM/ECF or a court sponsored electronic noticing system, then they might erroneously fail to serve each other by traditional means. A factual question to which I don't know the answer is whether the same difficulty is likely to arise on appeal. If it is likely to arise on appeal, then that would weigh in favor of having bankruptcy appeals track the bankruptcy-court practice with respect to service.

On the other hand, if the multiple-SRL problem is not as likely to arise on appeal, then perhaps the appellate practice could diverge from the bankruptcy-court practice on service without causing problems. It's not obvious that changing the service requirement that applies to self-represented paper filers in the district courts and courts of appeals would cause confusion for SRLs while they litigate in the bankruptcy courts. For one thing, a SRL typically will have litigated in the bankruptcy court – and become accustomed to the service requirements that apply there – before they litigate on appeal. And in many appeals (e.g., final-judgment appeals that result in affirmance), there may be no further proceedings in the bankruptcy court after the appellate proceeding concludes. Given that there are so few bankruptcy appeals generally, it seems as though the likelihood of confusion from a different service rule on appeal may be low.

As with filing, so too with service, another consideration is whether changing the practice applicable to appeals would disrupt the BAPs' current practices. Here, it does appear that – like many district courts – the BAPs probably follow the national rules' current approach on the service question. Four of the five BAPs either have a provision making clear that they follow Bankruptcy Rule 8011(c)'s approach to service or seem likely to do so:

- First Circuit BAP: "In accordance with Fed. R. Bankr. P. 8011(c), documents filed by any means other than through the ECF System must also be served by one of the following methods on the other parties to the appeal: personal delivery; mail; third-party commercial carrier; or email, if the entity served consented in writing to email service…."

- Sixth Circuit BAP, Ninth Circuit BAP, and Tenth Circuit BAP (possibly): A quick search didn't disclose any local provision on point, so I assume that the court applies Rule 8011(c).

The Eighth Circuit BAP has an ambiguous local provision that might be read to indicate that even paper filers needn't provide separate service on litigants who will receive the electronic notice via CM/ECF. Eighth Circuit BAP Rule 8014A(c) states: " Service shall be made by CM/ECF upon filing of the brief. However, one paper copy of the brief shall be served on any party who is not a CM/ECF participant."

c. Overall policy considerations

In sum, I can see arguments for having service practice in bankruptcy appeals continue to track the service practice in the bankruptcy courts, though those arguments are strongest as to the level of the intermediate appeal to district courts and BAPs, and somewhat weaker at the level of the court of appeals (because the courts of appeals – unlike the BAPs – would be moving to the new service practice anyway if the proposed rule changes are adopted).

There is also the issue of overall simplicity of design. It may be useful for the practice on bankruptcy appeals to track the ordinary practice in the relevant appellate court. It also may be useful for the treatment of e-filing and service by SRLs to be treated in tandem – that is, to apply the updated service approach whenever the updated e-filing approach applies and vice versa. Taken together, these considerations may weigh in favor of treating bankruptcy appeals the same way as other matters that are heard in the district courts and courts of appeals. The next section illustrates that approach.

2. Treating bankruptcy appeals the same as other matters in the district court: Amendment to Rule 8011 (and conforming amendment to Rule 8004(a)(3))

If the committees decide that the service and filing approaches that ordinarily apply in the district courts and courts of appeals should also apply on bankruptcy appeals, then it will be necessary to bring Rule 8011 into parallel with the goals of the SRL service and e-filing project.[17] This could be accomplished by means of the amendments sketched in Part I.B above, with one adjustment.

The adjustment concerns notices of appeal. Because notices of appeal are filed in the court from which the appeal is taken, the practice concerning notices of appeal from the bankruptcy court should track the practice that applies to other filings in the bankruptcy court. One can argue that the proposed sketch shown in Part I.B would accomplish that, because Rule 8011 as currently drafted seems designed only to govern filings in the district court or BAP, and

17 By contrast, if the committees were to decide that the new service and filing approaches should apply to bankruptcy appeals only in the courts of appeals – and not in the district courts or BAPs – then no changes to Rule 8011 would be necessary. That is because Appellate Rule 25(a)(5), not Bankruptcy Rule 8011, governs filing and service in the courts of appeals.

not filings in the bankruptcy court.[18] But once Rule 8011's treatment of filing and service diverges from the approach that applies in the bankruptcy court, it will become more important to ensure clarity concerning which rule applies to the filing of a notice of appeal (or other document, such as a motion for a stay) in the bankruptcy court.

A straightforward way to accomplish this would be to insert a new Rule 8011(a) that would read: "**(a) Scope.** This rule governs signature, service, and filing of documents required or permitted to be filed in a district court or BAP." Then Rule 8011's existing subdivisions would be re-lettered – that is, (a) would become (b), and so on. To adjust to the re-lettering, one would also need to make a conforming amendment to Rule 8004.[19] Admittedly, there are always transition costs associated with re-numbering an entire rule, because references to the prior version of the rule will no longer track the current numbering. But in the case of Rule 8011, those transition costs may be relatively manageable. As of February 27, 2025, a Westlaw search for court decisions citing Rule 8011 after November 30, 2014 (that is, the last day before the comprehensive 2014 revisions took effect) pulls up only 14 cases. Concededly, the renumbering could also require changes in local rules; but if Rule 8011 were to be amended to adopt the new approach to SRL service and e-filing, local rule amendments would be necessary anyway.

In sum, to implement the policy choice of updating bankruptcy appellate practice in the district courts and BAPs to track the proposed new approach to SRL service and e-filing, one could add the new subdivision 8011(a) concerning scope, re-letter the remaining subdivisions of Rule 8011, implement the proposed amendments to Rule 8011 sketched in Part I.B of this memo, and make a conforming amendment to the cross-reference in Rule 8004(a)(3):

Rule 8011. Filing and Service; Signature

(a) Scope. This rule governs signature, service, and filing of documents required or permitted to be filed in a district court or BAP.

(b) Filing.

18 One might initially be tempted to argue that Rule 8001(a) also suggests as much, because it provides in part that "[t]hese Part VIII rules govern the procedure in a United States district court and in a bankruptcy appellate panel on appeal from a bankruptcy court's judgment, order, or decree," and it does not say anything about the Part VIII rules governing procedure in the bankruptcy court. But that argument plainly doesn't work: It proves too much. The Part VIII rules explicitly govern some activities in the bankruptcy court, such as the filing of the notice of appeal. See Rule 8003(a)(1).

19 Specifically, one would revise Rule 8004(a)(3) to refer to "Rule 8011(e)" instead of "Rule 8011(d)."

(1) With the Clerk. A document required or permitted to be filed in a district court or BAP must be filed with the clerk of that court.

(2) Method and Timeliness.

(A) Nonelectronic Filing.

* * *

(B) Electronic Filing.~~(i)~~[20] By a Represented Person--Generally Required; Exceptions. An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for cause or is allowed or required by local rule.

~~(ii)~~ **(C) Electronic Filing By ~~an Unrepresented~~ a Self-Represented Individual--When Allowed or Required.**

(i) In General. ~~An~~ A self-represented individual ~~not represented by an attorney: •~~ may ~~file electronically only if allowed by~~ use the court's electronic-filing system [to file documents and receive notice of activity in the case] unless a court order or ~~by~~ local rule prohibits the individual from doing so.~~; and~~ A self-represented individual ~~•~~ may be required to file electronically only by ~~court~~ order in a case~~,~~ or by a local rule that includes reasonable exceptions.

(ii) Local Provisions Prohibiting Access. If a local rule – or any other

20 I suggest this re-numbering in order to avoid running out of levels of numbering and lettering.

local court provision that extends beyond a particular litigant or case – prohibits self-represented [individuals] from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing [documents] and for receiving electronic notice [of activity in the case].

(iii) Conditions and Restrictions on Access. A court may set reasonable conditions and restrictions on self-represented [individuals'] access to the court's electronic-filing system.

(iv) Restrictions on a Particular [Individual]. A court may deny a particular [individual] access to the court's electronic-filing system and may revoke an [individual]'s previously granted access for not complying with the conditions authorized in (iii).

~~(iii)~~ **(D) Electronically Filed Same as a Written Paper.** A document filed electronically is a written paper for purposes of these rules.

~~(C)~~ (E) **When Paper Copies Are Required.** No paper copies are required when a document is filed electronically. If a document is filed by mail or by delivery to the district court or BAP, no additional copies are required. But the district court or BAP may, by local rule or order in a particular case, require that a specific number of paper copies be filed or furnished.

(3) Clerk's Refusal of Documents. The court clerk must not refuse to accept for filing any document solely because it is not presented in proper form as required by

these rules or by any local rule or practice.

~~(b)~~ (c) **Service of All Documents Required.** Unless a rule requires service by the clerk or the document will be served under (d)(1), a party must, at or before the time of the filing of a document, serve it on the other parties to the appeal. Service on a party represented by counsel must be made on the party's counsel.

~~(c)~~ (d) **Manner of Service.**

(1) **Service by a Notice of Filing Sent Through the Court's Electronic-Filing System.** A notice of filing sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But a court may provide by local rule that if a paper is filed under seal, it must be served by other means.

~~(1) Nonelectronic~~ (2) **Service by Other Means.** ~~Nonelectronic service~~ A paper may also be served under this rule by ~~any of the following~~:

(A) personal delivery;

(B) mail; ~~or~~

(C) third-party commercial carrier for delivery within 3 days.~~;~~ or

~~(2) Service By Electronic Means. Electronic service may be made by:~~

~~(A) sending a document to a registered user by filing it with the court's electronic-filing system; or~~

~~(B) using other~~ (D) electronic means that the person served has consented to in writing.

(3) **When Service Is Complete.**

(A) Service under (d)(1) is complete as of the date of the notice of filing.

(B) Service by other electronic means is complete on sending, unless the person making service receives notice that the document was not received by the person served.

(C) Service by mail or by third-party commercial carrier is complete on mailing or delivery to the carrier. ~~Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served.~~

(4) Definition of "Notice of Filing." The term "notice of filing" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the docket.

~~(d)~~ (e) Proof of Service.

(1) Requirements. A document presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

(A) an acknowledgement of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) the mail or electronic address, the fax number, or the address of the place of delivery--as appropriate for the manner of service--for

each person served.

(2) Delayed Proof of Service. A district or BAP clerk may accept a document for filing without an acknowledgement or proof of service, but must require the acknowledgment or proof of service to be filed promptly thereafter.

(3) For a Brief or Appendix. When a brief or appendix is filed, the proof of service must also state the date and manner by which it was filed.

~~(e)~~ (f) Signature Always Required.

(1) Electronic Filing. Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the counsel's electronic signature. A filing made through a person's electronic-filing account and authorized by that person--together with that person's name on a signature block--constitutes the person's signature.

(2) Paper Filing. Every document filed in paper form must be signed by the person filing it or, if the person is represented, by the person's counsel.

Committee Note

Rule 8011 is amended to address two topics concerning self-represented litigants. (Concurrent amendments are made to Rule 7005, Civil Rule 5, Criminal Rule 49, and Appellate Rule 25.) A new Rule 8011(a) addresses the scope of Rule 8011. Rule 8011(a) becomes Rule 8011(b) and is amended to expand the availability of electronic modes by which self-represented litigants can file documents with the court and receive notice of filings that others make in the case. Rule 8011(c) becomes Rule 8011(d) and is amended to address service of documents filed by a self-represented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. New Rule 8011(d)'s treatment of service is also reorganized to reflect the primacy of service by means of the electronic notice.

Subdivision (a). As noted above, concurrent amendments are changing the practice for

filings by self-represented litigants under the Civil, Criminal and Appellate Rules as well as Rule 8011. However, for the reasons explained in the Committee Note to Rule 7005, no similar amendments are being made elsewhere in the Bankruptcy Rules. Accordingly, this package of amendments will not change the practice for filings by self-represented litigants in the bankruptcy courts. Notices of appeal are filed in the court from which the appeal is taken, and so the practice concerning notices of appeal from the bankruptcy court should track the practice that applies to other filings in the bankruptcy court. Rule 8011 is designed only to govern filings in the district court or BAP, and not filings in the bankruptcy court. But now that Rule 8011's treatment of filing and service will diverge from the approach that applies in the bankruptcy court, it becomes more important to ensure clarity concerning which rule applies to the filing of a notice of appeal (or other document, such as a motion for a stay) in the bankruptcy court. Accordingly, new subdivision (a) provides that Rule 8011 governs signature, service, and filing of documents required or permitted to be filed in a district court or BAP.

Subdivision (b)(2)(C). Under new Rule 8011(b)(2)(C)(i), the presumption is the opposite of the presumption set by the prior Rule 8011(a)(2)(B)(ii). That is, under new Rule 8011(b)(2)(C)(i), self-represented litigants are presumptively authorized to use the court's electronic-filing system to file documents in their case subsequent to the case's commencement. If a district court or BAP wishes to restrict self-represented litigants' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 8011(b)(2)(C)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 8011(a)(2)(C)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 8011(b)(2)(C)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for self-represented litigants to the court's electronic-filing system, or (2) providing self-represented litigants with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program).

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing system. Rule 8011(b)(2)(C)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant

or case" to make clear that Rule 8011(b)(2)(C)(ii) does not restrict a court from entering an order barring a specific self-represented litigant from accessing the court's electronic-filing system.

Rule 8011(b)(2)(C)(iv) provides that the court may deny a specific self-represented litigant access to the court's electronic-filing system, and that the court may revoke a self-represented litigant's access to the court's electronic-filing system.

Subdivision (c). Existing Rule 8011(b) generally requires that a party, "at or before the time of filing a document, [must] serve it on the other parties to the appeal." The existing rule exempts from this requirement instances when "a rule requires service by the clerk." The rule is amended to add a second exemption, for instances when "the document will be served under (d)(1)." This amendment is necessary because new Rule 8011(d)(1) encompasses service by the notice of filing that results from the clerk's uploading into the system a paper filing by a self-represented litigant. In those circumstances, service will not occur "at or before the time of filing a document," but it will occur when the court's electronic-filing system sends the notice to the litigants registered to receive it.

Subdivision (d). Rule 8011(d) is restructured so that the primary means of service – that is, service by means of the court's electronic-filing system – is addressed first, in subdivision (d)(1). Existing Rule 8011(c)(1) becomes new Rule 8011(d)(2), which continues to address alternative means of service. New Rule 8011(d)(4) defines the term "notice of filing" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket.

Subdivision (d)(1). Amended Rule 8011(d)(1) eliminates the requirement of separate (paper) service on a litigant who is registered to receive a notice of filing from the court's electronic-filing system. Litigants who are registered to receive a notice of filing include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 8011(c)(2)(A)'s provision for service by "sending a document to a registered user by filing it with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

The last sentence of amended Rule 8011(d)(1) states that a court may provide by local rule that if a paper is filed under seal, it must be served by other means. This sentence is designed to account for districts or BAPs in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system.

Subdivision (d)(2). Subdivision (d)(2) carries forward the contents of current Rules 8011(c)(1) and (2), with two changes.

The subdivision's introductory phrase ("Nonelectronic service may be by any of the following") is amended to read "A paper may also be served under this rule by." This locution ensures that what will become Rule 8011(d)(2) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to a litigant who will be filing non-electronically but who wishes to effect service on their opponent before the time when the court will have uploaded the filing into the court's system (thus generating the notice of filing).

Prior Rule 8011(c)(2)(A)'s reference to "sending a document to a registered user by filing it with the court's electronic-filing system" is deleted, because this is now covered by new Rule 8011(d)(1).

Subdivision (d)(3). Rule 8011(c)(3) ("When Service is Complete") becomes Rule 8011(d)(3) and is amended to distinguish between service under new Rule 8011(d)(1) – that is, service by means of the notice of electronic filing, which is complete as of the notice's date – and service by "other electronic means," which continues to be complete on "sending, unless the person making service receives notice that the document was not received by the person served." Experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system.

Subdivision (d)(4). New Rule 8011(d)(4) defines the term "notice of filing" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of filing" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

* * *

Rule 8004. Leave to Appeal from an Interlocutory Order or Decree Under 28 U.S.C. § 158(a)(3)

(a) Notice of Appeal and Accompanying Motion for Leave to Appeal. To appeal under 28 U.S.C. § 158(a)(3) from a bankruptcy court's interlocutory order or decree, a party must file with the bankruptcy clerk a notice of appeal under Rule 8003(a). The notice must:

(1) be filed within the time allowed by Rule 8002;

(2) be accompanied by a motion for leave to appeal prepared in accordance with (b); and

(3) unless served electronically using the court's electronic-filing system, include proof of service in accordance with Rule 8011~~(d)~~ (e).

* * *

Committee Note

Rule 8004(a)(3) is amended to conform to the renumbering of Bankruptcy Rule 8011(d) as Rule 8011(e).

3. Treating bankruptcy appeals the same as proceedings in the bankruptcy court: Possible Appellate Rules amendment

Alternatively, the committees might decide not to amend Bankruptcy Rule 8011, and to preserve the current approach to filing and service for purposes of appeals to a district court or BAP. Note, though, that absent additional amendments, the service and filing approaches that apply on appeal to the court of appeals might be thought to track the (new) procedures that would apply in the district courts and courts of appeals generally.

This is because, under the current rules, Appellate Rule 25(a)(5), not Bankruptcy Rule 8011, governs filing and service in the courts of appeals. Appellate Rule 1(a)(1) provides: "These rules govern procedure in the United States courts of appeals." Bankruptcy Rule 8001(a) provides that the Part VIII Rules "govern certain procedures on appeal to a United States court of appeals under 28 U.S.C. § 158(d)." The 2014 Committee Note to Rule 8001(a) lists (as Part VIII Rules that "relate to appeals to courts of appeals") Rules 8004(e), 8006, 8007, 8008, 8009, 8010, 8025, and 8028) – but not Rule 8011.

Nor would it be persuasive to suggest that Bankruptcy Rule 1001 somehow applies Rules 5005 or 9036 to bankruptcy matters in the courts of appeals. It's true that Rule 1001(a) states that "[t]hese rules, together with the Official Bankruptcy Forms, govern the procedure in cases under the Bankruptcy Code, Title 11 of the United States Code." But Rules 5005 and 9036 are drafted in ways that show they are not designed to address proceedings in the court of appeals. For example, each refers to the "clerk," which is defined by Rule 9001(b)(2) to mean "a bankruptcy clerk if one has been appointed; otherwise, it means the district-court clerk."

Thus, the current rules allocate to Appellate Rule 25(a)(5) the role of governing filing and service for proceedings in the courts of appeals, including bankruptcy appeals. So if the rulemakers wish to exempt bankruptcy appeals from proposed updated treatment of SRL service

and e-filing in the courts of appeals, some amendments to the Appellate and Bankruptcy Rules would seem necessary to accomplish that. I am not sketching such amendments here, because I surmise that the committees will prefer to keep the practice in the courts of appeals uniform across types of appeal rather than exempting bankruptcy appeals from the new SRL service and e-filing approach in the courts of appeals. But one could tentatively say that the change could be accomplished by amending Rule 8011 and also Appellate Rule 6 (Appeal in a Bankruptcy Case).

III. Conclusion

The project on SRL service and e-filing, if it goes forward in any form, will require amendments to the Bankruptcy Rules. This memo sketched the basic choices that will arise depending on whether or not bankruptcy-court practice will diverge from the new SRL service and e-filing practices that will apply in the district courts and courts of appeals.

Encl.

MEMORANDUM

DATE: March 7, 2025

TO: Advisory Committees on Civil, Criminal, and Appellate Rules

FROM: Catherine T. Struve

RE: Project on service and electronic filing by self-represented litigants

As the Committees know, the project on service and electronic filing by self-represented litigants ("SRLs") has two basic goals. As to service, the goal is to eliminate the requirement of separate (paper) service (of documents after the case's initial filing) on a litigant who receives a Notice of Filing through the court's electronic-filing system or a court-based electronic-noticing program. As to filing, the idea is to make two changes compared with current practice: (1) to presumptively permit SRLs to file electronically (unless a court order or local rule bars them from doing so) and (2) to provide that a local rule or general court order that bars SRLs from using the court's electronic-filing system must include reasonable exceptions or must permit the use of another electronic method for filing documents and receiving electronic notice of activity in the case.

This memo sets out sketches for how those goals might be implemented in the Civil, Criminal, and Appellate Rules. During the fall 2024 advisory committee discussions, the Bankruptcy Rules Committee decided that it was not ready to endorse either aspect of this program for adoption as part of the Bankruptcy Rules. By contrast, the Civil, Appellate, and Criminal Rules Committees – which met subsequently – indicated willingness to proceed with the proposed amendments. At its January 2025 meeting, the Standing Committee discussed whether it would be justifiable to proceed with proposed amendments to the Civil, Appellate, and Criminal Rules if the Bankruptcy Rules were not correspondingly amended. The Standing Committee did not express opposition to such an approach.

At its upcoming spring meeting, the Bankruptcy Rules Committee will assess whether the decision of the other three advisory committees might provide a reason to reconsider its skepticism about the proposed amendments. In a separate memo[1] I discuss two different packages of amendments to the Bankruptcy Rules – one that would parallel the proposed

1 The copy of this memo submitted for potential inclusion in the agenda books of the Appellate and Civil Rules Committees will enclose that memo.

amendments that will be considered by the Civil, Appellate, and Criminal Rules Committees, and an alternative that could be adopted if the Bankruptcy Rules Committee instead adheres to its decision not to implement the proposed filing and service changes at this time. Because of the uncertainty surrounding what the Bankruptcy Rules Committee will decide, this memo assumes that the Bankruptcy Rules Committee might decide to adhere to its prior decision, and offers suggestions for consideration by the Appellate Rules Committee in case that occurs.

This memo sketches possible amendments to the Civil, Criminal, and Appellate Rules that would achieve the twin goals of the project. As participants in this project are aware, the service and filing rules in those sets of rules are very similar but not identical. As discussed during the Standing Committee's January 2025 meeting, this project does not seek to eliminate existing variations among the sets of service and filing rules. In a number of instances those variations likely reflect salient differences among the contexts of the different rule sets. Rather, the sketches in this memo attempt to transpose into each rule set the key features of the SRL service and e-filing project.

As an update on relevant recent work by the Federal Judicial Center, I also wanted to mention that Tim Reagan has prepared a new report, "United States District Courts' Local Rules and Procedures on Electronic Filing by Self-Represented Litigants,"[2] which discusses relevant local rules and procedures in all of the 94 district courts. And he reports that the FJC's Education Division is planning an episode of its documentary program, "Court to Court," on self-represented litigants' use of CM/ECF. The focus of the episode will be showing how a district court can successfully allow self-represented litigants access to electronic filing. That development helpfully responds to suggestions made in the fall 2024 meetings concerning the benefits of court education on this topic.

Because this memo is lengthy, here is a table of contents:

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2 The report is available at https://www.fjc.gov/content/391989/united-states-district-courts-local-rules-and-procedures-electronic-filing-self .

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I. Changes made since the prior draft of Civil Rule 5

This section briefly notes substantive differences between the Civil Rule 5 draft set out in Part II.A and the Civil Rule 5 draft that was included in the fall 2024 agenda books. (I am not specifically noting style changes, but I thank the style consultants for their excellent guidance.)

The fall 2024 draft included – as an option for making service – sending a paper "by email to the address that the court uses to email Notices of Filing – so long as the sender has designated in advance the email address from which such service will be made." This option came in for some criticism during the fall advisory committee meetings. A judge member of the Bankruptcy Rules Committee stated that the provision was confusing. In the Appellate Rules Committee meeting, the Committee's Clerk of Court representative also expressed reservations about the provision's workability in practice. In addition, the style consultants proposed changes that indicated they, too, found the provision confusing as drafted. To streamline the proposal and avoid distracting from the needed innovations that the core proposals will accomplish, I propose that we delete this provision from the drafts.

In the fall agenda book, proposed Civil Rule 5(d)(3)(B)(ii) referred to a "general court order." The style consultants pointed out that "general court order" doesn't appear elsewhere in the rules. I've tentatively changed it to "a local rule – or any other local court provision that extends beyond a particular litigant or case –" (see Part II.A, lines 85-87). This phrasing is intended to capture the fact Rule 5(d)(3)(B)(ii) is talking about court orders or rules that are not specific to a given litigant or case.

In the prior draft of Civil Rule 5, as in the draft set out here, subdivision (b)(3)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served," but no such proviso is included in new subdivision (b)(2). I have added a paragraph to the Committee Note to Rule 5(b)(3)(E) to explain this difference.

II. Civil Rules: Amendments to Civil Rule 5 (plus a conforming amendment)

Part II.A sets out the sketch of Civil Rule 5, revised in light of guidance from the style consultants. Part II.B sets out the conforming amendment to Civil Rule 6.

A. Civil Rule 5

Here is the sketch of the Civil Rule 5 amendments:

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

(1) In General. Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

* * *

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) <u>Service by a Notice of Filing Sent Through the Court's Electronic-Filing System.</u>

<u>A notice of filing sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But a court may provide by local rule that if a paper is filed under seal, it must be</u>

served by other means.

(3) Service by Other Means ~~in General~~. A paper ~~is~~ may also be served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address – in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) ~~sending it to a registered user by filing it with the court's electronic filing system or~~ sending it by ~~other~~ electronic means that the person has consented to in writing – in ~~either of~~ which event~~s~~ service is complete upon ~~filing or~~ sending, but is not effective if the ~~filer or~~ sender learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person has consented to in writing – in which event service is complete when the person making service delivers it to the agency designated to make delivery.

~~**(3) Using Court Facilities.** [Abrogated (Apr. 26, 2018, eff. Dec. 1, 2018.]~~ **(4) Serving**

Papers That Are Not Filed. Rule 5(b)(3) governs service of a paper that is not filed.

(5) Definition of "Notice of Filing." The term "notice of filing" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the docket.

* * *

(d) Filing.

(1) Required Filings; Certificate of Service.

(A) Papers ~~after~~ After the Complaint. Any paper after the complaint that is required to be served must be filed no later than[3] a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(B) Certificate of Service. No certificate of service is required when a paper is served under Rule 5(b)(2)~~by filing it with the court's electronic-filing~~

3 The style consultants had suggested changing "no later than" to "within." However, it subsequently occurred to me that "within" would not work. Typically service occurs simultaneously with filing (because both occur at the same moment through the court's electronic-filing system). In such typical instances, I don't think that a simultaneous service would occur "within" any amount of time "*after*" service. Cf. the 2023 amendment to Civil Rule 15(a)(1).

~~system~~. When a paper that is required to be served is served by other means:

(i) if ~~the paper~~ it is filed, a certificate of service must be filed with it or within a reasonable time after service; and

(ii) if ~~the paper~~ it is not filed, a certificate of service need not be filed, unless filing is required by court order or by local rule.

(2) ~~Nonelectronic Filing.~~ ~~A paper not filed electronically is filed by delivering it:~~

~~(A) to the clerk; or~~

~~(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.~~

~~(3)~~ Electronic Filing and Signing.

(A) By a Represented Person—Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(B) By ~~an Unrepresented~~ a Self-Represented[4] Person—When Allowed or

4 The current rules use "unrepresented" to refer to a litigant who does not have a lawyer. With the concurrence of the style consultants, I propose that we instead use "self-represented." "Self-represented" recognizes that the litigant is advocating on the litigant's own behalf. The Latin term "pro se" means "for oneself," which is closer to "self-represented" than "unrepresented." Courts and legal organizations increasingly use "self-represented" to describe pro se litigants. See, e.g., https://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/self-represented-litigants. And the entry in Black's Law Dictionary for "pro se litigant" includes "self-represented" but not "unrepresented": "pro se litigant (1857) One who represents oneself in a court proceeding without the assistance of a lawyer <the third case on the court's docket

Required.

(i) **In General.** A self-represented person ~~not represented by an attorney: (i)~~ may ~~file electronically only if allowed by~~ use the court's electronic-filing system [to file papers[5] and receive notice of activity in the case],[6] unless a court order or ~~by~~ local rule prohibits the person from doing so.~~; and (ii)~~ A self-represented person may be required to file electronically only by ~~court~~ order in a case~~,~~ or by a local rule that includes reasonable exceptions.

(ii) **Local Provisions Prohibiting Access.** If a local rule – or any other local court provision that extends beyond a particular litigant or

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involving a pro se>. — Often shortened to pro se, n. — Also termed pro per; self-represented litigant; litigant in propria persona; litigant pro persona; litigant pro per; litigant in person; (rarely) pro se-er." Black's Law Dictionary (12th ed. 2024) (Bryan A. Garner, Ed. in Chief).

5 Previous drafts have used "document," but it came to my attention that the rules we are thinking of amending take two different approaches. Bankruptcy Rule 5005, Civil Rule 5, Criminal Rule 49, and (in the main) Appellate Rule 25 use the word "paper," while Bankruptcy Rules 8011 and 9036 use the word "document." On the theory that internal consistency within a rule may be more valuable on this point than consistency across rules, this memo and my companion memo on the Bankruptcy Rules use "paper" when sketching amendments to Bankruptcy Rule 5005, Civil Rule 5, Criminal Rule 49, and Appellate Rule 25, but use "document" when sketching amendments to Bankruptcy Rules 8011 and 9036. Of course, the style consultants will be key guides on this issue.

6 The previous draft of (B)(i) said "may file electronically." The style consultants pointed out that a reader might think there is a lack of parallelism between this phrase in (B)(i) and the reference in (B)(ii) to the requirement for providing alternatives to CM/ECF access – namely "another electronic method for filing documents and receiving electronic notice of activity in the case." Substantively, one could argue the two are in parallel, because one who is allowed to use the court's electronic-filing system will also receive electronic notices from the court's electronic-filing system. So one could say in (B)(i) simply "use the court's electronic-filing system" (lines 78-79) and it would be implicit that this would also encompass electronic noticing. But it could be useful to also include the bracketed language on lines 79-80, especially since spelling things out may assist SRLs.

case – prohibits self-represented persons from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing [papers] and for receiving electronic notice [of activity in the case].[7]

(iii) **Conditions and Restrictions[8] on Access.** A court may set reasonable conditions and restrictions on self-represented persons' access to the court's electronic-filing system.

(iv) **Restrictions on a Particular Person.** A court may deny a particular person access to the court's electronic-filing system and may revoke a person's previously granted access for not complying with the conditions authorized in (iii).

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7 On lines 89-90, the style consultants suggest that the bracketed language could be deleted if the bracketed language in (i) is included.

8 The style consultants question whether "conditions and restrictions" is redundant. My initial reason for including both terms is that "conditions" on access occur when the court says that SRLs can only use the system on certain conditions (e.g., on condition that they first take a course), while "restrictions" on access occur when the court says that certain types of SRLs can't use the system (like SRLs who are incarcerated). Professor Kimble suggests, though, that "if you say that X can't use the system, then you're saying that a condition of using the system is that you're not X." He wonders whether there are "other instances in the rules of using 'conditions' without 'restrictions.'"

Two responses to this style suggestion occur to me – one semantic and one practical. The semantic response is that there are examples of existing rules that use a similar distinction. See, e.g., Bankruptcy Rule 4001 (distinguishing between prohibitions and conditions with respect to use, sale, or lease of property). More importantly, the practical response is that this provision is designed to speak not only to clerk's offices but also to self-represented litigants. Using both terms will help to head off arguments by a self-represented litigant that a particular condition or restriction is not authorized under the rules.

(C) Signing. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(D) Same as a Written Paper. A paper filed electronically is a written paper for purposes of these rules.

(3) Nonelectronic Filing.[9] A paper not filed electronically is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(4) Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

Committee Note

Rule 5 is amended to address two topics concerning self-represented litigants. (Concurrent amendments are made to [add cites to Bankruptcy Rules],[10] Criminal Rule 49, and Appellate Rule 25.) Rule 5(b) is amended to address service of documents (subsequent to the complaint) filed by a self-represented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Rule 5(b)'s treatment of service is also reorganized to reflect the primacy of service by means of the electronic notice. Rule 5(d) is amended to expand the availability of electronic modes by which self-represented litigants can file documents with the court and receive notice of filings that others make in the case. Also, the order of what had been Rules 5(d)(2) ("Nonelectronic Filing") and 5(d)(3) ("Electronic Filing and Signing") is reversed – with (d)(2) becoming (d)(3) and vice versa – to reflect the modern primacy of electronic filing.

9 This provision is currently Rule 5(d)(2) and is being relocated pursuant to the style consultants' guidance and to accord with the ordering in Criminal Rule 49 and with the modern primacy of electronic filing.

10 The cites to the Bankruptcy Rules will depend on the option selected by the Bankruptcy Rules Committee.

Subdivision (b). Rule 5(b) is restructured so that the primary means of service – that is, service by means of the court's electronic-filing system – is addressed first, in subdivision 5(b)(2). Existing Rule 5(b)(2) becomes new Rule 5(b)(3), which continues to address alternative means of service. New Rule 5(b)(4) addresses service of papers not filed with the court, and new Rule 5(b)(5) defines the term "notice of filing" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket.

Subdivision (b)(2). Amended Rule 5(b)(2) eliminates the requirement of separate (paper) service (of documents after the complaint) on a litigant who is registered to receive a notice of filing from the court's electronic-filing system. Litigants who are registered to receive a notice of filing include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 5(b)(2)(E)'s provision for service by "sending [a paper] to a registered user by filing it with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

The last sentence of amended Rule 5(b)(2) states that a court may provide by local rule that if a paper is filed under seal, it must be served by other means. This sentence is designed to account for districts in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system.

Subdivision (b)(3). Subdivision (b)(3) carries forward the contents of current Rule 5(b)(2), with two changes.

The subdivision's introductory phrase ("A paper is served under this rule by") is amended to read "A paper may also be served under this rule by." This locution ensures that what will become Rule 5(b)(3) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to a litigant who will be filing non-electronically but who wishes to effect service on their opponent before the time when the court will have uploaded the filing into the court's system (thus generating the notice of filing).

Subdivision (b)(3)(E). The prior reference to "sending [a paper] to a registered user by filing it with the court's electronic-filing system" is deleted, because this is now covered by new Rule 5(b)(2).

Although subdivision (b)(3)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served," no such proviso is included in new subdivision (b)(2). This is

because experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system.

Subdivision (b)(4). New Rule 5(b)(4) addresses service of papers not filed with the court. It makes explicit what is arguably implicit in new Rule 5(b)(2): If a paper is not filed with the court, then the court's electronic system will never generate a notice of filing, so the sender cannot use Rule 5(b)(2) for service and thus must use Rule 5(b)(3).

Subdivision (b)(5). New Rule 5(b)(5) defines the term "notice of filing" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of filing" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

Subdivision (d)(1)(B). Subdivision (d)(1)(B) previously provided that no certificate of service was required when a paper was served "by filing it with the court's electronic-filing system." This phrase is replaced by "under Rule 5(b)(2)" in order to conform to the change to subdivision (b)(2).

Subdivision (d)(2)(B). Under new Rule 5(d)(2)(B)(i), the presumption is the opposite of the presumption set by the prior Rule 5(d)(3)(B). That is, under new Rule 5(d)(2)(B)(i), self-represented litigants are presumptively authorized to use the court's electronic-filing system to file documents in their case subsequent to the case's commencement. If a district wishes to restrict self-represented litigants' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 5(d)(2)(B)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 5(d)(2)(B)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 5(d)(2)(B)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for self-represented litigants to the court's electronic-filing system, or (2) providing self-represented litigants with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program).

For a court that adopts the option of allowing reasonable access to the court's electronic-

filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing system. Rule 5(d)(2)(B)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 5(d)(2)(B)(ii) does not restrict a court from entering an order barring a specific self-represented litigant from accessing the court's electronic-filing system.

Rule 5(d)(2)(B)(iv) provides that the court may deny a specific self-represented litigant access to the court's electronic-filing system, and that the court may revoke a self-represented litigant's access to the court's electronic-filing system.

B. Civil Rule 6

As you know, a conforming change to Civil Rule 6 would be necessary in order to update cross-references. That draft has not changed since the version shown in the fall 2024 agenda books:

Rule 6. Computing and Extending Time; Time for Motion Papers

* * *

(d) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(~~2~~3)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

Committee Note

Subdivision (d) is amended to conform to the renumbering of Civil Rule 5(b)(2) as Rule 5(b)(3).

III. Criminal Rules: Amendments to Criminal Rule 49 (plus a conforming amendment)

Criminal Rule 49 contains the filing and service provisions for the Criminal Rules. In

transposing the Civil Rule 5 draft into Criminal Rule 49, a few questions arise about the degree of parallelism that we seek to attain. On the whole, it seems wise not to attempt to bring the two rules into complete parallel. Existing differences between the rules were not eliminated during the prior joint projects concerning e-filing rules, and attempting to eliminate all such differences in the context of this project may create a distraction from the project's goals.

A. Criminal Rule 49

Rule 49. Serving and Filing Papers

(a) Service on a Party.

(1) What is Required. Each of the following must be served on every party: any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper.

(2) Serving a Party's Attorney. Unless the court orders otherwise, when these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party.

(3) Service by ~~Electronic Means~~ a Notice of Filing Sent Through the Court's Electronic-Filing System. A notice of filing sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But a court may provide by local rule that if a paper is filed under seal, it must be served by other means.

~~**(A) Using the Court's Electronic-Filing System.** A party represented by an attorney may serve a paper on a registered user by filing it with the court's electronic-filing system. A party not represented by an attorney may do so only if allowed by court order or local rule. Service is complete upon~~

~~filing, but is not effective if the serving party learns that it did not reach the person to be served.~~

~~**(B) Using Other Electronic Means.** A paper may be served by any other electronic means that the person consented to in writing. Service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served.~~

(4) Service by ~~Nonelectronic~~ Other Means. A paper may also be served by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address – in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address; ~~or~~

(E) sending it by electronic means that the person has consented to in writing – in which event service is complete upon sending, but is not effective if the sender learns that it did not reach the person to be served; or

~~(E)~~ (F) delivering it by any other means that the person consented to in writing – in which event service is complete when the person making service

delivers it to the agency designated to make delivery.

[(5) Serving Papers That Are Not Filed. Rule 49(a)(4) governs service of a paper that is not filed.[11]]

(6) Definition of "Notice of Filing." The term "notice of filing" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the docket.

(b) Filing.

(1) When Required; Certificate of Service. Any paper that is required to be served must be filed no later than a reasonable time after service. No certificate of service is required when a paper is served ~~by filing it with the court's electronic-~~

11 The Civil and Criminal Rules take different approaches as to papers that are served but not filed. The Civil Rules take the view that, for example, discovery responses are papers that are served, and so when Civil Rule 5(d)(1) directs that papers after the complaint that must be served must also be filed, it includes an additional sentence listing out items (disclosures, discovery requests, and discovery responses) that mustn't be filed as an initial matter.

Criminal Rule 49, by contrast, does not discuss in explicit terms service of, for example, disclosures under Criminal Rule 16 or production of witness statements under Criminal Rule 26.2. It may be that Criminal Rule 49, unlike Civil Rule 5, simply regards such papers as falling outside its ambit. Rule 49(a)(1)'s list of papers that must be served is: "any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper." By contrast, Civil Rule 5(a)(1)'s list of papers that must be served explicitly includes "discovery paper[s] required to be served on a party, unless the court orders otherwise," Civil Rule 5(a)(1)(C).

This difference might lead to a difference concerning what is shown here as proposed Rule 49(a)(5). Even in Civil Rule 5, it's not clear to me that we really need that provision; it simply makes explicit what is already implicit, namely, that if a document is not filed, then it won't be served on anyone via the court's electronic-filing system. Given the different treatment of the topic of served-but-not-filed documents in the Criminal Rules, I wonder if this provision might be less useful in the context of the Criminal Rules.

~~filing system~~ under Rule 49(a)(3). When a paper is served by other means, a certificate of service must be filed with it or within a reasonable time after service or filing.

(2) ~~Means of~~ Electronic Filing and Signing.

(A) By a Represented Person – Generally Required; Exceptions. A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.[12]

(B) By a Self-Represented Person – When Allowed or Required.

(i) In General. A self-represented person may use the court's electronic-filing system [to file papers and receive notice of activity in the case], unless a court order or local rule prohibits the person from doing so.[13]

(ii) Local Provisions Prohibiting Access. If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits self-represented persons from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing [papers] and for receiving electronic notice [of activity in the

12 This is currently in Rule 49(b)(3)(A). It is moved here to conform with the goal of the project to foreground e-filing as the primary filing method.

13 This provision carries forward a feature of current Rule 49(b)(3)(B) – namely, the absence of any reference to local provisions requiring a self-represented person to e-file.

case].

(iii) Conditions and Restrictions on Access. A court may set reasonable conditions and restrictions on self-represented persons' access to the court's electronic-filing system.

(iv) Restrictions on a Particular Person. A court may deny a particular person access to the court's electronic-filing system and may revoke a person's previously granted access for not complying with the conditions authorized in (iii).

(C) Means of Filing. ~~**Electronically.**~~ A paper is filed electronically by filing it with the court's electronic-filing system.

(D) Signature. A filing made through a person's electronic-filing account and authorized by that person, together with the person's name on a signature block, constitutes the person's signature.[14]

(E) Qualifies as Written Paper. A paper filed electronically is written or in writing under these rules.

~~**(B)**~~ **(3) Nonelectronic~~ally~~ Filing.** A paper not filed electronically is filed by delivering it:

(i) to the clerk; or

(ii) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

14 Professor Kimble asks how Rule 49(b)(2)(D) relates to Rule 49(b)(4). That thoughtful question seems to me to lie outside the scope of the SRL service and e-filing project. I of course defer to the Criminal Rules Committee as to whether or not it wishes to consider a change in this regard while it is considering the amendments to Rule 49 sketched in this memo.

~~**(3) Means Used by Represented and Unrepresented Parties.**~~

~~**(A) Represented Party.** A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.~~

~~**(B) Unrepresented Party.** A party not represented by an attorney must file nonelectronically, unless allowed to file electronically by court order or local rule.~~

(4) Signature. Every written motion and other paper must be signed by at least one attorney of record in the attorney's name--or by a person filing a paper if the person is not represented by an attorney. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or person's attention.

(5) Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

(c) Service and Filing by Nonparties. A nonparty may serve and file a paper only if doing so is required or permitted by law. A nonparty must serve every party as required by Rule 49(a), but may use the court's electronic-filing system only if allowed by court order or local rule.

(d) Notice of a Court Order. When the court issues an order on any post-arraignment motion, the clerk must serve notice of the entry on each party as required by Rule

49(a). A party also may serve notice of the entry by the same means. Except as Federal Rule of Appellate Procedure 4(b) provides otherwise, the clerk's failure to give notice does not affect the time to appeal, or relieve--or authorize the court to relieve--a party's failure to appeal within the allowed time.

Committee Note

Rule 49 is amended to address two topics concerning self-represented litigants. (Concurrent amendments are made to [add cites to Bankruptcy Rules],[15] Civil Rule 5, and Appellate Rule 25.) Rule 49(a) is amended to address service of documents filed by a self-represented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Rule 49(b) is amended to expand the availability of electronic modes by which self-represented litigants can file documents with the court and receive notice of filings that others make in the case.

Subdivision (a)(3). Rule 49(a)(3) is revised so that it focuses solely on the service of notice by means of the court's electronic-filing system. What had been Rule 49(a)(3)(B) (concerning "other electronic means" of service) is relocated, as revised, to a new Rule 49(a)(4)(E).

Amended Rule 49(a)(3) eliminates the requirement of separate (paper) service on a litigant who is registered to receive a notice of filing from the court's electronic-filing system. Litigants who are registered to receive a notice of filing include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 49(a)(3)(A)'s provision for service by "on a registered user by filing [the paper] with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

The last sentence of amended Rule 49(a)(3) states that a court may provide by local rule that if a paper is filed under seal, it must be served by other means. This sentence is designed to account for districts in which parties in the case cannot access other participants' sealed filings

15 The cites to the Bankruptcy Rules will depend on the option selected by the Bankruptcy Rules Committee.

via the court's electronic-filing system.

Subdivision (a)(4). Rule 49(a)(4) is retitled "Service by Other Means" to reflect the relocation into that subdivision – as new Rule 49(a)(4)(E) – what was previously Rule 49(a)(3)(B). The subdivision's introductory phrase ("A paper may be served by") is amended to read "A paper may also be served by." This locution ensures that Rule 49(a)(4) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to a litigant who will be filing non-electronically but who wishes to effect service on their opponent before the time when the court will have uploaded the filing into the court's system (thus generating the notice of filing).

Although new subdivision (a)(4)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served," no such proviso is included in new subdivision (a)(3). This is because experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system.

[Subdivision (a)(5). New Rule 49(a)(5) addresses service of papers not filed with the court. It makes explicit what is arguably implicit in new Rule 49(a)(3): If a paper is not filed with the court, then the court's electronic system will never generate a notice of filing, so the sender cannot use Rule 49(a)(3) for service and thus must use Rule 49(a)(4).]

Subdivision (a)(6). New Rule 49(a)(6) defines the term "notice of filing" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of filing" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

Subdivision (b)(1). Subdivision (b)(1) previously provided that no certificate of service was required when a paper was served "by filing it with the court's electronic-filing system." This phrase is replaced by "under Rule 49(a)(3)" in order to conform to the change to subdivision (a)(3).

Subdivision (b)(2). Amended Rule 49(b)(2) governs electronic filing and signing. New Rules 49(b)(2)(A) and (B) replace what had been Rule 49(b)(3). Under new Rule 49(b)(2)(B)(i), the presumption is the opposite of the presumption set by the prior Rule 49(b)(3)(B). That is, under new Rule 49(b)(2)(B)(i), self-represented litigants are presumptively authorized to use the court's electronic-filing system to file documents in their case subsequent to the case's commencement. If a district wishes to restrict self-represented litigants' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 49(b)(2)(B)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 49(b)(2)(B)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 49(b)(2)(B)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for self-represented litigants to the court's electronic-filing system, or (2) providing self-represented litigants with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program).

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing system. Rule 49(b)(2)(B)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 49(b)(2)(B)(ii) does not restrict a court from entering an order barring a specific self-represented litigant from accessing the court's electronic-filing system.

Rule 49(b)(2)(B)(iv) provides that the court may deny a specific self-represented litigant access to the court's electronic-filing system, and that the court may revoke a self-represented litigant's access to the court's electronic-filing system.

Subdivision (b)(3). What had been Rule 49(b)(2)(B) (concerning nonelectronic means of filing) is carried forward as new Rule 49(b)(3).

B. Criminal Rule 45

A conforming amendment would be necessary in order to update a cross-reference in Criminal Rule 45(c):

Rule 45. Computing and Extending Time

* * *

(c) Additional Time After Certain Kinds of Service. Whenever a party must or may act within

a specified time after being served and service is made under Rule 49(a)(4)(C), (D), and ~~(E)~~ (F), 3 days are added after the period would otherwise expire under subdivision (a).

Committee Note

Subdivision (c) is amended to conform to the renumbering of Criminal Rule 49(a)(4)(E) as Rule 49(a)(4)(F).

IV. Appellate Rules: Amendments to Appellate Rule 25

This section first discusses (in Part IV.A) a suggestion for implementing the project's goals through amendments to Appellate Rule 25. It then turns (in Part IV.B) to a brief discussion of options that might be considered for dovetailing the Appellate Rules with whichever approach the Bankruptcy Rules Committee selects for the Bankruptcy Rules.

A. Implementation: Amendments to Appellate Rule 25

To implement the project's twin goals in Appellate Rule 25, the following amendments could be considered. You will note that I am not suggesting the inclusion of the new provision about service of documents not filed with the court.[16] That is because I could not think of documents that would meet that description in the context of a proceeding in the court of appeals.

Rule 25. Filing and Service

(a) Filing.

(1) Filing with the Clerk. A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) Filing: Method and Timeliness.

(A) Nonelectronic Filing.

(i) In General. For a paper not filed electronically, filing may be accomplished by mail addressed to the clerk, but filing is not

16 Cf. proposed Civil Rule 5(b)(4).

timely unless the clerk receives the papers within the time fixed for filing.

(ii) A Brief or Appendix. A brief or appendix not filed electronically is timely filed, however, if on or before the last day for filing, it is:

- mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid; or
- dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(iii) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(A)(iii). A paper not filed electronically[17] by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

- it is accompanied by: a declaration in compliance with 28 U.S.C. § 1746--or a notarized statement--setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing

17 Some participants have noted that it would be useful to consider updating the inmate filing rule to address timeliness of documents filed pursuant to an electronic filing program within the institution. This project does not encompass such a proposal, but if this project extends into another rulemaking cycle, it might be worthwhile to expand it to include inmate-filing provisions, including this one and the one in Appellate Rule 4(c)(1).

that the paper was so deposited and that postage was prepaid; or

• the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(A)(iii).

(B) Electronic Filing ~~and Signing. (i) By~~ by a Represented Person--Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

~~(ii)~~ **(C) Electronic Filing by ~~By an Unrepresented~~ a Self-Represented Person--When Allowed or Required.**

(i) In General. A self-represented person ~~not represented by an attorney: •~~ may ~~file electronically only if allowed by~~ use the court's electronic-filing system [to file papers and receive notice of activity in the case], unless a court order or ~~by~~ local rule prohibits the person from doing so.~~; and •~~ A self-represented person may be required to file electronically only by ~~court~~ order in a case~~,~~ or by a local rule that includes reasonable exceptions.

(ii) Local Provisions Prohibiting Access. If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits self-represented persons from using the court's electronic-filing system, the provision must include reasonable

exceptions or must permit the use of another electronic method for filing [papers] and for receiving electronic notice [of activity in the case].

(iii) Conditions and Restrictions on Access. A court may set reasonable conditions and restrictions on self-represented persons' access to the court's electronic-filing system.

(iv) Restrictions on a Particular Person. A court may deny a particular person access to the court's electronic-filing system and may revoke a person's previously granted access for not complying with the conditions authorized in (iii).

~~(iii)~~ **(D) Signing.** A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

~~(iv)~~ **(E) Same as a Written Paper.** A paper filed electronically is a written paper for purposes of these rules.

(3) Filing a Motion with a Judge. *[Not shown in this draft, for brevity.]*

(4) Clerk's Refusal of Documents. *[Not shown in this draft, for brevity.]*

(5) Privacy Protection. *[Not shown in this draft, for brevity.]*

(b) Service of All Papers Required. Unless a rule requires service by the clerk or the paper will be served under Rule 25(c)(1), a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Service by a Notice of Filing Sent Through the Court's Electronic-Filing System. A notice of filing sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But a court may provide by local rule that if a paper is filed under seal, it must be served by other means.

(2) Service by Other Means. A paper may also be served under this rule by:

~~Nonelectronic service may be any of the following:~~

(A) personal delivery, including delivery to a responsible person at the office of counsel;

(B) ~~by~~ mail; ~~or~~

(C) ~~by~~ third-party commercial carrier for delivery within 3 days; or

(D) ~~. (2) Electronic service of a paper may be made (A) by sending it to a registered user by filing it with the court's electronic-filing system or (B) by~~ sending it by ~~other~~ electronic means that the person to be served consented to in writing.

(3) **Considerations in Choosing Other Means.** When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) **When Service Is Complete.** Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by a notice from the court's electronic-

filing system is complete as of the notice's date.[18] Service by other electronic means is complete on filing or sending, unless the party making service is notified that the paper was not received by the party served.

(5) Definition of "Notice of Filing." The term "notice of filing" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the docket.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

18 This provision will take care of the issue of periods that are timed from service. Appellate Rule 26(c) provides: "(c) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served, and the paper is not served electronically on the party or delivered to the party on the date stated in the proof of service, 3 days are added after the period would otherwise expire under Rule 26(a)." Under Rule 26(c), the "three-day rule" doesn't apply when a paper is served electronically. When electronic service of a paper filing occurs by means of the court's electronic-filing system, there may be a (generally brief) time lag between the submission of the paper filing to the court and the clerk's upload of the paper into the electronic-filing system. By providing that such service is complete as of the date of the notice of filing, amended Rule 25(c)(4) will ensure that the recipient's response time is not cut short.

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(A)(ii), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. *[Not shown in this draft, for brevity.]*

Committee Note

Rule 25 is amended to address two topics concerning self-represented litigants. (Concurrent amendments are made to [add cites to Bankruptcy Rules],[19] Civil Rule 5, and Criminal Rule 49.) Rule 25(a)(2) is amended to expand the availability of electronic modes by which self-represented litigants can file documents with the court and receive notice of filings that others make in the case. Rule 25(c) is amended to address service of documents filed by a self-represented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Rule 25(c)'s treatment of service is also reorganized to reflect the primacy of service by means of the electronic notice.

Subdivision (a)(2)(C). Under new Rule 25(a)(2)(C)(i), the presumption is the opposite of the presumption set by the prior Rule 25(a)(2)(B)(ii). That is, under new Rule 25(a)(2)(C)(i), self-represented litigants are presumptively authorized to use the court's electronic-filing system to file documents in their case. If a district wishes to restrict self-represented litigants' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 25(a)(2)(C)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 25(a)(2)(C)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

19 The cites to the Bankruptcy Rules will depend on the option selected by the Bankruptcy Rules Committee.

A court can comply with Rules 25(a)(2)(C)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for self-represented litigants to the court's electronic-filing system, or (2) providing self-represented litigants with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program).

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, filings that commence a proceeding in the court of appeals – cannot be filed by means of the court's electronic-filing system. Rule 25(a)(2)(C)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 25(a)(2)(C)(ii) does not restrict a court from entering an order barring a specific self-represented litigant from accessing the court's electronic-filing system.

Rule 25(a)(2)(C)(iv) provides that the court may deny a specific self-represented litigant access to the court's electronic-filing system, and that the court may revoke a self-represented litigant's access to the court's electronic-filing system.

Former Rules 25(a)(2)(B)(iii) and (iv) are carried forward but renumbered as Rules 25(a)(2)(D) and (E).

Subdivision (b). Existing Rule 25(b) generally requires that a party, "at or before the time of filing a paper, [must] serve a copy on the other parties to the appeal or review." The existing rule exempts from this requirement instances when "a rule requires service by the clerk." The rule is amended to add a second exemption, for instances when "the paper will be served under Rule 25(c)(1)." This amendment is necessary because new Rule 25(c)(1) encompasses service by the notice of filing that results from the clerk's uploading into the system a paper filing by a self-represented litigant. In those circumstances, service will not occur "at or before the time of filing a paper," but it will occur when the court's electronic-filing system sends the notice to the litigants registered to receive it.

Subdivision (c). Rule 25(c) is restructured so that the primary means of service – that is, service by means of the court's electronic-filing system – is addressed first, in Rule 25(c)(1). Existing Rule 25(c)(1) becomes new Rule 25(c)(2), which continues to address alternative means of service. New Rule 25(c)(5) defines the term "notice of filing" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket.

Subdivision (c)(1). Amended Rule 25(c)(1) eliminates the requirement of separate (paper) service on a litigant who is registered to receive a notice of filing from the court's electronic-filing system. Litigants who are registered to receive a notice of filing include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 25(c)(2)'s provision for service by "sending [a paper] to a registered user by filing it with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

The last sentence of amended Rule 25(c)(1) states that a court may provide by local rule that if a paper is filed under seal, it must be served by other means. This sentence is designed to account for circuits (if any) in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system.

Subdivision (c)(2). Subdivision (c)(2) carries forward the contents of current Rule 25(c)(1), with two changes.

The subdivision's introductory phrase ("Nonelectronic service may be any of the following") is amended to read "A paper may also be served under this rule by." This locution reflects the inclusion of other electronic means (apart from service through the court's electronic-filing system) in new Rule 25(c)(2)(D) and also ensures that what will become Rule 25(c)(2) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to a litigant who will be filing non-electronically but who wishes to effect service on their opponent before the time when the court will have uploaded the filing into the court's system (thus generating the notice of filing).

The prior reference to "sending [a paper] to a registered user by filing it with the court's electronic-filing system" is deleted, because this is now covered by new Rule 25(c)(1).

Subdivision (c)(4). Amended subdivision (c)(4) carries forward the prior rule's provisions that service by electronic means other than through the court's electronic-filing system is complete on sending unless the party making service is notified that the paper was not received by the party served, and that service by mail or by commercial carrier is complete on mailing or delivery to the carrier.

As to service through the court's electronic-filing system, the amendments make two changes. First, the amended rule provides that such service "is complete as of the notice's date." Under new subdivision (c)(1), when a litigant files a paper other than through the court's electronic-filing system, service on a litigant who is registered to receive a notice of filing

through the court's electronic-filing system occurs by means of the notice of filing. But that service does not occur "on filing" when the filing is made other than through the court's electronic-filing system. There can be a short time lag between the date the litigant files the document with the court and the date that the clerk's office uploads it into the court's electronic-filing system. Thus, new subdivision (c)(1) and amended subdivision (c)(4) provide that service by a notice of filing sent to a person registered to receive it through the court's electronic-filing system is complete as of the date of the notice of filing.

Second, although subdivision (c)(4) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "is notified that the paper was not received by the party served," no such proviso is included as to service by a notice of filing sent to a person registered to receive it through the court's electronic-filing system. This is because experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system.

Subdivision (c)(5). New Rule 25(c)(5) defines the term "notice of filing" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of filing" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

B. Dovetailing the Appellate Rules with the Bankruptcy Rules

Because the Appellate Rules address bankruptcy appeals as well as other types of proceedings in the courts of appeals, it will be necessary to ensure that the Bankruptcy and Appellate Rules work seamlessly together. This topic is discussed at greater length in Part II.B of the separate memorandum to the Bankruptcy Rules Committee. In brief, if the Bankruptcy Rules Committee were to change its decision and were to propose adoption for the Bankruptcy Rules of the twin goals of the SRL project, then the proposed amended Bankruptcy and Appellate Rules would work smoothly together because the approach taken in the originating court would be the same as that taken in the court of appeals. If, instead, the Bankruptcy Rules Committee adheres to its fall 2024 decision not to propose adoption of the SRL project's changes in the Bankruptcy Rules, then it will be necessary to determine how to handle bankruptcy appeals.

The memorandum to the Bankruptcy Rules Committee suggests that the best solution might be to have the procedures in bankruptcy appeals track the new procedures that will generally apply in the district courts and the courts of appeals. If that approach is adopted, it would necessitate a change to Bankruptcy Rule 8011 but no particular change to the Appellate Rules.

If instead the decision were made that the procedures in the court of appeals should track those in the bankruptcy court, this would entail amending a couple of relevant rules. I am not sketching such amendments here, because I surmise that the committees will prefer to keep the practice in the courts of appeals uniform across types of appeal rather than exempting bankruptcy appeals from the new SRL service and e-filing approach in the courts of appeals. But one could tentatively say that the change, if it were deemed advisable, could be accomplished by amending Rule 8011 and also Appellate Rule 6 (Appeal in a Bankruptcy Case).

III. Conclusion

The project on SRL service and e-filing will entail implementing amendments to the Civil, Criminal, and Appellate Rules, and either implementing or conforming amendments to the Bankruptcy Rules.

With enclosure (for the copies of this memorandum submitted to the Civil and Appellate Rules Committees)
Without enclosure (for the copy of this memorandum submitted to the Criminal Rules Committee)

TAB 5

TAB 5A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: REVISED SUGGESTION FOR AMENDMENT TO RULE 2003 (MEETING OF CREDITORS OR EQUITY SECURITY HOLDERS)

DATE: MARCH 4, 2025

Rebecca Garcia, a chapter 12 and chapter 13 trustee, submitted a suggestion (Suggestion 24-BK-G) to amend Rule 2003(a) and (c) as pertains to the timing, location, and recording of meetings of creditors in chapter 7, 11, 12, and 13 cases. She made this suggestion, which was endorsed by the Association of Chapter 12 Trustees and the National Association of Chapter 13 Trustees, in response to the current practice of conducting the meetings remotely by means of Zoom.

The Subcommittee provided an overview of the suggestion at the fall meeting of the Advisory Committee and sought the Committee's input on several issues. In response to that discussion, Ms. Garcia has submitted a revised suggestion (Suggestion 25-BK-B), which is discussed below.

Also since the fall meeting, Subcommittee member Nancy Whaley conducted a survey of chapter 12 and 13 trustees, which sought input about the timing and location of meetings of creditors. Finally, after the Subcommittee met and as agenda materials for the Advisory Committee were being prepared, the National Association of Bankruptcy Trustees ("NABT") submitted a related suggestion (Suggestion 25-BK-C) to amend Rule 2003.

The Subcommittee does not have a recommendation to present at this meeting. Instead, this memo discusses the developments mentioned above, the Subcommittee's deliberations at its February meeting, and the next steps the Subcommittee plans to take.

The Revised Suggestion

Ms. Garcia's proposed amendment, as revised, is as follows:

Rule 2003. Meeting of Creditors or Equity Security Holders

(a) DATE AND PLACE OF THE MEETING.

(1) *Date.* Except as provided in §341(e), the United States trustee must call a meeting of creditors to be held:

(A) in a Chapter 7 or 11 case, no fewer than 21 days and no more than 40 days after the order for relief;

(B) in a Chapter 12 case, no fewer than 21 days and no more than ~~35~~60 days after the order for relief; or

(C) in a Chapter 13 case, no fewer than 21 days and no more than ~~50~~60 days after the order for relief.

(2) *Effect of a Motion or an Appeal.* The United States trustee may set a later date for the meeting if there is a motion to vacate the order for relief, an appeal from such an order, or a motion to dismiss the case.

(3) *Manner of Meeting*~~*Place*~~*; Possible Change in the Meeting Date*. The meeting may be held remotely via video. ~~at a regular place for holding court. Or the~~ If a video meeting is not practical, the United States trustee may designate any other place or method ~~in the district~~ that is convenient for the parties in interest to hold the meeting. ~~If the designated meeting place is not regularly staffed by the United States trustee or an assistant who may preside, the~~ The United States trustee, in its discretion, may hold the meeting in Chapter 7 and 11 cases~~, may be held~~ no more than 60 days after the order for relief.

* * * *

This proposed amendment differs from the original suggestion in the following ways:

1. The requested changes have been updated so they are made to the restyled Rule 2003 that went into effect on December 1, 2024.

2. Instead of requesting changes to the timing of the chapter 7 and chapter 11 § 341 meetings, the change is limited to chapters 12 and 13.

3. The request to change the language regarding recording in subdivision (c) is withdrawn.

Remote Meetings of Creditors

In her original suggestion, Ms. Garcia explained that "Section 341 meetings are now largely [conducted] via remote video (Zoom)." The proposed amendment to Rule 2003(a) would provide explicit authority for this practice, thereby no longer calling for meetings to be held only at "a regular place for holding court . . . or any other place in the district that is convenient for the parties in interest."

At the fall Advisory Committee meeting, members discussed whether Rule 2003 needs to be amended to expressly recognize a practice that is already well established in all districts. There was little enthusiasm for such an amendment. Members said that the rule seems to be working well in this regard and that a rule change might suggest that the current use of remote meetings is unauthorized.

Related to the issue of conducting meetings of creditors by video is the matter of where the meetings may take place. Currently the rule specifies that the meeting must take place in the district—either at "a regular place for holding court" or any other place that is "convenient for the parties in interest." Ms. Garcia suggests eliminating references to where the meeting may be held because the use of videoconferencing makes location irrelevant.

As the rule has been interpreted for remote meetings, the location requirement applies to where the trustee must be present. Discussion at the fall meeting revealed that, in addition to the rule's requirement of location within the district, U.S. trustees generally require that the trustee conduct the meeting of creditors from his or her main office.

Ms. Whaley surveyed chapter 12 and chapter 13 trustees regarding these location requirements. Approximately 30% of the chapter 13 respondents said that they have conducted video meetings from outside the district, and approximately the same number said that they have

conducted them from somewhere other than their main office. Many respondents stated that they didn't think that conducting meetings from locations other than their main office would present any problems.[1]

Ms. Garcia's proposed amendment would eliminate the "in-the-district" requirement, but would not otherwise address the trustee's location. Any additional requirements, such as the main-office requirement, would continue to be left up to the U.S. trustee.

At the fall meeting, Ramona Elliott said that she understood that the National Association of Bankruptcy Trustees would be submitting its own suggestion for amending Rule 2003. In light of that information, the Advisory Committee decided to table further consideration of videoconferencing aspects of Ms. Garcia's suggestion. As a result, the Subcommittee took no action on that part of the suggestion at its recent meeting.

Since that time, NABT has submitted a suggestion to amend Rule 2003 to authorize remote meetings of creditors. In addition, it suggests that the rule be amended to do the following:

1. Deem the remote meeting to take place in the district that the court appointing the trustee is located, no matter where the parties, including the trustee, and their counsel are located.
2. Specifically authorize the trustee to administer oaths under federal law in the jurisdiction where the bankruptcy is pending, no matter where the parties are located.
3. Authorize the trustee to administer oaths remotely, so long as the trustee can positively identify the witness.

The Subcommittee has not had an opportunity to consider these proposals.

[1] Of the 13 respondents to the chapter 12 survey, approximately 54% said that they have conducted video meetings from outside the district, and approximately 31% said that they have conducted them from somewhere other than their main office.

Extended Time Limits

Currently Rule 3002 prescribes different time limits for setting the meeting of creditors depending on the case's chapter. The time periods are as follows:

Chapter 7 or 11 – no fewer than 21 days and no more than 40 days after the order for relief;

Chapter 12 – no fewer than 21 days and no more than 35 days after the order for relief;

Chapter 13 – no fewer than 21 days and no more than 50 days after the order for relief.

In addition, the rule provides that "[i]f the designated meeting place is not regularly staffed by the United States trustee or an assistant who may preside, the meeting may be held no more than 60 days after the order for relief."

Ms. Garcia's revised suggestion proposes that the time limits in chapter 12 and 13 cases be no fewer than 21 days and no more than 60 days after the order for relief.

Because other time periods in the Bankruptcy Code and Rules are expressed in relation to the meeting of creditors,[2] a change to the times in Rule 2003(a) could have a ripple effect elsewhere. Ms. Whaley, however, has said that the impact of such a change on other provisions would be less than might otherwise appear. She has explained that under the current rule—prior to the switch to remote meetings—meetings of creditors were often set for 60 days after the order for relief. That scheduling relied on the provision that allows an extended 60-day deadline "if the designated meeting place is not regularly staffed by the United States trustee or an assistant who may preside." The proposed amendment for a 60-day deadline, Ms. Whaley said, would merely reflect that practice.

[2] *See* Code §§ 521(a)(2)(A), 521(a)(2)(B), 521(e)(2)(A)(i, ii), 1308(a), and 1308(b); Rules 1006(b)(2), 1007(c), 1017(e), 1019(1), 1020(b), 2015.3(b), 4002(b), 4004(a), 4007(c), 4008(a), and 5009(b).

Discussion at the fall Advisory Committee meeting revealed opposition to extending the time periods for meetings of creditors in chapter 7 and 11 cases, and Ms. Garcia has dropped that aspect of her suggestion. Members of the Committee, however, favored obtaining more information from chapter 12 and 13 trustees about the timing of meetings. Ms. Whaley has now surveyed trustees on that topic.

Of the 83 respondents to the chapter 13 survey, 46% said that the current 50-day time limit caused them problems in managing their § 341 and court calendars; 54% said it did not. Some, however, said it had caused problems when their caseloads were heavier, and 63% said that they would have trouble scheduling their meetings within 50 days if their caseloads increased. When asked what problems they faced in scheduling meetings of creditors, a majority indicated conflicts with court calendars (57%) and staff preparation and assistance (54%). Fifty-seven percent of respondents said that they, rather than the U.S. trustee, scheduled their meetings.

Only 13 chapter 12 trustees responded to the survey, perhaps because some had already responded to the chapter 13 survey. Of the respondents, 69% said that the current 35-day time limit caused them problems in managing their § 341 and court calendars; 31% said it did not. Fifty-eight percent indicated that they did not have trouble scheduling their meetings within 35 days; the other 42% said that they did. The most frequently cited problems were calendar conflicts (91%) and debtor attorney availability (55%). Sixty-nine percent of respondents said that they, rather than the U.S. trustee, scheduled their meetings.

The Subcommittee's Discussion and Next Steps

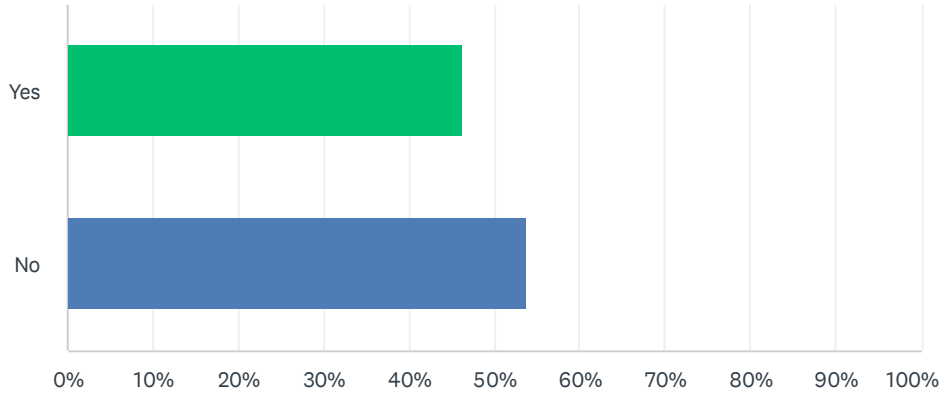
The Subcommittee discussed the results of Ms. Whaley's survey and considered the next steps it should take. It agreed that any amendments to Rule 2003 proposed in response to Ms.

Garcia's revised suggestion should await any suggestion by NABT, assuming that one was forthcoming, in order to avoid piecemeal amendments. The Subcommittee also concluded that because some of the concerns raised by Ms. Garcia's suggestion relate to policies of the Executive Office for U.S. Trustees, discussions between that office and trustee representatives might be helpful in determining whether a consensus might be reached about the need for possible amendments to Rule 2003. Ms. Elliott and Ms. Whaley agreed with that approach.

Now that NABT has filed its suggestion, the Subcommittee may be in a position to present a recommendation regarding Rule 2003 at the fall meeting.

Q1 Do you have locations that under the rule, you were permitted to use the 60 day time period for meetings prior to moving to virtual meetings?

Answered: 80 Skipped: 3



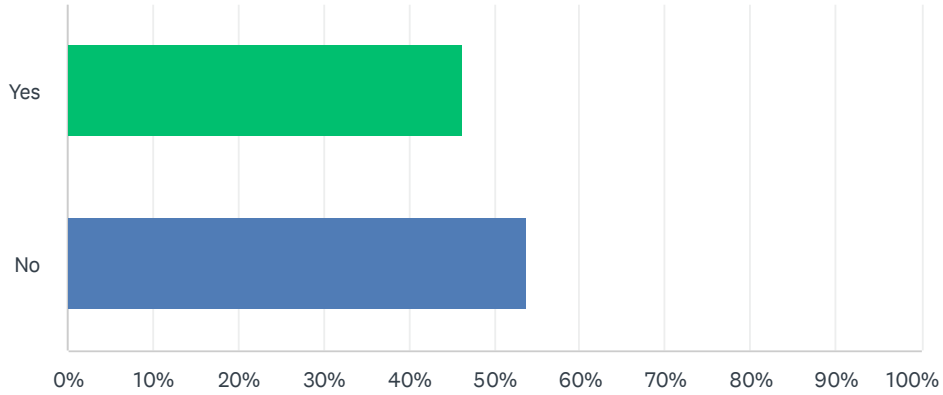
ANSWER CHOICES	RESPONSES	
Yes	46.25%	37
No	53.75%	43
TOTAL		80

#	PLEASE PROVIDE ANY HELPFUL COMMENTS:	DATE
1	We had a location in Brunswick and in Waycross, GA	12/26/2024 12:55 PM
2	Baton Rouge does not have a UST office so I used the extra time routinely to extend the confirmation past the bar date. Once the time for the 341a was reduced, I can't do that any longer and the Court is not happy about this either.	12/16/2024 2:40 PM
3	Yes, Newport News, Virginia	12/16/2024 1:30 PM
4	I don't recall whether we ever used the 60 days.	12/5/2024 11:04 AM
5	I am a single trustee with no staff attorney and I cover 9 points of holding court in two judicial districts.	12/4/2024 5:22 PM
6	I held Meetings in various locations -- in my car, in a small room in various courthouses, in my offices, in my home.	12/4/2024 4:54 PM
7	MDFL Jacksonville Division was able to schedule 341 meetings to impact the initial confirmation hearing date until after the claims bar date allowing for confirmation of plans with all nongovernmental claims considered.	12/4/2024 1:19 PM
8	My office covers two divisions and the Springfield, MA cases were permitted to use the 60 day time period.	12/4/2024 1:19 PM
9	Cookeville TN and Columbia TN	12/4/2024 1:14 PM
10	All but one of my locations would fall under the 60 day rule.	12/4/2024 12:41 PM
11	In fact, my divisions have been virtual for over 25 years. I have 5 divisions in Texas. (Texas is a BIG place.) My divisions are considered rural. We do not have cases filed every day. I have one CH 13 court docket/month/division set by the judges (2). Our previous UST allowed us to extend to 60 days because the chances of having any cases filed on the 51st-60th days were few and far between. (I have excel examples I can provide to you, if they will help.) My new	12/4/2024 12:35 PM

	UST requires the 50 days. As a result, I now have to have 2- 341 days/month/division plus 5 court days plus additional days for contested matters. Basically, at the least, I have 15 days out of an average of 20 workdays per month involved in meetings or court. It is paralyzing my small office! It is also causing a ripple in the CH 7 arena. they cannot schedule their dates until mine are set as they are usually the same attorneys. They have many fewer options.	
12	My District is the entire State and I'm the only Chapter 13 Trustee.	12/4/2024 12:24 PM
13	Our court only holds confirmation hearings once per month. the Courthouse has four courtrooms and 8 or 9 Judges. Confirmation hearings can only happen not less than 20 days nor more than 45 days after the 341 meeting. The 341 meeting may only happen more than 22 days after filing. We only have 341 meetings once per month. then means that about two or three times per year we had to use the 60 day rule for 341 meetings as no UST office was in our district. I have about ten cases filed per month. It makes no sense to have an extra docket, even virtual, just for one or two cases.	12/4/2024 12:22 PM
14	The 341 meetings are scheduled by the BK Court based on dates provided by the UST.	12/4/2024 12:12 PM
15	Requiring the trustee and trustee staff assistant to be in person at the main office is arbitrary and unnecessary. We have the UST virtual background and many of us work from home part- or full-time. No reasonable purpose is served by requiring the trustee/staff to be located in their main office to conduct 341s.	12/4/2024 11:52 AM
16	I could conduct them in a rented conference room or in the Courtroom.	12/4/2024 11:51 AM
17	Home office in same county as "main" office. Helpful where we get significant snow storms I am not used to and creates driving difficulties.	12/4/2024 11:50 AM

Q2 With your current caseload, does the restriction of setting the meeting within 50 days cause a problem in managing your 341 and court calendars regardless of their location/division?

Answered: 82 Skipped: 1



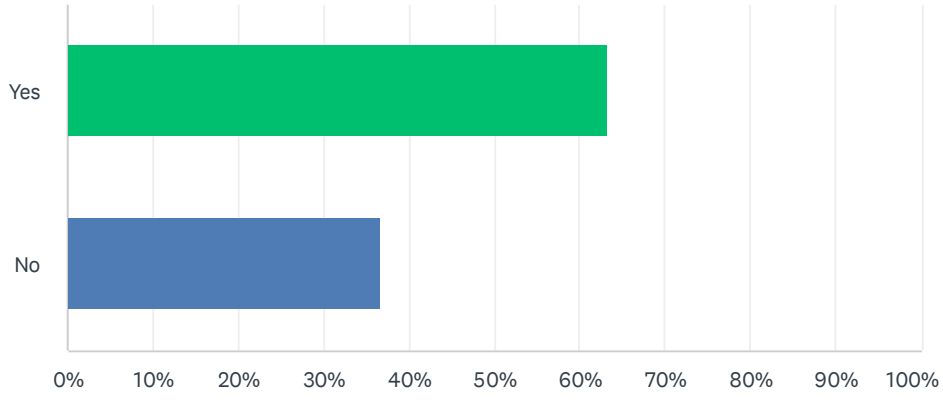
ANSWER CHOICES	RESPONSES	
Yes	46.34%	38
No	53.66%	44
TOTAL		82

#	PLEASE GIVE ANY HELPFUL COMMENTS:	DATE
1	Especially with the jump in filings when there is a property tax foreclosure sale.sale county tax sa	12/26/2024 6:52 PM
2	Our court is having a hard time setting meetings w/n 50 days in the Waycross Division.	12/26/2024 12:55 PM
3	case load small now but used it previously	12/26/2024 10:08 AM
4	See about, it is a bar date issue and sometimes a timing issue.	12/16/2024 2:40 PM
5	Sometimes I have 341s and confirmation hearings the same week, which is challenging.	12/11/2024 3:12 PM
6	I have two staff attorneys/hearing officers. Our chapter 13 court dockets are usually only once per month in each of 6 divisions, so scheduling is not usually a problem.	12/5/2024 11:04 AM
7	When filings are higher this can be challenging - also when something comes up ie natural disasters like hurricanes, etc., or someone just needs the initial meeting rescheduled to a different date because they have a conflict it puts us in a bind when we cannot go beyond the 50 days.	12/4/2024 8:56 PM
8	341s are held on the first Tuesday of each month for both judicial districts to minimize conflicts with court hearing dates.	12/4/2024 5:22 PM
9	the problem seems to be that BAPCPA requires the confirmation hearing too close to the 341 scheduling time frame. As a result, most confirmation hearings are adjourned.	12/4/2024 4:27 PM
10	During holiday, vacation, training periods this can occasionally cause problems	12/4/2024 4:01 PM
11	confirmation routinely set before bar date	12/4/2024 3:40 PM
12	A little but not too much	12/4/2024 2:44 PM

13	our local court asks us not to overlap our meetings with those of other chapter 13 metings in the other division in my district.	12/4/2024 2:23 PM
14	This is especially true when days are unavailable because of holidays, bar events, etc.	12/4/2024 1:35 PM
15	Fewer cases are confirmed at initial confirmation hearing because the claims bar date hasn't passed.	12/4/2024 1:19 PM
16	Given the timing of the confirmation hearing, we have had to have two 341 meetings set with only a few cases on each 341 calendar rather than one 341 date. It is much more efficient and cost effective to have only one 341 date.	12/4/2024 12:52 PM
17	Please see above note	12/4/2024 12:35 PM
18	Again, I am the sole C13 Tee in this District/State. I had to add additional 341s and Court dockets to adhere to this. Additionally, it locks my schedule up for other office time, personal time, etc. I do not have a Staff Attorney, so I have to conduct all hearings/Meetings myself.	12/4/2024 12:24 PM
19	Many cases in our vicinage are filed without schedules/plan and the court issues an osc to address same. The court is liberal with extensions to file and thus we usually have no plan/schedules filed in time to conduct a 341a in the time period required. This requires us to adjourn many on already over-crowded calendars.	12/4/2024 12:23 PM
20	see response above. Compiance requires us to schedule a separate 341 date just for one or two cases or to ignore the mandate.	12/4/2024 12:22 PM
21	Our court docket is once a month for each judge (I have 2). One docket is the first thursday of each month and the other is the third thursday of each month. This can make it difficult to schedule the first meeting and confirmation hearing within the time parameters of 11 USC 1324. At that becomes more difficult when the court deviates from the standard dockets which occurs in November and December. I asked for a standing order to allow me to extend the days between the 341 meeting and the confirmation hearing. An additional 10 days to conduct the 341 meeting would help.	12/4/2024 12:02 PM
22	It is sometimes necessary to add days/times that are not as desirable for all parties to allow meetings to be set in the 50 day period	12/4/2024 11:53 AM
23	The time and date restrictions have caused us to have multiple 341 dates within the same month on which only 5-10 cases have 341s each day. This is inefficient and inconvenient for the debtors' bar as well as the trustee. The extra 10 days would allow us to have fewer 341 dates each month.	12/4/2024 11:52 AM
24	My filings have increased. I now have two full days of 341's per month.	12/4/2024 11:51 AM
25	I am already having significant difficulty scheduling because of the amount of attorneys who do not timely produce required documents. I have had to schedule overflow days, but here, where attorneys cover not only the other Trustee in my district, but the southern district AND the neighboring two states, I have MORE difficulty scheduling overflow days than ever. To the point that I'm looking at referring attorneys for not doing their due diligence because I can't get 341s in during the deadlines without 12 hour 341 days...	12/4/2024 11:50 AM

Q3 If your caseload increases, would you have difficulty in scheduling the meetings within 50 days?

Answered: 82 Skipped: 1



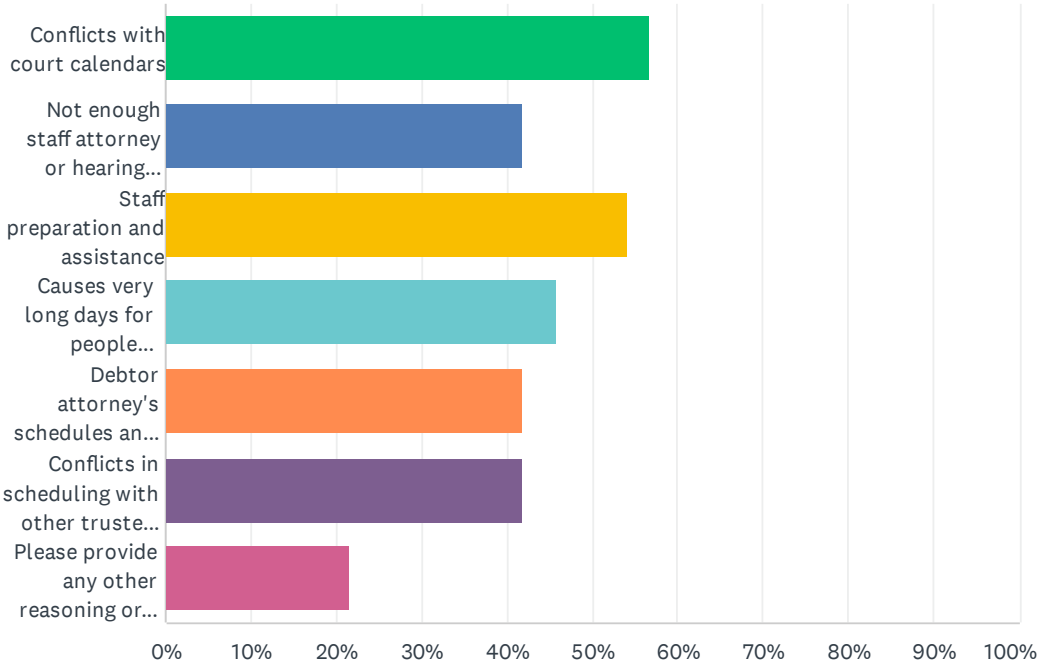
ANSWER CHOICES	RESPONSES	
Yes	63.41%	52
No	36.59%	30
TOTAL		82

#	PLEASE GIVE ANY HELPFUL COMMENTS:	DATE
1	The clerk's office has the difficulty.	12/26/2024 12:55 PM
2	see above	12/11/2024 3:12 PM
3	We set aside almost 2 days per week for 341 meetings. Due to the high rate of continuances, these dates are full and would need addtional dates if the case load increases	12/9/2024 2:15 PM
4	I would need to have multiple meetings per month in multiple locations, so I don't see how I could possibly do them all. I am struggling right now to get them all done.	12/9/2024 11:18 AM
5	we would not have enough available dates/times to accommodate the number of cases heard at our current hearing dockets	12/6/2024 11:24 AM
6	It's not necessarily the 50 days' notice; it's the capability of staff to handle the increased caseload.	12/5/2024 11:04 AM
7	I am in a district with one other trustee that extends 210 miles and includes a couple large and several smaller cities. Having the staff and resources to cover 341s in multiple locations has been difficult in the past, and while we no longer have to travel, there can be hearings in different "locations" on the same day. The extra time assisted us with avoiding those kinds of conflicts..	12/4/2024 4:07 PM
8	Possibly depending on the size of the increase. There is only one trustee and one Court in my district.	12/4/2024 2:56 PM
9	Conflicts would likely occur because 341 calendars would need to conflict with court calendars.	12/4/2024 1:19 PM
10	It is better to have the flexibility to use more dates. This is constrained when you have to hold the meetings within 50 days.	12/4/2024 1:19 PM
11	Again, it may result in more days. It is more cost effective to have only a single day rather than multiple 341 meeting days.	12/4/2024 12:52 PM

12	My 10 341 days/month are not filled by a long shot!	12/4/2024 12:35 PM
13	I am currently at 10% and would not add staff, so more demand will be placed on current staff.	12/4/2024 12:30 PM
14	Because this would cause me to be in two places at once at some point.	12/4/2024 12:24 PM
15	Same as above.	12/4/2024 12:23 PM
16	Extending to 60 days would not resolve the issue. Additional dates would eventually be needed. Extending to 60 may only be useful around the holidays when the court is closed. Otherwise, extending to 60 days just temporarily kicks the can and more dates will be required.	12/4/2024 12:17 PM
17	A significant increase may require holding meetings simultaneously requiring add'l presiding officer(s).	12/4/2024 12:12 PM
18	have had to schedule 2 different days to accommodate increased filings	12/4/2024 12:05 PM
19	It is already a problem which will get worse with more cases	12/4/2024 11:53 AM
20	Same as described above.	12/4/2024 11:52 AM
21	see above	12/4/2024 11:51 AM
22	Same comment as above - with the cross-jurisdiction practice here, I'm really limited to what have been my historical dates of 341 hearings. I know it's on the attorneys to get coverage, but it causes many scheduling issues.	12/4/2024 11:50 AM

Q4 What are your challenges in scheduling 341 meetings?

Answered: 74 Skipped: 9



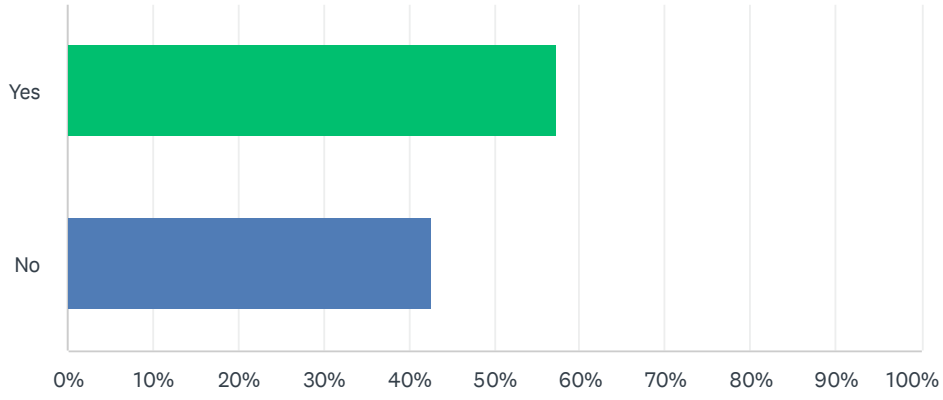
ANSWER CHOICES	RESPONSES	
Conflicts with court calendars	56.76%	42
Not enough staff attorney or hearing officers availability	41.89%	31
Staff preparation and assistance	54.05%	40
Causes very long days for people conducting the meetings	45.95%	34
Debtor attorney's schedules and availability	41.89%	31
Conflicts in scheduling with other trustees in your area. Whether in your district or neighboring district.	41.89%	31
Please provide any other reasoning or information:	21.62%	16
Total Respondents: 74		

#	PLEASE PROVIDE ANY OTHER REASONING OR INFORMATION:	DATE
1	We have 3 trustees, 8 judges and 4 divisions. Calendaring is very difficult and preparation for 341s takes more time for both staff and attorneys.	12/26/2024 10:08 AM
2	due to confirmation scheduling rules, the bar date often runs after the confirmation hearing without the extra 10 days.	12/16/2024 2:40 PM
3	It can impact staff attorneys or hearing officers taking time off	12/4/2024 8:56 PM
4	I cover two judicial districts in West Virginia and have many cross-border attorneys with multi-district practices	12/4/2024 5:22 PM
5	I don't have any challenges.	12/4/2024 3:53 PM

6	I have a high volume of cases and only one day per week for meetings. Meeting dates always overlap court dates. I have to have a staff attorney in court and it's difficult to cover all the meetings and also we have to work around debtor counsel schedules, as they are also in court.	12/4/2024 2:13 PM
7	Given the current level of filings at about two-thirds of before the China virus, I am not having an issue with my MOC. Occasionally a debtor attorney has a MOC before another chapter 13 trustee, but we work those out.	12/4/2024 1:59 PM
8	To work efficiently, MOC days for 13 cannot conflict with in person court dockets or chapter 7 MOC dockets	12/4/2024 1:14 PM
9	Zoom Section 341 Meetings have provided flexibility to scheduling, which is great.	12/4/2024 1:03 PM
10	failure to timely get schedules and plans.	12/4/2024 12:46 PM
11	Any additional time beyond 50 days would be helpful. For a small office with multiple courts and locations 50 days is not enough time.	12/4/2024 12:41 PM
12	We are 50 miles from the Northern District and 160 miles from the Western District of Oklahoma. Attorneys practice in multiple districts. I can only have meetings on Thursdays. I scheduled a Tuesday so I could be in the office and received a complaint from an attorney with a conflict.	12/4/2024 12:22 PM
13	No real conflicts at this time as case filings are still low.	12/4/2024 12:12 PM
14	I like to conduct meetings on the same day of the week. The 50 day requirement sometimes necessitates scheduling 341 meetings on a day other than a Friday.	12/4/2024 12:10 PM
15	NO CHALLENGES	12/4/2024 11:56 AM
16	Debtor's attorneys in our area are mostly one attorney offices and so we attempt to avoid conflicts but that leaves only so many time slots that can be used in a given week	12/4/2024 11:53 AM

Q5 Do you control the scheduling of your own 341 meetings regardless of who notices the meeting?

Answered: 82 Skipped: 1



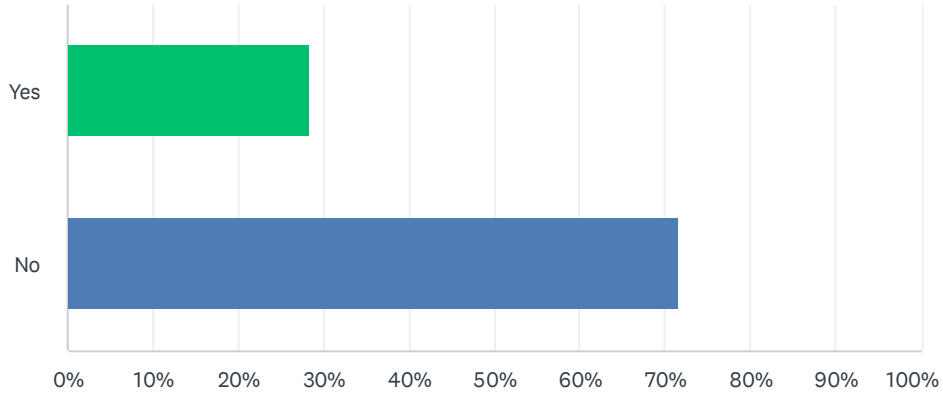
ANSWER CHOICES	RESPONSES	
Yes	57.32%	47
No	42.68%	35
TOTAL		82

#	PLEASE SPECIFY ANY OTHER INFORMATION?	DATE
1	UST asks what dates work for us but they control the settings because of the court calender	12/26/2024 3:10 PM
2	The UST schedules the meetings in consultation with teh Court	12/16/2024 1:30 PM
3	I wish I did - we only control when a meeting needs to be rescheduled	12/4/2024 8:56 PM
4	The 341 meeting schedule must be approved by the courts in two judicial districts by October of the preceding calendar year.	12/4/2024 5:22 PM
5	While we make the schedule, we are obviously not in control of the volume of filings. We simply go by historical information and add a cushion. As cases go up, we may need to schedule more cases in a day than we currently do (which is 40), due to the time limitation in the rule. It makes for longer days for the staff and trustee or staff attorney, but we become unable to give each case the attention it deserves. Adding creditors and language interpreters to the mix only makes the situation worse.	12/4/2024 4:07 PM
6	Indirectly, I provide the UST dates I am not available	12/4/2024 4:01 PM
7	UST/Court computer program sets 341	12/4/2024 3:40 PM
8	Unless I continue the meeting. Then, I control it.	12/4/2024 2:56 PM
9	The clerk's office sets the day of the meeting but my office sets the time.	12/4/2024 2:13 PM
10	The court sets the meetings in clumps which would cause a long wait time for some debtors if everyone showed up at the same time. We post a docket of the actual start time of the meeting which is never earlier than what was on the court notice so no interested party misses a meeting.	12/4/2024 1:26 PM
11	There is a coordinated effort with the clerk and AUST to accommodate my schedule when possible	12/4/2024 1:19 PM

12	Yes to some extent although I have to go through my regional UST office.	12/4/2024 1:19 PM
13	Coordinate dates with the US Trustee.	12/4/2024 12:41 PM
14	I work with the UST and Court to ensure all deadlines within the Code are met	12/4/2024 12:24 PM
15	We handle re-scheduling any that need to be done.	12/4/2024 12:21 PM
16	We follow the original date set by court and control all adjournment dates.	12/4/2024 12:21 PM
17	I control the scheduling if the original meeting is rescheduled.	12/4/2024 12:18 PM
18	Our local AUST office does all the scheduling, without regard to the trustees' preferences or schedules.	12/4/2024 11:52 AM
19	The UST sets the date.	12/4/2024 11:51 AM

Q6 Do you or your staff conduct 341s outside of your "main" office? Main office being your primary place of business, not your home office.

Answered: 81 Skipped: 2



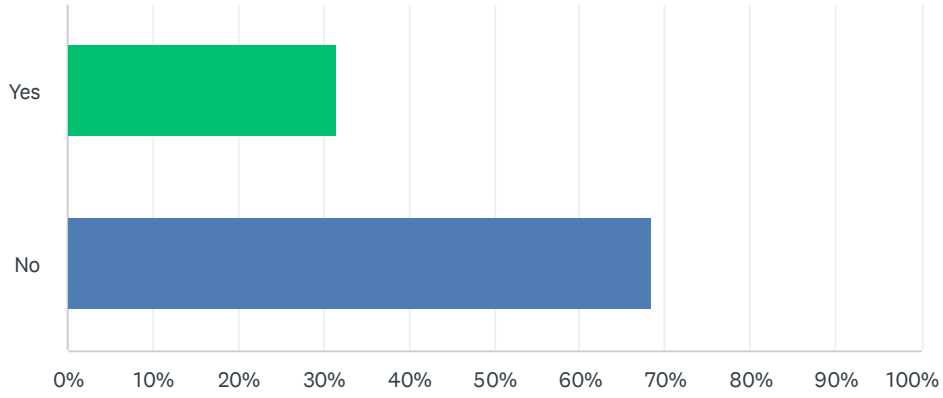
ANSWER CHOICES	RESPONSES	
Yes	28.40%	23
No	71.60%	58
TOTAL		81

#	OTHER (PLEASE SPECIFY)	DATE
1	Rarely, but it can happen.	12/26/2024 6:52 PM
2	We have to if one of the staff has a communicable illness - as people recover, we can't risk exposure to co-workers. I have several staff with compromised immune systems due to chronic illnesses.	12/26/2024 10:29 AM
3	but only permitted with UST approval	12/26/2024 10:08 AM
4	If out of town and staff attorney not available, but must seek permission first	12/9/2024 2:15 PM
5	sometimes the meetings are conducted on a work from home day	12/9/2024 11:18 AM
6	I have 2 hearing officers who work solely remote	12/6/2024 11:24 AM
7	Due to Court hearings, I have conducted Meetings out of office. My staff attorney conducted them remotely from home or at the office.	12/4/2024 4:54 PM
8	We are hybrid and in office 2 days/week. Neither day is when we have 341 meetings	12/4/2024 4:27 PM
9	But we would use our home office within the district if needed, do to a weather event or power outage at the office.	12/4/2024 4:07 PM
10	But we used to when I had a staff attorney living in a neighboring district, but I received UST approval for that	12/4/2024 2:44 PM
11	In times of inclement weather, we could conduct meetings remotely if necessary.	12/4/2024 2:13 PM
12	Not in the past three years or so.	12/4/2024 1:59 PM
13	Not allowed by my UST	12/4/2024 1:47 PM
14	We have obtained UST approval for those consulting attorneys that I hire on temporary basis to do so.	12/4/2024 1:03 PM

15	My office has gone remote and I was given permission to conduct the meetings from my home office.	12/4/2024 12:52 PM
16	But only because we are normally at work. However, I can see a day when it could happen. I could be at NACTT, for example, and my staff attorney becomes ill and in unable to conduct the meetings. I travel with a secured laptop. I would immediately logon and conduct the meetings. As long as I use the Zoom license and the UST background, as my office is paperless, why does it matter where I am located?	12/4/2024 12:35 PM
17	Due to being the only person that conduct 341s, and being very active in various Bankruptcy Organizations, I previously conducted 341s while at conferences or from home when sick (but not sick enough to be able to cont 341s).	12/4/2024 12:24 PM
18	I would if it was permitted. It would allow me to conduct certain meetings instead of staff attorneys.	12/4/2024 12:23 PM
19	Now the office is my home office.	12/4/2024 12:22 PM
20	May be conducted either from main or home office.	12/4/2024 12:21 PM
21	My AUST does not allow it.	12/4/2024 12:18 PM
22	Based on the UST's instruction, the presiding officer comes to the main office to conduct 341s.	12/4/2024 12:12 PM
23	We are not allowed to do so. Otherwise, I would conduct them from my home office.	12/4/2024 11:52 AM

Q7 Have you found it necessary to be out of your district to conduct 341s since moving to virtual meetings? If yes, please explain.

Answered: 79 Skipped: 4



ANSWER CHOICES	RESPONSES	
Yes	31.65%	25
No	68.35%	54
TOTAL		79

#	PLEASE EXPLAIN OR GIVE EXAMPLES:	DATE
1	Not since moving to Zoom, but I did when they were telephonic.	12/26/2024 6:52 PM
2	Hurricane closures	12/26/2024 10:57 AM
3	But it could happen based on staffing and seasonal illnesses.	12/26/2024 10:29 AM
4	my office is hybrid and it is difficult scheduling my attorneys for court time and 341s and still permitting them to telecommute 2 days a week	12/26/2024 10:08 AM
5	Daughter was having a baby in Houston, had to come back to Baton Rouge and go back.	12/16/2024 2:40 PM
6	However, it might be necessary in teh future since I am a small office.	12/16/2024 1:30 PM
7	I change my schedule, which is at times inconvenient.	12/11/2024 3:12 PM
8	Staff atty not authorized and planned vacation - got approval.	12/9/2024 2:15 PM
9	It would be nice to have the option.	12/6/2024 7:03 PM
10	I have been out of town at meetings on certain 341 dockets and I do not live in my district. There are times it is necessary to conduct my 341 hearings from my residence	12/6/2024 11:24 AM
11	building closed for repairs due to storms, person holding 341 ill but still able to hold hearing	12/5/2024 2:26 PM
12	But I could see us running into that issue - emergencies happen, they are a thing - and it is far easier on everyone if they can be conducted versus having to reschedule them all - that is a huge drain on resources	12/4/2024 8:56 PM
13	Seminars	12/4/2024 7:07 PM
14	I have a single office that covers two districts. Because my office can only physically be located in a single district, I am not physically located in the other district when conducting 341 meetings.	12/4/2024 5:22 PM

15	Not often, but I have. E.g., I had Court hearings in one district, then held a 341 for another district at that Courthouse.	12/4/2024 4:54 PM
16	vacation time severely limited. Being "in district" does not affect the conduct, the results or the technology of Zoom meetings	12/4/2024 4:27 PM
17	Prior to restriction, due to limited staff, I would conduct virtual video meetings outside of my district due to vacation or training events.	12/4/2024 4:01 PM
18	When trustee is on vacation	12/4/2024 3:51 PM
19	When I had a staff attorney living in the neighboring district	12/4/2024 2:44 PM
20	Not yet, but I foresee that possibility.	12/4/2024 1:59 PM
21	Had to conduct meetings during my vacation	12/4/2024 1:47 PM
22	People have been out of the district and we have had to replace them with other hearing officers which makes it hard on the hearing officers who are having to take more meetings.	12/4/2024 1:26 PM
23	I am case by case 12 and have only recently been assigned a new filing and it is in district.	12/4/2024 1:21 PM
24	Yes, absolutely. I do not have any staff attorneys, and so, I rely on the assistance of consulting attorneys to help me conduct some 341 hearings. Without their help, while they're working remotely at their office, I cannot attend court hearings and conduct 341s on a weekly basis.	12/4/2024 1:03 PM
25	Whether conflict schedules with conferences or even vacations, I cannot attend because I need to be in my district. This makes absolutely no sense when Zoom 341 meetings are conducted in cyberspace on a server and I have no clue where that server is actually located. Requiring the trustee to be in the district makes absolutely no sense. Now, I also think that if a trustee were allowed to be out of the district, the UST should be authorized to set boundaries. I appreciate the UST may not want to hire a trustee who then moves to the Bahamas. But that is a business structure issue and has no bearing on where the trustee is for a 341 meeting conducted on Zoom.	12/4/2024 12:52 PM
26	Not out of district, but out of main office. I underwent medical treatments that caused me to be too weakl to come to the office, but I could work from home - Again with the properly secured laptop.	12/4/2024 12:35 PM
27	I sit on committee's that meet in person and sometimes it conflicts with 341 schedules so I have to choose between 2 important events.	12/4/2024 12:30 PM
28	family medical emergency	12/4/2024 12:27 PM
29	See #6 above.	12/4/2024 12:24 PM
30	During the holidays, I close the office and have everyone work from home. I have asked permission for staff to do the meetings from their homes	12/4/2024 12:21 PM
31	Sometime one on my staff attorneys is sick but able to work remotely, but to the restriction I have to make an internal rearrangement of the calendar.	12/4/2024 12:18 PM
32	No. The case filings are such that my 2 staff attorneys can manage the schedule so that at least one is in district.	12/4/2024 12:12 PM
33	I live 71 miles from my office. Weather sometimes prevents me from getting to the office.	12/4/2024 11:51 AM

Q8 Assuming you are normally in your "main" office for 341s what reasonable exceptions do you think are necessary to allow you to conduct meetings from another location? Please explain

Answered: 65 Skipped: 18

#	RESPONSES	DATE
1	Staff attorney/trustee may be required to be in another location and need to conduct meetings. Have received permission to conduct meetings remotely on two occasions by describing parameters under which meetings were to be conducted that were similar to the "main office.	12/26/2024 7:01 PM
2	In my district we usually have 3-5 snow days per year when you can't get to the office. Also personal emergencies should count.	12/26/2024 6:52 PM
3	reemergence of Covid or similar illness which necessitates social distancing and/or myself being ill and unable to come to the main office	12/26/2024 3:53 PM
4	Bad weather may necessitate working from home for example	12/26/2024 3:10 PM
5	Staff attorneys or myself working from home due to illness	12/26/2024 11:10 AM
6	weather, UST regional meetings, NACTT,	12/26/2024 10:57 AM
7	Weather or other challenges outside our control.	12/26/2024 10:42 AM
8	Illness, unexpected staffing outage, weather - it makes sense to allow for offset when unexpected things happen or when reasonable, expected things happen - like, we always have staffing issues with bad weather or seasonal flus. It makes no sense to reschedule a lot of 341 meetings and inconvenience the bar when I can do the meetings offsite. The internet is everywhere, but I can't make it down icy roads to my office during snow.	12/26/2024 10:29 AM
9	Should not need an explanation. We attend court matters remotely very effectively.	12/26/2024 10:08 AM
10	Conflicts and travel for seminars. Right now, I am limited in the amount of time I can take "off" and travel.	12/16/2024 1:30 PM
11	Planned CLE, meeting or vacation.	12/11/2024 3:12 PM
12	I would think all the saem protocols would apply	12/9/2024 2:15 PM
13	Good connection to the internet. Quite surroundings.	12/9/2024 11:18 AM
14	Weather related issues that make travel to the office unsafe, travel for work, health issue that would be better for employee to not be in the office but could continue to work from home	12/6/2024 11:24 AM
15	building closed,	12/5/2024 2:26 PM
16	1) Severe weather that prevents a hearing officer from making it to the office. 2) A family or other emergency that prevents one staff attorney/hearing officer from making it to the office, but another staff attorney/hearing officer could cover the meeting from their home office on short notice (or at least call the cases, take appearances, and work out dates for rescheduling).	12/5/2024 11:04 AM
17	No opinion	12/5/2024 10:58 AM
18	Issues with your office building (like construction, a/c not working, etc.), hearing officers having prepared them and well enough to conduct on zoom but don’t want them in office getting others sick, weather emergencies like tropical storms and hurricanes, family emergencies that do not allow someone to be in the “main office” Requiring people to be in the “main office” makes no sense - we have the background to use and so long as it can be done in a way where there is not an issue with professionalism what is the issue? Sometimes my office building is louder than people’s homes because of things going on not related to my staff or our office but due to building maintenance.	12/4/2024 8:56 PM

19	Travel - either personal or professional. In a small office, I have to reorganize my travel arrangements based on 341 days, or vice versa.	12/4/2024 7:07 PM
20	I should be able to hold meetings from any location as long as I have a quality internet connection, computer, camera and microphone.	12/4/2024 6:06 PM
21	I am always in my main and only office to conduct 341s. To comply with a rule that I must conduct 341s in each district, I would have to travel 100 miles to cross the district border and conduct the meetings from my car on the side of the road.	12/4/2024 5:22 PM
22	Illness	12/4/2024 5:05 PM
23	I don't see any reason why a trustee cannot conduct a Meeting from any location, especially with a paperless office.	12/4/2024 4:54 PM
24	vacation time, adverse weather	12/4/2024 4:27 PM
25	Most of the time I would prefer to be in my office, but there should be reasonable exceptions. For example, if there is a conference I wish to attend, but my meetings fell on a travel day, I could travel early and conduct my meetings from the conference site/hotel, provided they could be secure, rather than be late or not attend the conference. Prior to the pandemic and the real ability to work from home, I always "worked sick" if I had a cold or was feeling under the weather I just went to work anyway. Now, I am more conscious of spreading germs, and if I feel crummy, I can work from home and not expose my staff/their families to my germs.	12/4/2024 4:07 PM
26	Travel, training, staff illness, vacation (I have limited staff and only one attorney able to conduct 341 meetings on my behalf)	12/4/2024 4:01 PM
27	n/a	12/4/2024 3:53 PM
28	Zoom is Zoom. No exceptions need to be justified as long as meetings can be conducted. There is nothing magic about being in district or in the main office.	12/4/2024 3:51 PM
29	None	12/4/2024 3:40 PM
30	In cases of inclement weather.	12/4/2024 2:56 PM
31	Vacations on a reasonable basis, if a staff attorney lives or works outside the district	12/4/2024 2:44 PM
32	Due to potential weather issues such as hurricane or tropical storm warnings, the office building maybe closed and we would need to conduct meetings from another location. If the office was not accessible due to lack of power after a storm (which has happened in the past) we would be unable to conduct meetings unless we did it from another location outside of the office.	12/4/2024 2:23 PM
33	In times of inclement weather or emergency, or global pandemic, we could conduct meetings remotely if necessary.	12/4/2024 2:13 PM
34	Yes. The UST/EOUST position does not provide a valid rationale for mandating the trustee conduct MOC while physically in the office. Also, I think EOUST is misconstruing FRBP 2003(a). That paragraph refers to a PHYSICAL location for parties to appear for a MOC. Of course, the parties should not be required to make a physical appearance at a MOC outside the district. Now, unless there is a special circumstance, there are no more physical MOC locations. My UST returned the physical meeting space back to the GSA.	12/4/2024 1:59 PM
35	If there is a shortage of hearing officers available on any given day located in the office. Basically a staffing issue that would cause us to need someone out of the office to step in and conduct hearings.	12/4/2024 1:47 PM
36	It should be flexible. Who cares where we are?	12/4/2024 1:47 PM
37	I think meetings should be able to be held from anywhere as long as the technical requirements are met and the decorum of the meeting is unaffected.	12/4/2024 1:35 PM
38	There is no benefit to telling people they have to be physically at the trustee's location with technology as advanced as it is. Anything that can be done from a desk in our office can be done from a remote location, like a home office, that is set up properly. We have staff working from remote offices on a routine basis. The Rule served a purpose when meetings were in person so that the trustee could not convene meetings at places that were convenient for him/her, but possibly not convenient for other parties. That is no longer the case. Debtors, their	12/4/2024 1:26 PM

	attorneys, and creditors can attend from anywhere with the proper technology. The only "rules" around conducting the hearings from a location different than the office should be that the presiding officer should have sufficient internet connectivity and equipment to conduct the hearings and should dress and behave in a professional manner in a quiet environment conducive to holding the hearing.	
39	The meeting would have to be conducted in person. I would have to travel to location where the UST had meeting space.	12/4/2024 1:21 PM
40	Allowing remote attendance if a heavy schedule occurs during a previously planned vacation. I or my staff attorneys could sacrifice a day of vacation if necessary and not cancel one.-	12/4/2024 1:19 PM
41	Due to shortage of staff and lack of a staff attorney, there is really no option for me besides hiring consulting attorneys to assist me with conducting 341 hearings. I have Court hearings at least 3 days a week, and thus, there is no way for me to conduct 341 hearings at the same time. If I require consulting attorneys to travel to my office to conduct the 341 hearings, they will refuse. Also, staff scheduled to take notes or conduct the 341 may call in sick last minute or have emergencies. The backup staff may be working remote, and they should be able to jump into the Zoom 341 and assist immediately. Most trustee's offices are small and do not have a lot of staff. There should flexibility given to these circumstances.	12/4/2024 1:03 PM
42	I have not conducted my meetings from my main office since we went to Zoom. I have special permission from my UST. To achieve that permission, I had to assure my UST that I would be at my home office, which is quiet and a private location. I agreed I could not conduct the meetings while I'm at my local Starbucks. Additionally, my home office is quieter than my "main" office because the "main" office is an open air office so it's actually noisier if I'm at the "main" office. Again, it seems like reasonable boundaries can be put in place to allow a trustee to conduct the meetings from somewhere other than the "main" office.	12/4/2024 12:52 PM
43	If the Trustee or staff member is unavailable to appear in the "main" office due to illness, temporary absence, or other reasonable exception.	12/4/2024 12:43 PM
44	Yes. There is no reason anymore for a meeting to be conducted from within the district when it is done virtually.	12/4/2024 12:41 PM
45	Hurricanes	12/4/2024 12:40 PM
46	I think the main reason would be that as long as your "device" is secured "properly" (could even be reviewed by STACS), then I do not think it matters where I am physically located, assuming the case and relevant notes and documents are available online. If the trusteeship depends on files, then to not be in the office , I think, would pose a potential problem in conducting a proper 341 meeting, as the files should not be removed from the office.	12/4/2024 12:35 PM
47	In the age of the internet, there is no logical reason to require meetings to be conducted from any specific location. No such limitation exists for court proceedings, why should creditor meeetings be more restricted?	12/4/2024 12:31 PM
48	life be lifing and I have missed very important family events because I live in a different state than the rest of my family. I missed both parents transitioning because I had to be in office. Waiting until they transitioned before leaving the state, while the rest of my family was at their bedside haunts me to this day.	12/4/2024 12:30 PM
49	Family medical emergency. So long as the Trustee can connect virtually and conduct the hearing, what makes the difference where the Trustee is sitting while conducting the hearings? This seems like a punishment rather than a reasonable rule. The ability to use Zoom changed everything. We can see the Debtor and all other participants which is certainly better and more meaningful than using telephonic hearings which was approved by the U.S.T.	12/4/2024 12:27 PM
50	Nothing more or less than is required when we conduct it from our "main" office. We are trusted to run offices that includes millions of dollars worth of distributions; PII; and staff. There should be no additional stipulations on permitting conducting 341s from any location as long as our other fiduciary duties are being met.	12/4/2024 12:24 PM
51	No. We have ample space, wifi etc in the office with no distractions.	12/4/2024 12:23 PM
52	There is NO reason to have the Trustee REQUIRED to be at any set location. The background is pre-determined no matter the location. The only reason the UST could have to "require" Trustees to be "in the office" is so we will not travel. The UST needs to acknowledge the effectiveness of remote work.	12/4/2024 12:22 PM

53	Any. I don't think that it is necessary that we be in our main office to hold 341s	12/4/2024 12:21 PM
54	Remote schedules allowing work from home, occasional need for travel due to conferences or unexpected non-vacation travel.	12/4/2024 12:21 PM
55	When a staff attorney or trustee can't be at the main office due to special circumstances, but are able to conduct the meeting remotely.	12/4/2024 12:18 PM
56	When the volume of cases requires a 2nd presiding officer to hear a minimal number of cases, I have allowed the 2nd staff atty to conduct the few cases from their home office.	12/4/2024 12:12 PM
57	None	12/4/2024 12:10 PM
58	attend meetings or court hearings on same or conflicting dates	12/4/2024 12:05 PM
59	N/A	12/4/2024 11:56 AM
60	Illness or weather conditions that prevent the hearing office from being in the main office. Hearing office availability (vacation or illness) that would require a hearing officer who is out of the office to conduct meetings.	12/4/2024 11:53 AM
61	Reasonable exceptions would include the availability, speed, and quality of the wi-fi connection; trustee's health conditions; road/travel safety (e.g., following the September hurricane or an ice storm, where we can't get to the office)	12/4/2024 11:52 AM
62	Weather, conflicts.	12/4/2024 11:51 AM
63	Myself and my staff attorney being able to conduct from home offices to the extent that we have bad weather. Even if they just limit it from Oct-March - would be a huge help.	12/4/2024 11:50 AM
64	I understand the rule to require trustees to be in their own district, OR A NEIGHBORING district, when conducting 341s. I've had to conduct 341s outside of my district/neighboring district only once since the effective date of the rule and my AUST/UST did not have any issue with it. I would, however, like the flexibility that all other counsel have with being able to travel (and not make a pattern of it) and conduct 341s outside of my district/neighboring district without the need to seek UST approval. I think the rule should be changed to require trustees to be located within any U.S. district when conducting 341s (i.e., within the country).	12/4/2024 11:50 AM
65	Not necessary for my office.	12/4/2024 11:50 AM

Q9 What have you found or what would you anticipate being a challenge for you to conduct meetings outside of your "main office"?

Answered: 65 Skipped: 18

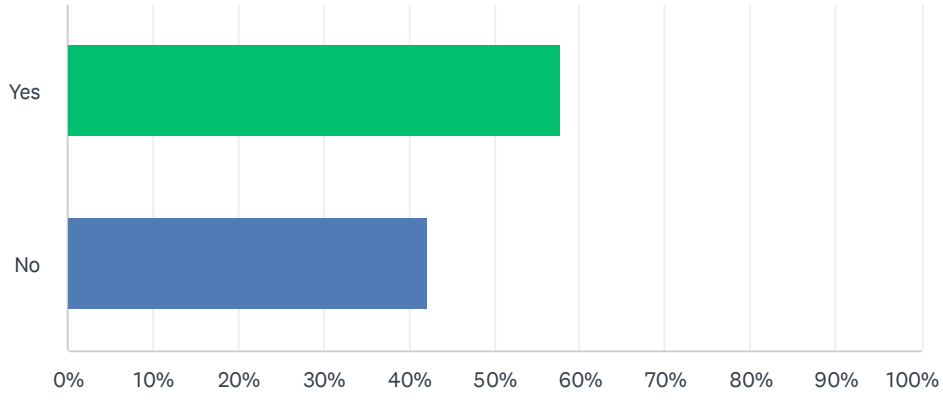
#	RESPONSES	DATE
1	Remote work needs; court appearance in another division.	12/26/2024 7:01 PM
2	Potentially a quiet place to conduct them.	12/26/2024 6:52 PM
3	interaction with other trustee personnel in the event of a technical/other issue with 341s	12/26/2024 3:53 PM
4	Nothing. Still have access to equipment necessary to handle the meetings; it's the same equipment we have to take to court every time, regardless of the division.	12/26/2024 12:55 PM
5	Coordinating with my staff.	12/26/2024 11:10 AM
6	WiFi	12/26/2024 10:57 AM
7	Not much - just need a hot spot to ensure adequate coverage and possibly a back up battery.	12/26/2024 10:29 AM
8	none	12/26/2024 10:08 AM
9	Can't think of anything although I would rarely do this. Still have UST background.	12/16/2024 2:40 PM
10	I anticipate the meeting can be conducted outside of my main office without difficulty.	12/16/2024 1:30 PM
11	I don't think it would be a problem.	12/11/2024 3:12 PM
12	None	12/9/2024 2:15 PM
13	None	12/9/2024 11:18 AM
14	I do not foresee any issues.	12/6/2024 7:03 PM
15	I am unaware of any challenges that would be a challenge for conducting meetings outside of my main office.	12/6/2024 11:24 AM
16	having required audio and video equipment	12/5/2024 2:26 PM
17	I see no challenge	12/5/2024 10:58 AM
18	There really aren’t any challenges for my office - we did this during COVID lockdowns when we had to do telephonic 341s. It hasn’t changed with Zoom. Only “potential” issue might be internet service at other location but we have some backups for this and we could lose internet service at the “main” office just like anywhere else.	12/4/2024 8:56 PM
19	Weather concerns, health concerns	12/4/2024 7:07 PM
20	The only limitation would be your internet connection.	12/4/2024 6:06 PM
21	Security of the recording	12/4/2024 5:05 PM
22	No problem at all to be in a different location holding the meeting.	12/4/2024 4:54 PM
23	none	12/4/2024 4:27 PM
24	Ensuring a secure connection (although having a VPN already alleviates most of those issues. Making sure there was a private space in the alternate location. Making sure the internet connection is sufficient.	12/4/2024 4:07 PM
25	Video screen size. Meetings work fine from a laptop in a hotel but that limits the ability to see case information as easily. A second monitor (that fits a suitcase) or paper files have both worked fine in the past.	12/4/2024 4:01 PM
26	n/a	12/4/2024 3:53 PM

27	None	12/4/2024 3:51 PM
28	NA	12/4/2024 3:40 PM
29	N/A	12/4/2024 2:56 PM
30	technology	12/4/2024 2:23 PM
31	Nothing, should be seamless.	12/4/2024 2:13 PM
32	None, but only if I were to conduct MOC from a location that had limited Internet bandwidth.	12/4/2024 1:59 PM
33	None	12/4/2024 1:47 PM
34	We operate on a hybrid schedule, with my staff attorneys working from home several days a week.	12/4/2024 1:35 PM
35	No challenges. I participate in Zoom meetings all the time (not 341s) from remote locations with no issues because I have sufficient internet connections and computer programs.	12/4/2024 1:26 PM
36	same response as above	12/4/2024 1:21 PM
37	No issues.	12/4/2024 1:19 PM
38	If it ain't broke, I don't need to seek to fix it. I support other trustees who may need more flexibility. What we are doing works here.	12/4/2024 1:14 PM
39	I think the main reason for the requirement to conduct hearings in your main office is to minimize distractions and maintain professionalism. However, distractions and professionalism have not been issues at all for Zoom Court hearings and other types of meetings that have been conducted over Zoom at non-main office locations. Thus, if any challenges at all, it may connectivity issues. But my staff and I are working at the same remote location every time, e.g. home office. Thus, there should be no surprises as to connectivity or disruptions.	12/4/2024 1:03 PM
40	None. We know the infrastructure we need at an alternative location and we know it has to be quiet and confidential. With these parameters in place, it's not a challenge to find another location.	12/4/2024 12:52 PM
41	If there is an IT problem my IT person is in the main office	12/4/2024 12:46 PM
42	Weather, illness, travel delays	12/4/2024 12:43 PM
43	Recording device may be an issue. It would be very helpful if we could use Zoom's video recording option.	12/4/2024 12:41 PM
44	none	12/4/2024 12:40 PM
45	NONE! MY IT person has secured my laptop and I can work from anywhere. I have =multiple such laptops in my office to cover various contingencies. (COVID) I suppose a weak or down wifi connection could cause a problem. As for me, I will switch to my hotspot. However, when AT&T went down nationwide this year, I was in court and the Judge asked a question and I could not connect in any way to give him the information. (Some, rural courthouses in Texas are not equipped with 21st century technology!)	12/4/2024 12:35 PM
46	None. It is much easier and provides more flexibility in scheduling.	12/4/2024 12:31 PM
47	none because I would make certain to eliminate them prior to departure.	12/4/2024 12:30 PM
48	The only challenge would be if the internet connection was not good, but frankly that can happen occasionally even at the main office. If everyone is honest, there is no good reason to put a restriction on where the Trustee is located when conducting virtual zoom hearings.	12/4/2024 12:27 PM
49	Insurances of Wifi access and quiet space perhaps. But we all are aware of the necessity of these, so it is no different than doing it at our main office.	12/4/2024 12:24 PM
50	NA - i have no interest in conducting them outside of my main office.	12/4/2024 12:23 PM
51	Ensuring a secure internet connection.	12/4/2024 12:23 PM
52	I can say with certainty there are NO challenges whatsoever. I would be happy to discuss off the record.	12/4/2024 12:22 PM

53	Tradition. Trad-i-TION (sung).	12/4/2024 12:21 PM
54	Myself and my staff have regularly conducted meetings via Zoom from home since April of 2020.	12/4/2024 12:21 PM
55	Noise control that may impact the recordings. At the office, due to the professional environment, you can control external noise. This may not happen in other places, such as noisy neighbors, authorities sirens...	12/4/2024 12:18 PM
56	Ensuring proper internet connectivity and privacy at the remote site.	12/4/2024 12:17 PM
57	Prior to the UST's instruction, 341 mtgs were conducted from various locations, mainly home offices. We did not face any challenges in doing so.	12/4/2024 12:12 PM
58	Nothing	12/4/2024 12:10 PM
59	There would be no challenge as I /staff use laptop to conduct the meetings	12/4/2024 12:05 PM
60	N/A	12/4/2024 11:56 AM
61	Starting the meeting from an appropriate computer (hearing officer may have to join and be added as co-host)	12/4/2024 11:53 AM
62	None! There is no reason 341s cannot be conducted from ANY location where the trustee is, and has access to wifi and a laptop or tablet	12/4/2024 11:52 AM
63	none, it has worked out great.	12/4/2024 11:51 AM
64	Main challenge is we don't have recording equipment from the UST for home offices, but we'd just have to watch the weather and plan to take our recorders home with us since we can't record audio on Zoom.	12/4/2024 11:50 AM
65	n/a	12/4/2024 11:50 AM

Q10 If you conduct 341s outside of your "main" office, do you have backup procedures if something prevents you from conducting the meeting?

Answered: 52 Skipped: 31



ANSWER CHOICES	RESPONSES	
Yes	57.69%	30
No	42.31%	22
TOTAL		52

#	WHAT WOULD THAT BACK UP BE?	DATE
1	The same back-up if the meetings were not able to be conducted in the office (internet failure, etc.)	12/26/2024 7:01 PM
2	There is a secondary person who could do it if necessaryit	12/26/2024 6:52 PM
3	N/A	12/26/2024 3:53 PM
4	we go remote	12/26/2024 10:29 AM
5	Whether in the office or remote, I have back up procedures for all 341s and court matters.	12/26/2024 10:08 AM
6	n/a = I currently do not conduct meetings outside my main office.	12/16/2024 1:30 PM
7	a backup person located in the main office	12/9/2024 11:18 AM
8	It does not matter where I am physically located because I would be using the same equipment anywhere I am. Laptop with camera & recorder.	12/6/2024 7:03 PM
9	NA	12/4/2024 6:38 PM
10	Reschedule the meeting. If your internet goes down it doesn't matter where you are sitting.	12/4/2024 6:06 PM
11	if laptop malfunctions, i can Zoom on my cell phone.	12/4/2024 4:54 PM
12	We are hybrid and already use our home offices daily, the connections are private and sufficient.	12/4/2024 4:07 PM
13	Staff at "main" office would call and adjourn meeting to a mutually agreeable time.	12/4/2024 4:01 PM
14	n/a	12/4/2024 3:53 PM
15	Staff attorney stand-in	12/4/2024 3:51 PM

16	N/A	12/4/2024 2:56 PM
17	I did when we did that -- the backup was another person in the main office	12/4/2024 2:44 PM
18	Would have to reschedule to the next date.	12/4/2024 2:13 PM
19	Such would occur only if the trustee or staff attorney were scheduled to be out of the office and if something came up to cause the person scheduled to conduct the MOC had an issue that caused the person unable to conduct the MOC. Then, the trustee/SA might have to conduct the MOC "outside" the office.	12/4/2024 1:59 PM
20	Hot spot or telephone.	12/4/2024 1:47 PM
21	The trustee or a staff attorney in the main office can take over	12/4/2024 1:35 PM
22	We do not have a back up because we do the meetings in the office, but consider this. The biggest disruption our office has had was our internet at the office being down several times over a 3 week period due to an HVAC issue. We have to re-schedule a lot of things because it was too hot in the office for anyone to work. Since our office is cloud based, we could have continued to hold 341s during that period without disruption.	12/4/2024 1:26 PM
23	I currently don't conduct meetings outside of main office, but if allowed, I would employ the same backup procedures I have now of re-scheduling the meeting if something prevents me from conducting it.	12/4/2024 1:19 PM
24	We have multiple backups, as we have staff both at the office and outside of the office who is ready to jump into 341 hearings to record or assist, as needed.	12/4/2024 1:03 PM
25	I have other local locations where I can conduct the meetings that meet all the criteria of my home office.	12/4/2024 12:52 PM
26	I would also connect through my phone. If none of that were available. My office would immediately contact all attorneys directly with apologies, post to my website, and file continued 341 notices that same day.	12/4/2024 12:35 PM
27	Conduct from other location	12/4/2024 12:31 PM
28	my staff attorneys and I maintain constant contact	12/4/2024 12:30 PM
29	I have a Staff Attorney that could step in and take over if needed who is located either at the main office or at their remote location.	12/4/2024 12:27 PM
30	These are the same as my "main" office - only issues I could foresee are internet issues. If it is Wifi/internet, then I have a hotspot on my phone I use. If it is both, then I would adjourn. I have cell phones of all debtor(s)' counsel (and they have mine), so I would text/call re: the issue and adjourn if internet is not viable within a decent amount of time	12/4/2024 12:24 PM
31	NA	12/4/2024 12:23 PM
32	To conduct the meeting from the remote location.	12/4/2024 12:22 PM
33	We've had connection issues in our main office, so we just roll with it the same we would here. ne of my staff bought their own recorder so we don't have to worry about who has the expensive one.	12/4/2024 12:21 PM
34	Myself and other staff who are hearing officers have office provided hot spots to assist with any internet connectivity issues from a remote workspace.	12/4/2024 12:21 PM
35	other staff attorneys or I can preside the meetings and if their is an issue of internet or computer, when possible, the staff attorney need to travel to main office.	12/4/2024 12:18 PM
36	Staff is in the main office prepared to conduct meetings in case of emergency	12/4/2024 12:17 PM
37	If a presiding officer assigned to conduct 341s was prevented from doing so, the back up would be to have the 2nd staff atty or trustee conduct the meetings.	12/4/2024 12:12 PM
38	I don't conduct 341s outside of my main office, but my backup would be to use my iPad - which I have had to do anyway, even when conducting 341s from my main office. My other backup is my staff attorney, who works from home full-time.	12/4/2024 11:52 AM
39	Emergency rescheduling	12/4/2024 11:50 AM

Q11 Any other information that you would like to provide?

Answered: 25 Skipped: 58

#	RESPONSES	DATE
1	We are professionals and those decisions should be left to the Trustee.	12/26/2024 6:52 PM
2	sorry that this was not more helpful ...	12/26/2024 12:14 PM
3	We have effectively been conducting virtual 341s for years now. Where we are located, no one knows. We must use a virtual background so no one knows where we are located and we do not know where other people are located. The rule is dated and obsolete. If being remote for Court is effective and we do not know where judges are located, why does it matter where we are located as long as we effectively do our job.	12/26/2024 10:08 AM
4	If debtors and debtors counsel do not have to be present in the district, it defeats the purpose of virtual meetings to require the Trustee and staff to be required to hold 341 hearings at the "main office" in the district	12/6/2024 11:24 AM
5	Once the 341 has been scheduled initially, we have the flexibility to continue the 341 to another date/time. If the case is called on the first date but cannot be conducted, only creditors who appeared will be given notice of the continued date. If the case has to be continued before the case can be called (for example, we continue the 341 in cases where the debtor has not yet filed all schedules), notice must be given to all creditors on the matrix. Usually in those circumstances the debtor is responsible for sending the notice to all creditors on the matrix.	12/5/2024 11:04 AM
6	I will repeat what I said above - what difference does it make if you are in your “main office” - who is going to know the difference so long as you use the UST provided background, there is no sound issue where you are located and you maintain professional standards? This is a guideline with no logic in my opinion. Life happens and having the flexibility to conduct the meetings wherever and whenever possible in an increasingly complex society benefits everyone and avoids meetings having to be rescheduled. Rescheduling meetings leads to confusion on the part of debtors and also requires resources for noticing the rescheduled date/time. Requiring meetings to be conducted in a “main” office is a difference without distinction in terms of what actually happens - seems like a rule for the purpose of having a rule.	12/4/2024 8:56 PM
7	No.	12/4/2024 1:59 PM
8	I feel the rule related to the location of the meeting was to prevent debtors and creditors from travelling to a location outside the district . With virtual 341 meetings this rule is no longer necessary	12/4/2024 1:50 PM
9	Thanks for doing this.	12/4/2024 1:47 PM
10	The "in the office" requirement is an antiquated rule that has outlived its usefulness. Every other party in the process can attend from virtually any location. There is no reason the presiding officers should not be able to do that as well. We have the technology and access to the cloud to allow us to do just that.	12/4/2024 1:26 PM
11	No	12/4/2024 1:19 PM
12	I do not have any staff attorney for more than 6 months now, and I've been trying to hire a staff attorney local to my main office for over a year, without any luck. I'm constrained to hire legal help outside of my district on a consultant basis. I have to be able to allow the consulting attorney to appear for me in 341 hearings and court hearings at their own office and not requiring them to commute to my main office, which is 2-3 hours away. If the commute was required, they would not work me at all.	12/4/2024 1:03 PM
13	My office is going virtual and I know other trustees are looking at doing this same this. The ability to do this is a MAJOR cost savings. If I'm restricted by being at a "main" office only for 341 meetings, then I have increased costs in my budget driving my fee up higher. Remote	12/4/2024 12:52 PM

	capabilities are a cost savings feature the legal world needs to adopt. And it can do with with reasonable boundaries in place to ensure trustees are providing the same quality of service as if they had a "main" office.	
14	Thank you for your efforts to allow trustees to go to 60 days.	12/4/2024 12:41 PM
15	We should be allowed to hold the meetings outside main office. The staff attorneys and mye=self all have high speed internet and a private location	12/4/2024 12:40 PM
16	I believe my Excel 341 date sheets from pre and post 50 days, would be very enlightening to the committee. It seems like a minor change to many. When you see it on paper, it is shocking!!! If you are interested contact me! Kathy Davis - kldavis@lubbockch13.com 806-748-6699	12/4/2024 12:35 PM
17	Technology is available to allow for many changes in the way business is done today. This would be a good start to continue moving in a good direction.	12/4/2024 12:30 PM
18	Trustees know how to do their job and they get the job done. Trying to punish a Trustee because they are not sitting in a specific location conducting a zoom meeting seems like a petty thing for the UST to bring up. The 60-day window for 341 hearings would greatly help in being able to adjust for trying to resolve conflicts with other Trustee's calendars.	12/4/2024 12:27 PM
19	Overall the timing of the 341a hearing, proof of claim bar date and scheduled confirmation hearings are counter-intuitive and should be reviewed again.	12/4/2024 12:23 PM
20	Please do everything possible to overturn this punitive and unnecessary policy.	12/4/2024 12:22 PM
21	We need some kind of flexibility. Authorization for special circumstances should be granted.	12/4/2024 12:18 PM
22	My office has adapted to the restrictions imposed by the UST and we've not had any issues to date. However, I support changes to allow flexibility should case filings increase or in other circumstances.	12/4/2024 12:12 PM
23	Because case filings occur in waves and are out of our control, it would be very helpful to have more flexibility in setting the meetings.	12/4/2024 11:53 AM
24	As most of my scheduling issues are debtor attorney (or debtor) created, it seems really unfair the extent it messes with my and my staff attorney's schedule so extensively. I think there should be some exception for "cause" for continuing longer.	12/4/2024 11:50 AM
25	The rule is unfair, right now, against trustees since debtors'/creditors' attorneys are not required to be present within their district/neighboring district when participating in Section 341 meetings.	12/4/2024 11:50 AM

TAB 5B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: COMMENTS ON PROPOSED AMENDMENT TO RULE 1007(h)

DATE: MARCH 4, 2025

Last August an amendment to Rule 1007(h) (Interests in Property Acquired or Arising After the Petition is Filed) was published for comment. This amendment would explicitly allow a court to require the debtor to file a supplemental schedule to list property or income that becomes property of the state under § 1115, 1207, or 1306—that is, property that "the debtor acquires after commencement of the case but before the case is closed, dismissed, or converted" and "earnings from services performed by the debtor" during that period.

Seven comments were filed addressing this proposed change, all of them negative.

The Proposed Amendment

As published, the amendment provides as follows:

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time to File

* * * * *

(h) Interests in Property Acquired or Arising After a Petition Is Filed.

(1) ***Property Described in § 541(a)(5).*** After the petition is filed in a Chapter 7, 11, 12, or 13 case, if the debtor acquires—or becomes entitled to acquire—an interest in property described in § 541(a)(5), the debtor must file a supplemental schedule and include any claimed exemption. Unless the court allows additional time, the debtor must file the schedule within 14 days after learning about the property interest. This duty continues even after the case is closed but does not apply to property acquired after an order is entered:

(~~1~~A) confirming a Chapter 11 plan (other than one confirmed under § 1191(b)); or

(~~2~~B) discharging the debtor in a Chapter 12 case, a Chapter 13 case, or a case under Subchapter V of Chapter 11 in which the plan is confirmed under § 1191(b).

(2) ***Property That Becomes Estate Property Under § 1115, 1207, or 1306.*** The court may also require the debtor to file a supplemental schedule to list property or income that becomes property of the estate under § 1115, 1207, or 1306.

* * * * *

Committee Note

Subdivision (h) is amended to clarify that a court may require an individual chapter 11 debtor or a chapter 12 or chapter 13 debtor to file a supplemental schedule to report postpetition property or income that comes into the estate under § 1115, 1207, or 1306.

The Comments

BK-2024-0002-0009 – National Conference of Bankruptcy Judges.
NCBJ opposes this amendment. (1) It is unnecessary. Courts already have the authority to promulgate local rules requiring disclosure of postpetition assets, and some have done so. (2) It may appear to be an endorsement of cases that have found an obligation to disclose such assets (reaching that conclusion without citing any statute or rule that imposes such an obligation). (3) It may have unintended consequences, leading some courts to impose a disclosure obligation. (4) It runs counter to the preference for uniformity in bankruptcy. (5) It is not clear what is meant by a "supplemental schedule." (6) It does not specify what assets could be required to be disclosed, and courts would interpret differently.

BK-2024-0002-0010 – National Association of Consumer Bankruptcy Attorneys.
NACBA opposes this amendment. There is no reason for an amendment to alert debtors to the need in some jurisdictions to disclose certain postpetition assets. Competent attorneys will be aware of the need to do so, and *pro se* debtors probably won't be aware of a local rule imposing such an obligation. Cases holding that there is such a duty of disclosure are wrongly decided; no statute or rule requires it, other than for § 541(a)(5) property and postpetition income in some circumstances. Adoption of the amendment would lead to further disuniformity in chapter 13 practice. Local rules would vary (as they already do) in the type and dollar amount of property that had to be disclosed. Finally, adoption of the rule would also make it more difficult for debtors to argue, in courts that have not required disclosure of postpetition asset acquisition, that such disclosure is not required. A court could rightly ask why, if it is not required, the Supreme Court promulgated a rule concerning such disclosure. If the Advisory Committee wants to take a position on this still developing case law, it should clarify that there is no obligation to disclose postpetition acquisitions of property other than § 541(a)(5) property.

BK-2024-0002-0012 – Benjamin Matthews.

He opposes the amendment. It will create more confusion regarding the disclosure of postpetition assets and make it more difficult to properly advise clients.

BK-2024-0002-0013 – Erin K. Brignola.
She agrees with NCBJ and NACBA in opposing the amendment. The proposed amendment would work to punish debtors for not amending and exempting a personal injury claim that arose after the petition.

BK-2024-0002-0015 – Anonymous.
Opposes the amendment. Because § 1306 is all encompassing, the amendment could require a debtor to disclose "any small raise, tax refund, or acquisition of nominal property, such as furniture, etc. It's not practical."

BK-2024-0002-0016 – National Bankruptcy Conference.
NBC opposes the amendment. (1) It authorizes a disclosure requirement that is not found in the Bankruptcy Code and may be inconsistent with the Code. (2) The law regarding such a disclosure is still evolving, and cases are conflicting. (3) The proposed amendment is vague and fails to provide guidance about how, when, and under what circumstances a court may require this disclosure. (4) Unlike Rule 4002(b)(5), the proposed rule lacks appropriate safeguards. The proposed disclosure might include sensitive and confidential information.

BK-2024-0002-0017 – Darya Druch.
Opposes the amendment. (1) The Code does not require this disclosure. (2) The debtor's attorney could not keep track of all the property covered by this rule without substantially increasing costs. (3) The rule would cause variations from district to district. (4) The proposed amendment seems to address something that is not a problem.

The Subcommittee's Discussion

In considering the comments, Subcommittee members recalled that it initially recommended taking no action on the suggestion that gave rise to the proposed amendment, which would have required the reporting of a debtor's acquisition of postpetition property in the chapter 11 case of an individual or in a chapter 12 or 13 case. This suggestion was considered by the Subcommittee, and at the spring 2023 Advisory Committee meeting, the Subcommittee recommended that no further action be taken on it. Following the Advisory Committee's discussion of the matter, the suggestion was referred back to the Subcommittee for further consideration. The Subcommittee did so and recommended what it considered to be a middle

ground: not mandating disclosure of the postpetition property but allowing courts to do so on a local basis.

The Subcommittee's reasons for opposing a national rule requiring disclosure of §§ 1115, 1207, and 1306 property were similar to many of the concerns raised in the comments. The Subcommittee's August 21, 2023, report to the Advisory Committee explained as follows:

> The Subcommittee questioned whether a widespread problem exists that needs to be solved on a national basis. There is no indication that courts are being prevented from requiring chapter 12 and 13 debtors and individual debtors in chapter 11 cases to supplement their schedules to report acquisitions of property or income increases while their cases are pending. Indeed, courts have found several ways to impose such a requirement.
>
> Nor does it appear that the Bankruptcy Rules need to be amended in this regard in order to be consistent with the Code. There is no express statutory obligation to report acquisitions of property covered by §§ 1115, 1207, and 1306. The Subcommittee noted that in 2005, when Congress imposed the requirement for the filing of postpetition tax returns upon request, it did not impose a broader requirement regarding the reporting of all postpetition property acquisitions.
>
> The Subcommittee also considered the challenge of drafting an effective amendment to Rule 1007(h) to include property under §§ 1115, 1207, and 1306. It is not feasible to include within a supplementation requirement all postpetition property that comes within those provisions. Either specific types of property need to be stated, or the rule needs to describe some degree of impact on the debtor's financial condition, such as substantial or significant. A specification of types of property gives greater guidance, but it runs the risk of being underinclusive.
>
> In the end, the Subcommittee concluded that bankruptcy courts have developed their own practices for whether and how they require disclosure of postpetition property by debtors in chapter 11, 12, and 13 cases, and it did not see any reason to disturb those practices.

The Subcommittee thought that the NCBJ, NACBA, and NBC comments in particular point out why the middle ground adopted by the proposed amendment may not be desirable. First, it is not needed. Some courts have already adopted local rules or issued orders requiring disclosure of postpetition property, and the Subcommittee was aware of no suggestion that they

lack the authority to do so. Thus, the clarification referred to in the committee note is unnecessary. Second, the addition of this provision may suggest that the Advisory Committee is taking a position in support of the required disclosure of property under §§ 1115, 1207, and 1306, and the Subcommittee did not think that the Advisory Committee should be seen as taking a position on this still evolving issue.

Recommendation

The Subcommittee recommends that the Advisory Committee withdraw the proposed amendment to Rule 1007(h) and not pursue it further.

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

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time to File[2]

* * * * *

(b) Schedules, Statements, and Other Documents.

* * * * *

(7) ***Personal Financial-Management Course.*** Unless an approved provider has notified the court that the debtor has completed a course in personal financial management after filing the petition or the debtor is not required to complete one as a condition to discharge, an individual debtor in a Chapter 7 or Chapter

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

[2] The changes indicated are to the restyled version of Rule 1007, not yet in effect.

13 13 case—or in a Chapter 11 case in which
14 § 1141(d)(3) applies—must file a certificate
15 of course completion issued by the provider.
16 * * * * *
17 **(c) Time to File.**
18 * * * * *
19 ~~(4) *Financial Management Course*. Unless the~~
20 ~~court extends the time to file, an individual~~
21 ~~debtor must file the certificate required by~~
22 ~~(b)(7) as follows:~~
23 ~~(A) in a Chapter 7 case, within 60 days~~
24 ~~after the first date set for the meeting~~
25 ~~of creditors under § 341; and~~
26 ~~(B) in a Chapter 11 or Chapter 13 case, no~~
27 ~~later than the date the last payment is~~
28 ~~made under the plan or the date a~~
29 ~~motion for a discharge is filed under~~
30 ~~§ 1141(d)(5)(B) or § 1328(b).~~

* * * * *

(h) Interests in Property Acquired or Arising After a Petition Is Filed.

(1) ***Property Described in § 541(a)(5).*** After the petition is filed in a Chapter 7, 11, 12, or 13 case, if the debtor acquires—or becomes entitled to acquire—an interest in property described in § 541(a)(5), the debtor must file a supplemental schedule and include any claimed exemption. Unless the court allows additional time, the debtor must file the schedule within 14 days after learning about the property interest. This duty continues even after the case is closed but does not apply to property acquired after an order is entered:

(~~1~~A) confirming a Chapter 11 plan (other than one confirmed under § 1191(b)); or

(~~2~~B) discharging the debtor in a Chapter 12 case, a Chapter 13 case, or a case under Subchapter V of Chapter 11 in which the plan is confirmed under § 1191(b).

(2) ***Property That Becomes Estate Property Under § 1115, 1207, or 1306.*** The court may also require the debtor to file a supplemental schedule to list property or income that becomes property of the estate under § 1115, 1207, or 1306.

* * * * *

Committee Note

The deadlines in (c)(4) for filing certificates of completion of a course in personal financial management have been eliminated. When Code § 727(a)(11), 1141(d)(3), or 1328(g)(1) requires course completion for the entry of a

discharge, the debtor must demonstrate satisfaction of this requirement by filing a certificate issued by the course provider, unless the provider has already done so. The certificate must be filed before the court rules on discharge, but the rule no longer imposes an earlier deadline for doing so.

Subdivision (h) is amended to clarify that a court may require an individual chapter 11 debtor or a chapter 12 or chapter 13 debtor to file a supplemental schedule to report postpetition property or income that comes into the estate under § 1115, 1207, or 1306.

TAB 5C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: PROPOSED AMENDMENTS TO RULES 1007(c), 5009(b), and 9006(b) AND (c)

DATE: MARCH 4, 2025

Last August, in response to the recommendation of the Advisory Committee, the Standing Committee published for comment proposed amendments to the three rules listed above. They were proposed with the goal of reducing the number of individual debtors who go through bankruptcy but whose cases are closed without a discharge because they either failed to take the required course on personal financial management or merely failed to file the needed documentation of their completion of the course.

The proposed changes consist of the following:

1. *The deadlines in Rule 1007(c) for filing the certificate of course completion would be eliminated.* The Code only requires that the course be taken before a discharge can be issued, and members of the Advisory Committee were concerned that some debtors might be deprived of a discharge merely because they failed to file their certificates by the times specified in the rules.

The proposed amendments would delete subdivision (c)(4), which sets out the deadlines for filing the certificate of course completion in chapter 7, 11, and 13 cases. If this amendment is approved, references to the deadlines in Rule 9006(b) and (c) would also be deleted.

2. *Rule 5009(b) would provide for two reminder notices to be sent, rather than one.* This change would allow one notice to be sent early in the case—when the debtor would be more

likely to be reachable and still represented by counsel—and another toward the end of the case before eligibility for a discharge would be determined. The first notice would be sent to any chapter 7 or chapter 13 debtor for whom a certificate of course completion has not been filed within 45 days after the petition was filed. This date will be 21 to 50 days earlier than Rule 5009(b)'s current requirement.

The second notice in a chapter 7 case would be sent to any debtor for whom a certificate has not been filed within 90 days after the petition was filed, and it would advise the debtor that the case is subject to closing without the entry of a discharge if the certificate is not filed within the next 30 days.

In a chapter 13 case, the second notice would be sent as part of the closing process. The proposed amendment would require the notice to be sent to any debtor for whom a certificate has not been filed when the trustee files a final report and final account. It would advise the debtor that the case is subject to being closed without the entry of a discharge at the end of 60 days.

Comments Submitted

In addition to a general comment supporting all "the proposed amendments to the Federal Rules of Bankruptcy Procedure," two comments were submitted regarding these rules. One submitted by an unnamed commenter concerns Rule 9006 generally (needs more flexibility) and does not relate to the proposed amendment. The other comment was submitted by Jacqueline Sadlo, a paralegal at Upsolve, which assists disadvantaged individuals in chapter 7 cases. She said that she strongly supports the deletion of Rule 1007(c)(4) and the amendments to Rule 5009(b) because these changes will benefit *pro se* debtors and the nonprofit organizations that assist them. She noted that they will also benefit the court system by reducing the number of repeat filings and re-openings due to missed deadlines and procedural complexities.

Recommendation

The Subcommittee recommends that the Advisory Committee give its final approval to the proposed amendments to Rules 1007(c), 5009(b), and 9006(b) and (c), as published.

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

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time to File[2]

* * * * *

(b) Schedules, Statements, and Other Documents.

* * * * *

(7) ***Personal Financial-Management Course.*** Unless an approved provider has notified the court that the debtor has completed a course in personal financial management after filing the petition or the debtor is not required to complete one as a condition to discharge, an individual debtor in a Chapter 7 or Chapter

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

[2] The changes indicated are to the restyled version of Rule 1007, not yet in effect.

13 13 case—or in a Chapter 11 case in which
14 § 1141(d)(3) applies—must file a certificate
15 of course completion issued by the provider.
16 * * * * *
17 **(c) Time to File.**
18 * * * * *
19 ~~(4) *Financial Management Course*. Unless the~~
20 ~~court extends the time to file, an individual~~
21 ~~debtor must file the certificate required by~~
22 ~~(b)(7) as follows:~~
23 ~~(A) in a Chapter 7 case, within 60 days~~
24 ~~after the first date set for the meeting~~
25 ~~of creditors under § 341; and~~
26 ~~(B) in a Chapter 11 or Chapter 13 case, no~~
27 ~~later than the date the last payment is~~
28 ~~made under the plan or the date a~~
29 ~~motion for a discharge is filed under~~
30 ~~§ 1141(d)(5)(B) or § 1328(b).~~

* * * * *

(h) Interests in Property Acquired or Arising After a Petition Is Filed.

(1) ***Property Described in § 541(a)(5).*** After the petition is filed in a Chapter 7, 11, 12, or 13 case, if the debtor acquires—or becomes entitled to acquire—an interest in property described in § 541(a)(5), the debtor must file a supplemental schedule and include any claimed exemption. Unless the court allows additional time, the debtor must file the schedule within 14 days after learning about the property interest. This duty continues even after the case is closed but does not apply to property acquired after an order is entered:

(~~1~~A) confirming a Chapter 11 plan (other than one confirmed under § 1191(b)); or

(~~2~~B) discharging the debtor in a Chapter 12 case, a Chapter 13 case, or a case under Subchapter V of Chapter 11 in which the plan is confirmed under § 1191(b).

(2) ***Property That Becomes Estate Property Under § 1115, 1207, or 1306.*** The court may also require the debtor to file a supplemental schedule to list property or income that becomes property of the estate under § 1115, 1207, or 1306.

* * * * *

Committee Note

The deadlines in (c)(4) for filing certificates of completion of a course in personal financial management have been eliminated. When Code § 727(a)(11), 1141(d)(3), or 1328(g)(1) requires course completion for the entry of a

discharge, the debtor must demonstrate satisfaction of this requirement by filing a certificate issued by the course provider, unless the provider has already done so. The certificate must be filed before the court rules on discharge, but the rule no longer imposes an earlier deadline for doing so.

Subdivision (h) is amended to clarify that a court may require an individual chapter 11 debtor or a chapter 12 or chapter 13 debtor to file a supplemental schedule to report postpetition property or income that comes into the estate under § 1115, 1207, or 1306.

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

Rule 5009. Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied[2]

* * * * *

(b) Chapter 7 or 13—Notice of a Failure to File a Certificate of Completion for a Course on Personal Financial Management.

(1) ***Applicability.*** This subdivision (b) applies if an individual debtor in a Chapter 7 or 13 case is required to file a certificate under Rule 1007(b)(7). ~~and~~

(2) ***Clerk's First Notice to the Debtor.*** If the certificate is not filed ~~fails to do so~~ within 45 days after the ~~first date set for the meeting of~~

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

[2] The changes indicated are to the restyled version of Rule 5009, not yet in effect.

~~creditors under § 341(a)~~ petition is filed~~. The~~ the clerk must promptly notify the debtor that the case ~~will~~ can be closed without entering a discharge if the certificate is not filed ~~within the time prescribed by Rule 1007(c)~~.

(3) ***Clerk's Second Notice to the Debtor.***

(A) *Chapter 7.* In a Chapter 7 case, if the certificate is not filed within 90 days after the petition is filed and the court has not yet sent a second notice, the clerk must promptly notify the debtor that the case can be closed without entering a discharge if the certificate is not filed within 30 days after the notice's date.

(B) *Chapter 13.* In a Chapter 13 case, if the certificate has not been filed when the trustee files a final report and final

account, the clerk must promptly notify the debtor that the case can be closed without entering a discharge if the certificate is not filed within 60 days after the notice's date.

* * * * *

Committee Note

Subdivision (b) is amended in order to reduce the number of cases in which a discharge is not issued solely because a certificate of completion of a personal-financial-management course is not filed as required by Rule 1007(b)(7). When that occurs, a debtor who is otherwise entitled to a discharge must seek to have the case reopened—at added cost—in order to obtain the ultimate benefit of the bankruptcy.

Subdivision (b) now provides for two reminder notices to be sent to debtors who have not satisfied the requirement of Rule 1007(b)(7). The clerk must send the first notice to any chapter 7 or 13 debtor for whom a certificate has not been filed within 45 days after the petition was filed, an earlier date than under the prior rule. Then if a chapter 7 debtor has not complied within 90 days after the petition date and a second notice has not already been sent, the clerk must send a second reminder notice. In a chapter 13 case, as part of the case closing process, the clerk must send a second notice to any debtor who has not complied by the time the trustee files a final report and final account. Both notices must explain that the consequence of not complying

with Rule 1007(b)(7) is that the case is subject to being closed without a discharge being entered.

Nothing in the rule precludes a court from taking other steps to obtain compliance with Rule 1007(b)(7) before a case is closed without a discharge.

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

Rule 9006. Computing and Extending Time; Motions[2]

* * * * *

(b) Extending Time.

* * * * *

(3) ***Extensions Governed by Other Rules.*** The court may extend the time to:

(A) act under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033—but only as permitted by those rules; and

(B) file the ~~certificate required by Rule 1007(b)(7), and the~~ schedules and statements in a small business

[1] Matter to be omitted is lined through.

[2] The changes indicated are to the restyled version of Rule 9006, not yet in effect.

case under § 1116(3)—but only as permitted by Rule 1007(c).

(c) Reducing Time.

* * * * *

(2) ***When Not Permitted.*** The court may not reduce the time to act under Rule 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2) or (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, or 9033(b). ~~Also, the court may not reduce the time set by Rule 1007(c) to file the certificate required by Rule 1007(b)(7).~~

* * * * *

Committee Note

The references in (b)(3)(B) and (c)(2) to the certificate required by Rule 1007(b)(7) have been deleted because the deadlines for filing those certificates have been eliminated.

TAB 5D

MEMORANDUM

TO: ADVISORY COMMITTEE FOR BANKRUPTCY RULES

FROM: CONSUMER SUBCOMMITTEE

SUBJECT: 24-BK-N – RULE 3001(c)

DATE: FEB. 28, 2025

We received a suggestion from the National Consumer Law Center (24-BK-N) noting a potential inadvertent substantive change in Bankruptcy Rule 3001(c) effected by its restyling.

The unrestyled version of the relevant part of that rule read as follows:

Rule 3001. Proof of Claim

***

(c) SUPPORTING INFORMATION.

***

(2) *Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply*. In a case in which the debtor is an individual:

***

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

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

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

(3) *Claim Based on an Open-End or Revolving Consumer Credit Agreement.*

(A) When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor's real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

(i) the name of the entity from whom the creditor purchased the account;

(ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;

(iii) the date of an account holder's last transaction;

(iv) the date of the last payment on the account; and

(v) the date on which the account was charged to profit and loss.

(B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision

***

In the restyled version of Rule 3001, former Rule 3001(c)(2)(D) became a new Rule 3002(c)(3) which reads as follows:

(3) ***Sanctions in an Individual-Debtor Case***. If the debtor is an individual and a claim holder fails to provide any information required by (1) or (2), the court may, after notice and a hearing, take one or both of these actions:

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

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

What used to be Rule 3001(c)(3) dealing with claims based on an open-end or revolving consumer credit agreement was redesignated as Rule 3001(c)(4).

The problem noted by the National Consumer Law Center is that former Rule 3001(c)(2)(D) prescribed available sanctions "If the holder of a claim fails to provide any *information required by this subdivision (c)* (emphasis added)."[1] The restyled version of Rule 3001(c)(3) now limits sanctions to failure to supply "*information required by (1) and (2)* (emphasis supplied)," excluding the information required by new (4) which was part of former

[1] At the time that rule was drafted in 2011, there was no Rule 3001(c)(3) dealing with claims based on open-end or revolving consumer credit agreements. That paragraph was added in 2012. But because it was added as a part of subdivision (c), the sanctions language of Rule 3001(c)(2)(D) appears to apply to it because Rule 3001(c)(2)(D) was not limited to information required by paragraph (c)(2). The 2012 Advisory Committee Note that describes the addition of former paragraph (c)(3) does not discuss the issue of sanctions for noncompliance, perhaps because Rule 3001(c)(2)(D) was clearly applicable.

subsection (c) and was therefore formerly included. This is a substantive change, and was not intended. Therefore a technical amendment to Rule 3001(c)(3) to eliminate this substantive change would replace the current phrase "information required by (1) or (2)" with the words "information required by (c)". The change is shown below:

(3) ***Sanctions in an Individual-Debtor Case***. If the debtor is an individual and a claim holder fails to provide any information required by ~~(1) or (2)~~(c), the court may, after notice and a hearing, take one or both of these actions:

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

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

Advisory Committee Note

The first sentence of Rule 3001(c)(3) is amended to replace the references to "(1) or (2)" with a reference to "(c)." This remedies an inadvertent substantive change made by the restyled version of the Rule which became effective on Dec. 1, 2024. The remedies provisions of rule 3001(c)(3) are intended to be applicable to all failures to provide information required by (c), including that required by (c)(4).

The Subcommittee does not believe that publication of this technical amendment is necessary because it is simply correcting the inadvertent error introduced by the restyling project. Under Section 440.20.40(d) of the procedures Governing the rulemaking Process the "Standing Committee may … eliminate public notice and comment for a technical or conforming amendment if the Committee determines that they are unnecessary." Therefore, the Subcommittee has given its approval to the amendment and recommends that the Advisory Committee give final approval to the amendment and recommend it to the Standing Committee for final approval without publication.

TAB 6

TAB 6A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: Possible Technical Changes to Official Forms 122A-2 and 122C-2

DATE: February 28, 2025

At the fall 2024 meeting, the Advisory Committee considered and approved a proposed amendment to Official Forms 122A-2 and 122C-2 to address a May 2024 change in terminology concerning the Housing and Utilities Standards for Connecticut. Instead of breaking down the state by "Counties" it developed nine "Planning Regions." In completing lines 8 and 9a of the two forms, a debtor must consult the Housing and Utilities Standards for the debtor's "county" to determine the appropriate income deduction amount. To address the change from "Counties" to "Planning Regions" in Connecticut, the Advisory Committee approved adding the words "or planning region" after "county" at lines 8 and 9a of both forms as shown in the mockup below.

To answer the questions in lines 8-9, use the U.S. Trustee Program chart.

To find the chart, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

8. ..**Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county or planning region for insurance and operating expenses. $_____

9. **Housing and utilities – Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county or planning region for mortgage or rent expenses. $_____

While discussing the recommendation during the meeting however, a member asked whether other states might use designations besides county for these means-test questions. AO staff researched this question after the meeting and learned that several states use designations other than "county" for at least some areas listed in the Housing and Utilities Standards. Louisiana, for example, uses "parish" for all designations, and Alaska uses "borough" or "census area" for its listed locations. In addition, four states, Maryland, Missouri, Nevada, and Virginia use a city rather than a county designation for some locations. There may be additional variations with respect to U.S. territories. The Advisory Committee reviewed this new information, and by email vote remanded the proposed changes to the Subcommittee for further deliberation.

After considering the additional research, the Subcommittee has concluded that there is not a clear need to amend the forms to address the Connecticut change. Even though Housing and Utilities Standards have been categorized by "parish" in Louisiana, and "borough" or "census area" in Alaska since the means-test was incorporated into the Bankruptcy Code in 2005, there has been no indication that debtors from those states have had any problems using the

Housing and Utilities table hosted on the Means Testing page of the U.S. Trustee Program website, even though the table header for these designations is uniformly "county." The table for Louisiana is attached.

The Advisory Committee generally does not recommend changes to rules or forms unless there is a suggestion raising a genuine problem that needs to be fixed. Here, AO staff became aware of the Connecticut change and recommended that the means-test forms be updated on the assumption that the form references to county might be confusing. Given that Louisiana and Alaska have used designations other than county without generating any confusion for the past 20 years, however, there does not seem to be a real-world problem.

The Subcommittee recommends that no changes be made.

Bankruptcy Allowable Living Expenses
(Cases Filed On or After November 1, 2024)

Local Housing and Utilities Standards*

Louisiana

		Family Size and Expense Type									
		1 Person		2 People		3 People		4 People		5 or More People	
County	FIPS Code	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent
Acadia Parish	22001	$555	$854	$652	$1,003	$687	$1,057	$766	$1,179	$778	$1,198
Allen Parish	22003	$552	$797	$649	$935	$684	$985	$762	$1,099	$774	$1,117
Ascension Parish	22005	$553	$1,264	$650	$1,484	$685	$1,564	$763	$1,745	$776	$1,772
Assumption Parish	22007	$560	$845	$658	$992	$693	$1,046	$773	$1,166	$785	$1,185
Avoyelles Parish	22009	$618	$634	$725	$745	$764	$785	$852	$875	$866	$889
Beauregard Parish	22011	$586	$905	$688	$1,063	$725	$1,120	$808	$1,249	$821	$1,269
Bienville Parish	22013	$577	$603	$678	$708	$714	$746	$796	$832	$809	$845
Bossier Parish	22015	$572	$1,067	$672	$1,254	$708	$1,321	$790	$1,472	$803	$1,496
Caddo Parish	22017	$596	$918	$700	$1,078	$738	$1,136	$823	$1,267	$836	$1,287
Calcasieu Parish	22019	$565	$977	$664	$1,148	$700	$1,209	$780	$1,349	$793	$1,370
Caldwell Parish	22021	$623	$839	$733	$985	$772	$1,038	$861	$1,157	$875	$1,176
Cameron Parish	22023	$445	$995	$523	$1,168	$551	$1,231	$614	$1,373	$624	$1,395
Catahoula Parish	22025	$611	$659	$717	$775	$756	$816	$843	$910	$856	$925
Claiborne Parish	22027	$571	$546	$671	$641	$707	$676	$788	$754	$801	$766
Concordia Parish	22029	$641	$629	$753	$739	$794	$778	$885	$868	$899	$882
De Soto Parish	22031	$607	$797	$713	$936	$751	$987	$838	$1,100	$851	$1,118
East Baton Rouge Parish	22033	$579	$1,152	$680	$1,353	$717	$1,425	$799	$1,589	$812	$1,615
East Carroll Parish	22035	$620	$603	$729	$708	$768	$746	$856	$832	$870	$845
East Feliciana Parish	22037	$591	$929	$695	$1,090	$732	$1,149	$816	$1,281	$829	$1,302
Evangeline Parish	22039	$666	$645	$782	$757	$824	$798	$919	$890	$934	$904
Franklin Parish	22041	$624	$638	$733	$749	$773	$789	$862	$880	$876	$894
Grant Parish	22043	$559	$843	$657	$990	$692	$1,043	$772	$1,163	$784	$1,182

		Family Size and Expense Type									
		1 Person		2 People		3 People		4 People		5 or More People	
County	FIPS Code	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent
Iberia Parish	22045	$594	$823	$698	$967	$735	$1,019	$820	$1,136	$833	$1,154
Iberville Parish	22047	$615	$914	$722	$1,074	$761	$1,131	$849	$1,261	$862	$1,282
Jackson Parish	22049	$612	$669	$718	$786	$757	$828	$844	$923	$858	$938
Jefferson Davis Parish	22053	$557	$855	$654	$1,004	$689	$1,058	$768	$1,180	$781	$1,198
Jefferson Parish	22051	$566	$1,169	$664	$1,374	$700	$1,447	$780	$1,614	$793	$1,640
La Salle Parish	22059	$637	$863	$748	$1,014	$788	$1,069	$879	$1,192	$893	$1,211
Lafayette Parish	22055	$557	$1,072	$654	$1,259	$689	$1,327	$768	$1,480	$780	$1,504
Lafourche Parish	22057	$551	$991	$648	$1,163	$682	$1,226	$761	$1,366	$773	$1,389
Lincoln Parish	22061	$594	$995	$697	$1,169	$734	$1,232	$819	$1,373	$832	$1,395
Livingston Parish	22063	$584	$1,063	$686	$1,248	$722	$1,316	$805	$1,467	$819	$1,490
Madison Parish	22065	$633	$802	$744	$941	$784	$992	$874	$1,106	$888	$1,124
Morehouse Parish	22067	$624	$714	$733	$839	$772	$884	$861	$985	$874	$1,002
Natchitoches Parish	22069	$594	$852	$698	$1,000	$735	$1,054	$820	$1,175	$833	$1,194
Orleans Parish	22071	$636	$1,395	$747	$1,638	$787	$1,726	$878	$1,924	$892	$1,955
Ouachita Parish	22073	$618	$909	$727	$1,067	$765	$1,125	$853	$1,254	$867	$1,274
Plaquemines Parish	22075	$600	$1,343	$705	$1,577	$743	$1,662	$828	$1,854	$842	$1,883
Pointe Coupee Parish	22077	$588	$1,030	$691	$1,209	$728	$1,274	$811	$1,421	$824	$1,444
Rapides Parish	22079	$635	$891	$746	$1,047	$786	$1,103	$876	$1,230	$890	$1,250
Red River Parish	22081	$559	$689	$657	$809	$692	$853	$772	$951	$784	$966
Richland Parish	22083	$695	$658	$816	$774	$860	$815	$959	$909	$975	$923
Sabine Parish	22085	$662	$757	$777	$889	$819	$937	$913	$1,045	$928	$1,062
St. Bernard Parish	22087	$537	$872	$631	$1,024	$665	$1,079	$742	$1,203	$754	$1,222
St. Charles Parish	22089	$609	$1,230	$715	$1,445	$754	$1,522	$840	$1,698	$854	$1,725
St. Helena Parish	22091	$622	$563	$730	$662	$770	$697	$858	$778	$872	$790
St. James Parish	22093	$584	$1,058	$686	$1,242	$723	$1,309	$807	$1,459	$819	$1,483
St. John the Baptist Parish	22095	$612	$921	$718	$1,082	$757	$1,140	$844	$1,271	$858	$1,291

		Family Size and Expense Type									
		1 Person		2 People		3 People		4 People		5 or More People	
County	FIPS Code	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent
St. Landry Parish	22097	$564	$807	$663	$947	$699	$998	$779	$1,113	$792	$1,131
St. Martin Parish	22099	$606	$906	$711	$1,065	$749	$1,122	$836	$1,250	$849	$1,271
St. Mary Parish	22101	$590	$873	$693	$1,026	$730	$1,081	$814	$1,205	$827	$1,225
St. Tammany Parish	22103	$575	$1,237	$676	$1,452	$712	$1,530	$794	$1,706	$806	$1,734
Tangipahoa Parish	22105	$546	$980	$641	$1,151	$675	$1,213	$753	$1,352	$765	$1,374
Tensas Parish	22107	$602	$568	$707	$667	$745	$703	$831	$784	$844	$797
Terrebonne Parish	22109	$538	$1,056	$632	$1,240	$666	$1,307	$743	$1,457	$755	$1,480
Union Parish	22111	$604	$729	$709	$857	$747	$903	$833	$1,007	$847	$1,022
Vermilion Parish	22113	$579	$934	$680	$1,097	$717	$1,156	$799	$1,289	$812	$1,310
Vernon Parish	22115	$623	$866	$732	$1,017	$771	$1,072	$860	$1,195	$874	$1,214
Washington Parish	22117	$565	$773	$664	$908	$700	$956	$780	$1,066	$793	$1,083
Webster Parish	22119	$624	$680	$733	$799	$772	$842	$861	$939	$875	$954
West Baton Rouge Parish	22121	$566	$1,068	$665	$1,254	$701	$1,321	$782	$1,473	$794	$1,497
West Carroll Parish	22123	$661	$674	$777	$791	$818	$834	$913	$929	$927	$945
West Feliciana Parish	22125	$613	$1,124	$720	$1,320	$759	$1,391	$846	$1,551	$860	$1,576
Winn Parish	22127	$625	$643	$734	$755	$773	$796	$862	$887	$876	$902

*** Note:** The IRS expense figures posted on this Web site are for use in completing bankruptcy forms. They are not for use in computing taxes or for any other tax administration purpose. Expense information for tax purposes can be found on the IRS Web site.

TAB 6B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: OFFICIAL FORM 410S1 (NOTICE OF MORTGAGE PAYMENT CHANGE)

DATE: MARCH 4, 2025

Published for comment last August were amendments to Official Form 410S1, as shown on the mock-up of the form that follows in the agenda book. The amendments are intended to reflect the proposed provisions in the amendments to Rule 3002.1(b) regarding payment changes in home equity lines of credit ("HELOCs"). The relevant HELOC provisions state as follows:

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

* * * * *

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

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

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

(ii) include a reconciliation amount to account for any overpayment or underpayment during the prior year.

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

(D) *Effective Date.* The new payment amount stated in the annual notice (disregarding the reconciliation amount) is

effective on the first payment due date after the payment under (C) has been made and remains effective until a new notice becomes effective.

* * * * *

The amendments to Rule 3002.1 are on a track leading to a December 1, 2025, effective date. If approved, the amendments to Official Form 410S1 would go into effect at the same time as the rule amendments.

Comments and Recommendation

No comments were submitted in response to publication. Accordingly, the Subcommittee recommends that the Advisory Committee give its final approval to the proposed amendments to Form 410S1, as published.

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

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

Case number _____

Official Form 410S1

Notice of Mortgage Payment Change

12/25

If the debtor's plan provides for payment of postpetition contractual installments on your claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

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

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

Date of payment change:
Must be at least 21 days after date of this notice ____/____/_____

New total payment:
Principal, interest, and escrow, if any $ _____
For HELOC payment amounts, see Part 3

Part 1: Escrow Account Payment Adjustment

1. **Will there be a change in the debtor's escrow account payment?**

❑ No
❑ Yes. Attach a copy of the escrow account statement prepared in a form consistent with applicable nonbankruptcy law. Describe the basis for the change. If a statement is not attached, explain why: _____

Current escrow payment: $ _____ **New escrow payment:** $ _____

Part 2: Mortgage Payment Adjustment

2. **Will the debtor's principal and interest payment change based on an adjustment to the interest rate on the debtor's variable-rate account?**

❑ No
❑ Yes. Attach a copy of the rate change notice prepared in a form consistent with applicable nonbankruptcy law. If a notice is not attached, explain why: _____

Current interest rate: _____% **New interest rate:** _____%

Current principal and interest payment: $ _____ **New principal and interest payment:** $ _____

Part 3: Annual HELOC Notice

3. **Will there be a change in the debtor's home-equity line-of-credit (HELOC) payment for the year going forward?**

❑ No
❑ Yes.

Current HELOC payment: $_____

Reconciliation amount: + $_____ or
- $_____

Amount of next payment (including reconciliation amount) **$_____**

Amount of the new payment thereafter (without reconciliation amount) **$_____**

Part 4: Other Payment Change

4. **Will there be a change in the debtor's mortgage payment for a reason not listed above?**

❑ No
❑ Yes. Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement. (*Court approval may be required before the payment change can take effect.*)

Reason for change: _____

Current mortgage payment: $ _____ **New mortgage payment:** $ _____

Part 5: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number.

Check the appropriate box.

❑ I am the creditor.
❑ I am the creditor's authorized agent.

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

✘ _____ Date ____/_____/_____
Signature

Print: _____ Title _____
First Name Middle Name Last Name

Company _____

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

Committee Note

Official Form 410S1, *Notice of Mortgage Payment Change*, is amended to provide space for an annual HELOC notice. As required by Rule 3002.1(b)(2), new Part 3 solicits disclosure of the existing payment amount, a reconciliation amount representing underpayments or overpayments for the past year, the next payment amount (including the reconciliation amount), and the new payment amount thereafter (without the reconciliation amount). The sections of the form previously designated as Parts 3 and 4 are redesignated Parts 4 and 5, respectively.

TAB 6C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: INSTRUCTIONS FOR FORMS IMPLEMENTING RULE 3002.1

DATE: MARCH 4, 2025

Proposed amendments to Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence) are on schedule to go into effect on December 1, 2025, along with six new forms proposed to implement the rule's new provisions. In response to the publication of the forms for comment, several commenters asked that instructions for completing the forms be provided.

The Subcommittee has approved the instructions that follow in the agenda book and recommends that the Advisory Committee ask the Administrative Office of the Courts to adopt them as instructions for Official Forms 410C13-M1, 410C13-M1R, 410C13-M2, 410C13-M2R, 410C13-N, and 410C13-NR. They do not need to go through the rulemaking process.

United States Bankruptcy Court

_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

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

The [trustee/debtor] states as follows:

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

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

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

Property address: _____

_____
City State ZIP Code

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

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

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

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

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

e. Total amount of arrearages disbursed: $ _____

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

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

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

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

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

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

Signed: _____ Date: ____/____/_____

(Trustee/Debtor)

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

Official Form 41013-M1

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

United States Bankruptcy Court 12/25

Introduction

This form is used only in chapter 13 cases. It may be filed by a trustee or debtor at any time after the date of the order for relief under chapter 13 and until the trustee files the end-of-case Notice of Disbursements Made.

Applicable Law and Rules

Rule 3002.1 of the Federal Rules of Bankruptcy Procedure addresses claims secured by a security interest in a chapter 13 debtor's principal residence. Subdivision (f) of that rule authorizes a trustee or debtor to seek a court determination of the status of such a claim in an ongoing case by filing a motion in the bankruptcy court. Rule 3002.1(f)(1) requires that this form be used for the motion and that it be served on the debtor and the debtor's attorney, if the trustee is the movant; the trustee, if the debtor is the movant; and the claim holder.

Directions

Indicate whether the movant is the trustee or the debtor(s).

Information required in 1

Insert on the appropriate spaces:

- the claim holder's name;
- the court claim number, if known;
- the last 4 digits of the loan account number or any other number used to identify the account;
- the address of the principal residence securing the claim.

Information required in 2

This section concerns disbursements made on account of arrearages. To the extent known by the movant, insert on the appropriate lines:

- the allowed amount of any arrearage that arose prepetition;
- the total amount of any prepetition arrearage disbursed as of the date of the motion;
- the allowed amount of any arrearage that arose postpetition;
- the total amount of any postpetition arrearage disbursed as of the date of the motion;
- the total amount of arrearages disbursed as of the date of the motion

The amount listed on line 2a should be the same amount as "Amount necessary to cure any default as of the date of the petition" that was reported on line 9 of Form 410 and that has not been disallowed or, in districts in which the plan controls, the amount specified in the plan. The amount on line 2c should be the allowed amount from line 9 of an amended Form 410, the plan, or an order allowing cure of postpetition

arrearages. If line 9 of an amended Form 410 or such plan or order combines the amounts necessary to cure defaults as of the date of the petition with amounts necessary to cure defaults after the petition, then insert the combined total on line 2c and leave line 2a blank. Use line 5 to explain that line 2c includes the amounts to cure both the prepetition default and the postpetition default.

Information required in 3

This section concerns disbursements made on account of postpetition fees, expenses, and charges.

Insert on the appropriate lines:

- the amount of postpetition fees, expenses, and charges noticed under Rule 3002.1(c) and not disallowed;
- the amount of postpetition fees, expenses, and charges disbursed.

The amount listed on line 3a should be the total of the amounts reported on Form 410S-2 as of the date of the motion that have not been disallowed. Line 3b should indicate the amount of those fees, expenses, and charges that have been disbursed.

Information required in 4

This section concerns disbursements made on account of postpetition obligations on the loan that are not reported on prior lines of this form. For example, the amount reported on this line should include regular monthly payments on the loan. Insert that amount in the space provided, to the extent known by the movant. If the movant is the trustee and has not been making these payments, insert $0 if unknown. If the movant is the debtor, insert the sum of the payments made by the debtor and the trustee after the date of the petition and prior to the date of this motion.

Information required in 5

Space is provided here for the movant to add any other information that may be relevant to determining the status of the mortgage claim.

Information required 6

This section states the relief the movant is seeking, followed by spaces for the movant's name and contact information.

United States Bankruptcy Court
_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

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

_____ (claim holder) states as follows:

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

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

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

Property address: _____

_____
City State ZIP Code

2. Arrearages

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

$_____.

Check all that apply:

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

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

  $ _____.

3. Postpetition Payments

(a) Check all that apply:

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

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

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

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

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

iv. Unpaid principal balance of the loan: $_____

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

vi. Balance of the escrow account: $_____

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

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

4. Itemized Payment History

Include if applicable:

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

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

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

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

_____ Date ____/_____/_____
Signature

Print _____ Title _____
Name

Company _____

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

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

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

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

Official Form 41013-M1R

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

United States Bankruptcy Court 12/25

Introduction

This form is used only in chapter 13 cases. It is filed by the holder of a claim secured by a security interest in the debtor's principal residence in response to the trustee's or debtor's motion to determine the status of that claim.

Applicable Law and Rules

Rule 3002.1 of the Federal Rules of Bankruptcy Procedure addresses claims secured by a security interest in a chapter 13 debtor's principal residence. Subdivision (f) of that rule authorizes a trustee or debtor to seek a court determination of the status of such a claim in an ongoing case by filing a motion in the bankruptcy court. Rule 3002.1(f)(2) requires the claim holder to file a response to the motion if it disagrees with facts set forth in the motion. The response must be filed within 28 days after the motion is served, using this form. The response must be served on the debtor, the debtor's attorney, and the trustee.

Directions

Information required in 1

Insert on the appropriate spaces:

- the claim holder's name;
- the court claim number, if known;
- the last 4 digits of the loan account number or any other number used to identify the account;
- the address of the principal residence securing the claim.

Information required in 2

This section responds to line 2 of the motion.

- Insert in the appropriate space the total amount received, as of the date of the response, to cure any prepetition or postpetition arrearage. This amount should include payments received to cure any default occurring as of the date of the petition or thereafter, but not payments for postpetition fees, charges, expenses, escrow, and costs, which are reported in line 3.
- Check all the applicable boxes and provide the information requested.

Information required in 3

This section responds to lines 3 and 4 of the motion.

- In (a), indicate by checking the appropriate box(es) whether the debtor is current on payments that came due postpetition or, if not, whether past due payments are owed for postpetition obligations on the loan (such as regular monthly payments on the loan); fees,

charges, expenses, negative escrow amounts, or costs; or both.

- In (b), attach a payoff statement and provide the information requested.

Information required in 4

If the claim holder has indicated that the debtor is not current on all payments due on the claim, attach an itemized payment history that provides the specified information.

Information required in 5

Space is provided here for the claim holder to add any other information that may be relevant to determining the status of the mortgage claim.

The person completing the form should sign it and provide the requested information.

United States Bankruptcy Court

_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

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

The [trustee/debtor] states as follows:

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

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

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

Property address: _____

_____
City State ZIP Code

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

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

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

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

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

e. Total amount of arrearages disbursed $ _____

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

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

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

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

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

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

Signed: _____
(Trustee/Debtor)

Date: ____/____/_____

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

Official Form 41013-M2

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

United States Bankruptcy Court 12/25

Introduction

This form is used only in chapter 13 cases. It may be filed by a trustee or debtor within 45 days after service of the claim holder's response to the trustee's end-of-case Notice of Disbursements Made or within 45 days after service of the notice if no response is filed.

Applicable Law and Rules

Rule 3002.1 of the Federal Rules of Bankruptcy Procedure addresses claims secured by a security interest in a chapter 13 debtor's principal residence. Subdivision (g) of that rule requires the trustee at the end of the case to file a notice stating the total amount the trustee disbursed to the claim holder to cure any default and the total amount disbursed for payments that came due during the pendency of the case. The claim holder must respond to the notice. Thereafter Rule 3002.1(g)(4) authorizes the trustee or debtor to file a motion seeking a court determination of whether the debtor has cured all defaults and paid all required postpetition amounts. The rule requires that this form be used for the motion and that it be served on the debtor and the debtor's attorney, if the trustee is the movant; the trustee, if the debtor is the movant; and the claim holder.

Directions

Indicate whether the movant is the trustee or the debtor(s).

Information required in 1

Insert on the appropriate spaces:

- the claim holder's name;
- the court claim number, if known;
- the last 4 digits of the loan account number or any other number used to identify the account;
- the address of the principal residence securing the claim.

Information required in 2

This section concerns disbursements made on account of arrearages. To the extent known by the movant, insert on the appropriate lines:

- the allowed amount of any arrearage that arose prepetition;
- the total amount of any prepetition arrearage disbursed as of the date of the motion;
- the allowed amount of any arrearage that arose postpetition;
- the total amount of any postpetition arrearage disbursed as of the date of the motion;
- the total amount of arrearages disbursed as of the date of the motion.

The amount listed on line 2a should be the same amount as "Amount necessary to cure any default as of the date of the petition" that was reported on line 9 of Form 410 and that has not been disallowed or, in districts in which the plan controls, the amount specified by the plan. The amount on line 2c should be the allowed amount from line 9 of an amended Form 410, the plan, or an order allowing cure of postpetition arrearages. If line 9 of an amended Form 410 or such plan or order combines the amounts necessary to cure defaults as of the date of the petition with amounts necessary to cure defaults after the petition, then insert the combined total on line 2c and leave line 2a blank. Use line 5 to explain that line 2c includes the amounts to cure both the prepetition default and the postpetition default.

Information required in 3

This section concerns disbursements made on account of postpetition fees, expenses, and charges.

Insert on the appropriate lines:

- the amount of postpetition fees, expenses, and charges noticed under Rule 3002.1(c) and not disallowed;
- the amount of postpetition fees, expenses, and charges disbursed.

The amount listed on line 3a should be the total of the amounts reported on Form 410S-2 as of the date of the motion that have not been disallowed. Line 3b should indicate the amount of those fees, expenses, and charges that have been disbursed.

Information required in 4

This section concerns disbursements made on account of postpetition obligations on the loan that are not reported on prior lines of this form. For example, the amount reported on this line should include regular monthly payments on the loan. Insert that amount in the space provided, to the extent known by the movant. If the movant is the trustee and has not been making these payments, insert $0 if unknown. If the movant is the debtor, insert the sum of the payments made by the debtor and the trustee after the date of the petition and prior to the date of this motion.

Information required in 5

Space is provided here for the movant to add any other information that may be relevant to determining the status of the mortgage claim.

Information required in 6

This part states the relief the movant is seeking, followed by spaces for the movant's name and contact information.

United States Bankruptcy Court
_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

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

_____ (claim holder) states as follows:

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

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

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

Property address: _____

_____
City State ZIP Code

2. Arrearages

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

$_____.

Check all that apply:

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

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

  $ _____.

3. Postpetition Payments

(a) Check all that apply:

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

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

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

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

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

iv. Unpaid principal balance of the loan: $_____

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

vi. Balance of the escrow account: $_____

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

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

4. Itemized Payment History

Include if applicable:

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

- all prepetition and postpetition payments received;

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

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

_____ Date ____/_____/_____
Signature

Print _____ Title _____
Name

Company _____

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

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

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

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

Official Form 41013-M2R

Instructions for Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of the Mortgage Claim

United States Bankruptcy Court 12/25

Introduction

This form is used only in chapter 13 cases. It is filed by the holder of a claim secured by a security interest in the debtor's principal residence in response to the trustee's or debtor's Motion to Determine Final Cure and Payment of the Mortgage Claim.

Applicable Law and Rules

Rule 3002.1 of the Federal Rules of Bankruptcy Procedure addresses claims secured by a security interest in a chapter 13 debtor's principal residence. Subdivision (g) of that rule requires the trustee at the end of the case to file a notice stating the total amount the trustee disbursed to the claim holder to cure any default and the total amount disbursed for payments that came due during the pendency of the case. The claim holder must respond to the notice. Thereafter Rule 3002.1(g)(4) authorizes the trustee or debtor to file a motion seeking a court determination of whether the debtor has cured all defaults and paid all required postpetition amounts. The claim holder must respond to the motion if it disagrees with the facts set forth in the motion. The response must be filed within 28 days after the motion is served, using this form. The response must be served on the debtor, the debtor's attorney, and the trustee.

Directions

Information required in 1

Insert on the appropriate spaces:

- the claim holder's name;
- the court claim number, if known;
- the last 4 digits of the loan account number or any other number used to identify the account;
- the address of the principal residence securing the claim.

Information required in 2

This section responds to line 2 of the motion.

- Insert in the appropriate space the total amount received, as of the date of the response, to cure any prepetition or postpetition arrearage. This amount should include payments received to cure any default occurring as of the date of the petition or thereafter, but not payments for postpetition fees, charges, expenses, escrow, and costs, which are reported in line 3.
- Check all the applicable boxes and provide the information requested.

Information required in 3

This section responds to lines 3 and 4 of the motion.

- In (a), indicate by checking the appropriate box(es) whether the debtor is current on payments that came due postpetition or, if not, whether past due payments are owed for postpetition obligations on the loan (such as regular monthly payments on the loan); fees, charges, expenses, negative escrow amounts, or costs; or both.

- In (b), attach a payoff statement and provide the information requested.

Information required in 4

If the claim holder has indicated that the debtor is not current on all payments due on the claim, attach an itemized payment history that provides the specified information.

Information required in 5

The person completing the form should sign it and provide the requested information.

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

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

Case number _____

Official Form 410C13-N

Trustee's Notice of Disbursements Made

12/25

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

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

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

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Statement of Completion

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

Part 3: Arrearages

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

Part 4: Postpetition Payments

Check one:

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

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

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

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

Part 5: Postpetition Fees, Expenses, and Charges

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

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

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

✘ _____ Date ____/_____/_____
Signature

Trustee _____
First Name Middle Name Last Name

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

Official Form 41013-N

Instructions for Trustee's Notice of Disbursements Made

United States Bankruptcy Court 12/25

Introduction

This form is used only in chapter 13 cases. It must be filed by the trustee within 45 days after the debtor completes all payments due to the trustee under a chapter 13 plan—whether or not the trustee made any disbursements to the claim holder.

Applicable Law and Rules

Rule 3002.1 of the Federal Rules of Bankruptcy Procedure addresses claims secured by a security interest in a chapter 13 debtor's principal residence. Subdivision (g)(1) of that rule requires the trustee at the end of the case to file a notice stating what amount the trustee disbursed to the claim holder to cure any default and what amount the trustee disbursed for payments that came due during the pendency of the case. The rule requires that this form be used for the notice and that it be served on the debtor, the debtor's attorney, and the claim holder.

Directions

Information required in Part 1

Insert on the appropriate spaces:

- the claim holder's name;
- the court claim number, if known;
- the last 4 digits of the loan account number or any other number used to identify the account;
- the address of the principal residence securing the claim.

Information required in Part 2

Either attach a copy of the trustee's disbursement ledger for all payments to the claim holder or provide the web address where it can be accessed.

Information required in Part 3

Insert on the appropriate lines:

- the allowed amount of any arrearage that arose prepetition;
- the total amount of any prepetition arrearage that the trustee disbursed;
- the total amount of any postpetition arrearage that the trustee disbursed;
- the total amount of arrearages disbursed by the trustee.

The amount listed in Part 3a. should be the same amount as "Amount necessary to cure any default as of the date of the petition" that was reported on line 9 of Official Form 410 and that was not disallowed or, in districts in which the plan controls, the amount specified by the plan. The amount listed in Part 3d. should be the sum of the amounts listed in Parts 3b. and 3c. If the trustee did not make any disbursements for a

listed category, insert $0 in the appropriate space.

Information required in Part 4

Check the appropriate box indicating who made postpetition payments. If some postpetition payments were made by the trustee and some by the debtor, check the third box and explain how they were divided up.

If the trustee disbursed any postpetition payments, insert in the appropriate space the total amount of postpetition payments the trustee disbursed as of the date of the notice and the date of the last ongoing mortgage payment disbursed by the trustee.

Information required in Part 5

Insert in the space the amount of postpetition fees, expenses, and charges disbursed by the trustee. If the trustee made no such disbursements, insert $0.

Information required in Part 6

Sign and date the form and provide the requested contact information.

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

Official Form 410C13-NR

Response to Trustee's Notice of Disbursements Made

12/25

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

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

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

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Arrearages

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

Check all that apply:

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

Part 3: Postpetition Payments

(a) *Check all that apply:*

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

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

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

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

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

iv. Unpaid principal balance of the loan: $_____

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

vi. Balance of the escrow account: $_____

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

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

Part 4 Itemized Payment History

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

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

Part 5: Sign Here

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

❑ I am the claim holder.

❑ I am the claim holder's authorized agent.

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

✘ _____ Date ____/_____/_____
Signature

Name _____
First name Middle name Last name

Title _____

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

Address _____
Number Street

_____
City State ZIP Code

Contact phone _____ Email _____

Official Form 41013-NR

Instructions for Response to Trustee's Notice of Disbursements Made

United States Bankruptcy Court 12/25

Introduction

This form is used only in chapter 13 cases. It must be filed by the holder of a claim secured by a security interest in the debtor's principal residence within 28 days after service of the trustee's end-of-case Notice of Disbursements Made.

Applicable Law and Rules

Rule 3002.1 of the Federal Rules of Bankruptcy Procedure addresses claims secured by a security interest in a chapter 13 debtor's principal residence. Subdivision (g)(1) of that rule requires the trustee at the end of the case to file a notice stating what amount the trustee disbursed to the claim holder to cure any default and what amount the trustee disbursed to the claim holder for payments that came due during the pendency of the case. Subdivision (g)(3) then requires the claim holder to respond to the notice within 28 days after it is served, using this form. The response must be filed as a supplement to the claim holder's proof of claim and served on the debtor, the debtor's attorney, and the trustee.

Directions

Information required in Part 1

Insert on the appropriate spaces:

- the claim holder's name;
- the court claim number, if known;
- the last 4 digits of the loan account number or any other number used to identify the account;
- the address of the principal residence securing the claim.

Information required in Part 2

This part responds to Part 3 of the notice.

- Insert in the in the appropriate space the total amount received, as of the date of the response, to cure any prepetition or postpetition arrearage.

This amount should include the sum of any prepetition arrearage and postpetition arrearage payments that the claim holder has received, but not payments for postpetition fees, charges, expenses, escrow, and costs, which are reported in Part 3.

- Check all the applicable boxes, and, if applicable, insert the amount of any prepetition or postpetition arrearage remaining unpaid. If the fourth box is checked, the postpetition arrearage amount should not include postpetition fees, charges, expenses, escrow, and costs, which are reported in Part 3.

Information required in Part 3

This part responds to Parts 4 and 5 of the notice.

- In subpart (a), indicate by checking the appropriate box(es) whether the debtor is current on payments that came due postpetition or, if not, whether past due scheduled payments; fees, charges, expenses, negative escrow amounts, or costs; or both, are owed.

- In subpart (b), attach a payoff statement and provide the information requested.

Information required in Part 4

If the claim holder has indicated that the debtor is not current on all payments due on the claim, attach an itemized payment history that provides the specified information.

Information required in Part 5

The person completing the form should sign it (under penalty of perjury) and provide the requested information.

TAB 6D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: SUGGESTION FOR AMENDMENT OF OFFICIAL FORM 106C

DATE: MARCH 4, 2025

Rebecca Garcia, a chapter 12 and chapter 13 trustee, has submitted a suggestion (Suggestion 24-BK-H) to amend Official Form 106C (Schedule C: The Property You Claim as Exempt). The suggestion, which has been endorsed by the Association of Chapter 12 Trustees and the National Association of Chapter 13 Trustees, proposes amending the form to include a total amount of assets being claimed exempt. Ms. Garcia explains that "28 U.S.C. Sec. 589b(d)(3) requires the uniform final report submitted by trustees to total the 'assets exempted.' Without the amount totaled on the form, the Trustee is required to manually add up the amounts on each form in preparation of the required final report."

The Subcommittee began considering this suggestion last summer and reported on its deliberations at the fall Advisory Committee meeting. Aided by some additional information provided by Ramona Elliott, the Subcommittee now recommends amending Form 106C as discussed below.

The Subcommittee's Prior Discussions

As reported at the fall meeting, the Subcommittee reviewed the history of the form's revision in response to the Supreme Court's decision in *Schwab v. Reilly*, 560 U.S. 770 (2010), which stated that a debtor could list as the exempt value of an asset on Schedule C "'full fair market value (FMV)' or '100% of FMV.'" By doing so, the debtor would notify the trustee of the need to object to the exemption within the period prescribed by Rule 4003(b) in order to

preserve for the estate any value in the property exceeding a statutory exemption limit. The Advisory Committee's challenge in revising Schedule C was to make available on the form the option the *Schwab* Court had suggested, but to do so in a way that did not encourage improper use of the option.

After one aborted attempt, the Advisory Committee eventually proposed the version of Form 106C that currently exists. It was published for comment in 2013, approved by the Advisory and Standing Committees in 2014, and took effect in 2015. It includes the following preface to the form:

> **For each item of property you claim as exempt, you must specify the amount of the exemption you claim. One way of doing so is to state a specific dollar amount as exempt. Alternatively, you may claim the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Some exemptions—such as those for health aids, rights to receive certain benefits, and tax-exempt retirement funds—may be unlimited in dollar amount. However, if you claim an exemption of 100% of fair market value under a law that limits the exemption to a particular dollar amount and the value of the property is determined to exceed that amount, your exemption would be limited to the applicable statutory amount.**

It then requires the following information to be provided for each property claimed as exempt:

Brief description of the property and line on *Schedule A/B* that lists this property	**Current value of the portion you own** Copy the value from *Schedule A/B*	**Amount of the exemption you claim** *Check only one box for each exemption*	**Specific laws that allow exemption**
	$_____	☐ $_____ ☐ 100% of fair market value, up to any applicable statutory limit	

Because of the nonspecific-dollar-amount category of claimed exemptions, no total amount is asked for on the form.

Members of the Subcommittee understood the desire of trustees to have a total dollar amount of claimed exemptions listed on Form 106C in order to simplify their task of reporting "assets exempted" to the U.S. trustee under 28 U.S.C. § 589b. But because the form—in response to *Schwab*—allows an unspecified dollar amount to be claimed, simple addition to arrive at a total amount is not always possible. The value of an asset claimed as 100% exempt might be unliquidated or in dispute. Requiring a debtor to assign a definite value to such property in order to arrive at a total amount would be contrary to the option recognized in *Schwab*.

The Subcommittee's discussions about whether the form should include a total amount led it to ask questions about the current practices of reporting on assets exempted:

- Does reporting only exemptions claimed in a specific dollar amount satisfy the statutory requirement?
- Are unspecified amounts currently being reported and, if so, how?
- Are assets *claimed* as exempt on Form 106C the same as "assets exempted"?

Ms. Elliott offered to investigate these issues and report back to the Subcommittee.

The Subcommittee's Further Deliberations and Recommendation

During the Subcommittee's February meeting, Ms. Elliott explained that the U.S. Trustee Program had promulgated a regulation pursuant to 28 U.S.C. 589b(d) regarding the completion of forms for the trustee's final report. *See* 28 C.F.R. 58.7. The regulation sets forth a list of items to be included in the trustee's distribution report (or no distribution report in a chapter 7 no asset case) that mirrors the statute, specifically "assets exempted" under 28 U.S.C. § 589b(d)(3).

The statute does not explain "assets exempted." But the U.S. Trustee Program did address this issue in response to comments received to the proposed regulation. In the interest of

setting a uniform standard that is reasonable and would not require the trustee to expend significant additional resources, the Executive Office for U.S. Trustees ("EOUST") defined "assets exempted" as the total value of assets listed as exempt on the debtor's Schedule C, unless revised pursuant to a court order. The instructions to the final reports reflect this definition and note that 28 U.S.C. § 589b(c) requires the rule to "strike the best achievable practical balance between (1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system, (2) economy, simplicity, and lack of undue burden on persons with a duty to file these reports, and (3) appropriate privacy concerns and safeguards."

Consistent with the statute and the regulation, the U.S. Trustee Program's instructions for the trustee's final report generally state that, in reporting the total value of exempt assets, the trustee should begin with Schedule C, including any amendments, and consider any court orders modifying the exemptions.

Guided by this information, the Subcommittee understood that assets claimed as exempt on Form 106C are treated as "assets exempted" for purposes of the trustee's final report, subject to any subsequent amendments or revisions pursuant to a court order. It also reasoned that, in light of the EOUST's "attempt[] to balance the reasonable needs of the public for information with the need not to unduly burden the standing trustees who must file the final reports," adding up and reporting just the specific dollar amounts is acceptable. As a result, the Subcommittee decided that Form 106C should be amended to provide a total of the specified exemption amounts.

The Subcommittee recommends that the Advisory Committee approve for publication amendments to Official Form 106C as shown on the form mock-up that follows in the agenda book. Spaces are added to provide a total amount of exemptions claimed in a

specific amount, as well as a total value of the debtor's interest in property for which exemptions are claimed.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number (If known) _____

❑ Check if this is an amended filing

Official Form 106C

Schedule C: The Property You Claim as Exempt

12/26

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Using the property you listed on *Schedule A/B: Property* (Official Form 106A/B) as your source, list the property that you claim as exempt. If more space is needed, fill out and attach to this page as many copies of *Part 2: Additional Page* as necessary. On the top of any additional pages, write your name and case number (if known).

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. One way of doing so is to state a specific dollar amount as exempt. Alternatively, you may claim the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Some exemptions—such as those for health aids, rights to receive certain benefits, and tax-exempt retirement funds—may be unlimited in dollar amount. However, if you claim an exemption of 100% of fair market value under a law that limits the exemption to a particular dollar amount and the value of the property is determined to exceed that amount, your exemption would be limited to the applicable statutory amount.

Part 1: Identify the Property You Claim as Exempt

1. **Which set of exemptions are you claiming?** *Check one only, even if your spouse is filing with you.*
   - ❑ You are claiming state and federal nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3)
   - ❑ You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. **For any property you list on *Schedule A/B* that you claim as exempt, fill in the information below.**

A. Brief description of the property and line on *Schedule A/B* that lists this property	**B.** Current value of the portion you own Copy the value from *Schedule A/B*	**C.** Amount of the exemption you claim *Check only one box for each exemption.*	**D.** Specific laws that allow exemption
Brief description: _____ Line from *Schedule A/B:* _____	$_____	❑ $ _____ ❑ 100% of fair market value, up to any applicable statutory limit	_____
Brief description: _____ Line from *Schedule A/B:* _____	$_____	❑ $ _____ ❑ 100% of fair market value, up to any applicable statutory limit	_____
2.1 **Add the dollar value of all entries from Column B, including any entries for pages you have attached.**	$_____		
2.2 **Add the dollar value of all entries with a specific amount from Column C, including any entries for pages you have attached.**		$_____	

3. **Are you claiming a homestead exemption of more than $214,000?**
   (Subject to adjustment on 4/01/28 and every 3 years after that for cases filed on or after the date of adjustment.)
   - ❑ No
   - ❑ Yes. Did you acquire the property covered by the exemption within 1,215 days before you filed this case?
     - ❑ No

❑ Yes

Part 2: Additional Page

A. Brief description of the property and line on Schedule A/B that lists this property	B. Current value of the portion you own Copy the value from *Schedule A/B*	C. Amount of the exemption you claim *Check only one box for each exemption*	D. Specific laws that allow exemption
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________

Committee Note

Part 1 of Official Form 106C is amended to add spaces for providing the total amount of column B—current value of the portion of property owned by the debtor—and of column C—amount of the exemption claimed. In adding up the exemption amounts claimed in column C, the debtor should include only those exemptions claimed in specific dollar amounts.

TAB 7

TAB 7A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: TECHNOLOGY AND PRIVACY SUBCOMMITTEE

SUBJECT: 23-BK-C– RULES 9014 AND 9017 AND PROPOSED RULE 7043 ON REMOTE HEARINGS

DATE: FEB. 28, 2025

The National Bankruptcy Conference (NBC) has submitted proposals to amend Bankruptcy Rules 9014 and 9017 and introduce a new Rule 7043 to facilitate video conference hearings for contested matters in bankruptcy cases. The proposed new rule and amendments were published for public comment in August, 2024. The text of the proposed amendments is attached. We received four comments on the proposals.

Comment BK-2024-0002-0004: An anonymous comment posted on Oct. 15, 2024, urged the Advisory Committee to "consider Rule 7043 regarding testimony and the impact it may have on debtors who may be unrepresented or lack appropriate resources. The procedural requirements outlined in this rule may be challenging and result in a disadvantage to someone." However, the author stated that "[o]verall, these amendments seem to be a necessary step to improving bankruptcy procedures."

Response: New Rule 7043 simply makes Civil Rule 43 applicable in adversary proceedings. Under existing Rule 9017, Civil Rule 43 is applicable in bankruptcy cases generally, including as to contested matters. If the requirements of Civil Rule 43 are "challenging" to unrepresented debtors, the amendments should ameliorate those problems by limiting their applicability. The Subcommittee recommends no change in response to this comment.

Comment BK-2024-0002-0006: Mia Andrade, without specifying which amendments she addressed, stated that she agreed with the proposed amendments "as it is crucial as it ensures that the legal framework remains responsive and effective in addressing contemporary financial challenges. These amendments can enhance the clarity, efficiency, and fairness of bankruptcy proceedings, providing better protection for both debtors and creditors. By updating these rules, the legal system can adapt to evolving economic conditions and technological advances, ultimately fostering a more stage and predictable enforcement for financial recovery and dispute resolution. This proactive approach not only strengthens the integrity of the bankruptcy process but also promotes confidence in the judicial system, which is essential for maintaining public trust and economic stability."

Response: None required.

Comment BK-2024-0002-0009: The National Conference of Bankruptcy Judges had two comments on the proposed rule changes. First, they interpreted the redlined copy of the changes to Rule 9017 to show deletion of Civil Rule 44 and believe such a deletion is inappropriate. Second, they believe that the phrase "motion in a contested matter" in Rule 9014(d)(2) is "potentially redundant and confusing" and suggest using the phrase "motion or contested matter."

Response: As to the first comment, their interpretation of the redlined version of Rule 9017 is erroneous. This was a problem with the typeface, in that Rule 43 and the comma following Rule 44 were marked as deleted, and the deletion marks were closely adjacent to the cross bars on "44" so it looked like Rule 44 was also deleted. That is not the case, and if one increases the font size of the proposed amendment, one can see that the deletion marks did not relate to "44". The Subcommittee recommends no change in response to this comment.

As to the second comment, the suggested language would dramatically change the substance of the proposed amendment. The proposed amendment is intended to apply only in contested matters. Rule 9014 is entitled "Contested Matters." If a motion were made in an adversary proceeding, it is not governed by the amended rule.

The comment did point out some confusion about whether other aspects of a contested matter – such as an application or a response to a motion – would be governed by the rule. The Subcommittee decided to make three changes in response to the comment to clarify that any testimony in a contested matter would be governed by the rule. First, the Subcommittee decided to change the title of Rule 9014(d)(2) from "Evidence on a Motion" to "Evidence." Second, the Subcommittee suggests modifying the text of Rule 9014(d)(2) to change the phrase "When a motion in a contested matter" to "When resolution of a contested matter" and changing the phrase "the court may hear the motion" to "the court may hear the matter." (This latter change conforms the language in Rule 9014(d)(2) to the same language in Civil Rule 43(c)). Third, in the first sentence of the third paragraph of the Committee Note, the Subcommittee recommends changing the language from "a motion procedure" to "proceeding." The changes are shown on the attached copy of the amended rule.

The Subcommittee does not believe these changes require republication as they merely clarify that any testimony in the contested matter – whether on a motion or not – is subject to the rule. This is in fact the way that Civil Rule 43(c) has been interpreted even though it refers to a "motion" and therefore no change in substance is made by the modifications. The Subcommittee considered whether to retain language that is parallel to Civil Rule 43(c) for the sake of uniformity, but decided that more specificity in the text was advisable.

Comment BK-2024-0002-0011: Adam Hiller commented that the newly-added Rule 9014(d)(2) should replace the word "affidavits" with "affidavits or declarations" because the practice in many jurisdictions is to use unsworn declarations pursuant to 28 U.S. Code § 1746 instead of affidavits."

Response: Although Mr. Hiller may well be accurate with respect to current practice, the language of Rule 9014(d)(2) to which his comment is addressed is identical to that of Civil Rule

43(c) and until and unless Civil Rule 43(c) is modified to amend its reference to "affidavits" to include declarations, Bankruptcy Rule 9014(d)(2) should not do so.

David Hubbert comments: David Hubbert made two comments on the Committee Note to Rule 9014(d) outside of the publication process. In the third paragraph, the second sentence reads "contested matters do not require the procedural formalities used in adversary proceedings, including a complaint, answer, counterclaim, crossclaim, and third-party practice." He notes that there may be some contested matters "where many of the procedural formalities are appropriate and adopted for that matter under Rule 9014(c)." He suggests adding the word "generally" between the words "do not" and "require."

Second, in the final paragraph of the note, the penultimate sentence currently reads "In-person testimony would be particularly appropriate in disputed contested matters where it is necessary for the court to determine the witness's credibility." He suggests that "a witness's credibility is weighed no matter how the testimony is heard in court." He further points out that the committee note (1996) to Civil Rule 43 states that the court can reject a stipulation between the parties providing that testimony should be presented by transmission by reason of "the apparent importance of the testimony in the full context of the trial." He therefore suggests replacing the sentence with one reading as follows: "In-person testimony would be appropriate in disputed contested matters where the witness is important or there is conflicting evidence for the court to consider."

Response: The Subcommittee agreed to insert the word "generally" in the second sentence of the third paragraph of the Committee Note. As to his second suggestion, although it is true that a witness's credibility is weighed even if the witness testifies remotely, judges will certainly agree that they can assess credibility more easily if the witness is physically present when testifying rather than on a screen. The Committee Note is distinguishing between matters in which determination of the witness's credibility is necessary to resolve the dispute, and those in which it is not. The Subcommittee recommended no change in response to this comment.

***

Recommendation: The Subcommittee recommends that the Advisory Committee give final approval to new Rule 7043 and the proposed amendments to Rules 9014 and 9017 as published with the additional amendments discussed above to Rule 9014 and its Committee Note. The rules and their committee notes follow this memo. The changes to Rule 9014 and its Committee Note occur at line numbers 16-17, 19, 47-48, and 50.

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

Rule 7043. Taking Testimony

Fed. R. Civ. P. 43 applies in an adversary proceeding.

Committee Note

Rule 7043 is new and, as was formerly true under Rule 9017, makes Fed. R. Civ. P. 43 applicable to adversary proceedings. Unlike under former Rule 9017, Fed. R. Civ. P. 43 is no longer applicable to contested matters under new Rule 7043.

[1] New material is underlined in red.

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

Rule 9014. Contested Matters[2]

* * * * *

(d) Taking Testimony ~~on a Disputed Factual Issue~~; Interpreter. ~~A witness's testimony on a disputed material factual issue must be taken in the same manner as testimony in an adversary proceeding.~~

(1) ***In Open Court.*** A witness's testimony on a disputed material factual issue must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For cause and with appropriate safeguards, the court may permit

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

[2] The changes indicated are to the restyled version of Rule 9014, not yet in effect.

testimony in open court by contemporaneous transmission from a different location.

(2) ***Evidence*** ~~***on a Motion***~~**.** When ~~a motion~~ ~~in~~resolution of a contested matter relies on facts outside the record, the court may hear the ~~motion~~ matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(3) ***Interpreter.*** Fed. R. Civ. P. 43(d) applies in a contested matter.

* * * * *

Committee Note

Rule 9014(d) is amended to include language from Fed. R. Civ. P. 43. That rule is no longer generally applicable in a bankruptcy case, and the reference to that rule has been removed from Rule 9017. Instead, Rule 9014(d) incorporates most of the language of Fed. R. Civ. P. 43 for contested matters but eliminates the "compelling circumstances" standard in Fed. R. Civ. P. 43(a) for permitting remote testimony. Terms used in Rule 9014(d) have the same meaning as they do in Fed. R. Civ. P. 43. However, consistent with the other restyled bankruptcy rules, the phrase "good cause" used in Fed. R. Civ. P. 43 has

been shortened to "cause" in Rule 9014(d)(1). No substantive change is intended.

Under new Rule 7043, all of Fed. R. Civ. P. 43—including the "compelling circumstances" standard—continues to apply to adversary proceedings. An adversary proceeding in bankruptcy is procedurally like a civil action in district court. Because assessing the credibility of witnesses is often required, there is a strong presumption that testimony will be in person.

A contested matter, however, is a ~~motion procedure~~proceeding that can usually be resolved expeditiously by means of a hearing. Contested matters do not generally require the procedural formalities used in adversary proceedings, including a complaint, answer, counterclaim, crossclaim, and third-party practice. They occur with frequency over the course of a bankruptcy case and are often resolved on the basis of uncontested testimony. Testimony might concern, for example, the simple proffer by a debtor about the ability to make ongoing installment payments for an automobile that is the subject of a motion to lift the automatic stay. Or, as another example, testimony might be given in a commercial chapter 11 case by a corporate officer about ongoing operational costs in support of a motion to use estate assets to maintain business operations.

The need to quickly resolve most contested matters is recognized in existing Rule 9014, by making presumptively inapplicable the disclosure requirements of Fed. R. Civ. P. 26(a)(2) and 26(a)(3) and the mandatory meeting under Fed. R. Civ. P. 26(f). Under Rule 9014, the court has the discretion to direct that one or more of the other rules in Part VII apply when a contested matter warrants

heightened process. The court has similar discretion under Rule 9014(d) to deny a request to testify remotely.

Although the amendment to Rule 9014(d) removes the "compelling circumstances" requirement in Fed. R. Civ. P. 43(a), the court still must find cause to permit remote testimony and must impose appropriate safeguards. In other words, the presumption of in-person testimony in open court is retained, and remote testimony in contested matters should not be routine. In-person testimony would be particularly appropriate in disputed contested matters where it is necessary for the court to determine the witness's credibility. On the other hand, the greater flexibility to allow remote testimony in contested matters could be useful in consumer cases if the matters are straightforward and witness attendance is cost prohibitive or infeasible due to travel, job, or family obstacles.

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

Rule 9017. Evidence[2]

The Federal Rules of Evidence and Fed. R. Civ. P. ~~43,~~ 44~~,~~ and 44.1 apply in a bankruptcy case.

Committee Note

The Rule is amended to delete the reference to Fed. R. Civ. P. 43. Under new Rule 7043, Fed. R. Civ. P. 43 is applicable to adversary proceedings but not to contested matters. Testimony in contested matters is governed by Rule 9014(d).

[1] Matter to be omitted is lined through.

[2] The changes indicated are to the restyled version of Rule 9017, not yet in effect.

TAB 8

TAB 8A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: COMMENTS ON PROPOSED AMENDMENTS TO RULE 3018 (CHAPTER 9 OR 11—ACCEPTING OR REJECTING A PLAN)

DATE: MARCH 4, 2025

Last August amendments to Rule 3018(a) and (c) were published for comment. The Advisory Committee proposed them in response to a suggestion from the National Bankruptcy Conference. The proposed amendments to subdivision (c) would authorize a court in a chapter 9 or 11 case to treat as an acceptance of a plan a statement on the record by a creditor's attorney or authorized agent. Conforming amendments were also proposed for Rule 3018(a). The rule as published follows in the agenda book.

Comments and Suggestion

Three sets of comments were submitted regarding the proposed amendments.

BK-2024-0002-0003 – Robert Kressel.
He supports the amendments but questions why subdivision (c)(1)(B) does not apply to an individual creditor.

BK-2024-0002-0010 – National Conference of Bankruptcy Judges.
It generally supports the amendments, but suggests some wording changes. It would rewrite subdivision (c)(1)(B)(i) as follows:

"(B) *As a Statement on the Record.* The court may also permit an acceptance—or the change or withdrawal of a rejection—in a statement that is:

(i) part of the record, including an oral statement or stipulation made during the confirmation hearing or a written stipulation that has been filed; and

(ii) made or signed by an attorney for—or an authorized agent of—the creditor or equity security holder."

These changes would clarify that a qualifying statement could be made orally by a creditor or equity security holder (or their attorney) or by a stipulation read into the record or filed.

BK-2024-0002-0014 – Anonymous.
The proposed amendment improperly conflates a plan vote with the filing or withdrawal of an objection. They are not the same. A creditor may choose not to object to a plan but also not vote on it. In a subchapter V case, this might be done so that confirmation is nonconsensual and thus § 1191(b) applies.

After the deadline for the submission of comments and after the Subcommittee's meeting, Judge Connelly received a letter from the Deputy Attorney General regarding the proposed amendments. It was treated as a suggestion and posted on the AO website.

Suggestion 25-BK-D – U.S. Department of Justice.
It has no objection to the text of the proposed amendments, and it endorses the statement in the committee note that "[n]othing in the rule is intended to create an obligation to accept or reject a plan." It writes to underscore the limits of the proposed amendment. The suggestion that gave rise to the amendment—from the National Bankruptcy Conference—was motivated by a concern that government entities often do not vote on plans, even if they do not object to them. It should be understood that the increased flexibility in voting methods provided by the amendment, which the Department supports, cannot add a substantive requirement that creditors must vote on a plan or that courts could compel the United States or federal agencies to do so.

Discussion

The anonymous comment can be disregarded, as it appears to be based on an erroneous reading of the proposed amendments. They address the change or withdrawal of *re*jections (i.e. votes), not *ob*jections to plans. The Advisory Committee was well aware of the difference.

Judge Kressel's comment that subdivision (c)(1)(B) does not apply to individual creditors is apparently based on the provision's reference only to statements by attorneys and authorized agents of creditors. In contrast to (c)(1)(A), it thus seems to exclude statements by individual creditors—real people who can represent themselves. The Subcommittee believes this exclusion was unintended and recommends that subdivision (c)(1)(B)(ii) be reworded as follows: "made by ~~an attorney for or an authorized agent of~~ the creditor or equity security holder—or its attorney or authorized agent." If that change is accepted, the second sentence of the committee

note should be amended as follows: "In addition to allowing acceptance or rejection by written ballot, the rule now authorizes a court to permit a creditor or equity security holder—or its attorney or authorized agent—to accept a plan by means of ~~its attorney's or authorized agent's~~ a statement on the record, including by stipulation or by oral representation at the confirmation hearing."

The Subcommittee concluded that the wording change to subdivision (c)(1)(B)(i) suggested by NCBJ was unnecessary. It would change that provision as follows:

> (B) *As a Statement on the Record.* The court may also permit an acceptance—or the change or withdrawal of a rejection—in a statement that is:
>
> (i) part of the record, including an oral statement or stipulation made during ~~at~~ the confirmation hearing or a written stipulation that has been filed; and
>
> (ii) made by an attorney for—or an authorized agent of—the creditor or equity security holder.

That wording would spell out in greater detail how such a stipulation might be made, but the Subcommittee concluded that the more succinct wording is preferable. A written stipulation that is filed becomes part of the record; the amendment explicitly covers statements that are a "part of the record."

Finally, although the Subcommittee did not consider the DOJ's letter, it does not require any action in response.

Recommendation

With the wording changes noted above in response to Judge Kressel's comment, the Subcommittee recommends that the Advisory Committee give its final approval to the proposed amendments to Rule 3018(a) and (c).

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

Rule 3018. Chapter 9 or 11—Accepting or Rejecting a Plan[2]

(a) In General.

* * * * *

(3) ***Changing or Withdrawing an Acceptance or Rejection.*** After notice and a hearing and for cause, the court may permit a creditor or equity security holder to change or withdraw an acceptance ~~or rejection~~. The court may permit the change or withdrawal of a rejection as provided in (c)(1)(B).

* * * * *

(c) ~~Form~~ Means for Accepting or Rejecting a Plan; Procedure When More Than One Plan Is Filed.

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

[2] The changes indicated are to the version of Rule 3018 on track to go into effect December 1, 2024.

(1) ~~***Form***~~ ***Alternative Means*.**

(A) *By Ballot.* Except as provided in (B), ~~An~~ an acceptance or rejection must:

(~~A~~i) be in writing;

(~~B~~ii) identify the plan or plans;

(~~C~~iii) be signed by the creditor or equity security holder—or an authorized agent; and

(~~D~~iv) conform to Form 314.

(B) *As a Statement on the Record.* The court may also permit an acceptance—or the change or withdrawal of a rejection—in a statement that is:

(i) part of the record, including an oral statement at the confirmation hearing or a stipulation; and

(ii) made by an attorney for—or an authorized agent of—the creditor or equity security holder.

(2) ***When More Than One Plan Is Distributed.*** If more than one plan is sent under Rule 3017, a creditor or equity security holder may accept or reject one or more plans and may indicate preferences among those accepted.

* * * * *

Committee Note

Subdivision (c) is amended to provide more flexibility in how a creditor or equity security holder may indicate acceptance of a plan in a chapter 9 or chapter 11 case. In addition to allowing acceptance or rejection by written ballot, the rule now authorizes a court to permit a creditor or equity security holder to accept a plan by means of its attorney's or authorized agent's statement on the record, including by stipulation or by oral representation at the confirmation hearing. This change reflects the fact that disputes about a plan's provisions are often resolved after the voting deadline and, as a result, an entity that previously rejected the plan or failed to vote accepts it by the conclusion of the confirmation hearing. In such circumstances, the court is permitted to treat that change in position as a plan

acceptance when the requirements of subdivision (c)(1)(B) are satisfied.

Subdivision (a) is amended to take note of the means in (c)(1)(B) of changing or withdrawing a rejection.

Nothing in the rule is intended to create an obligation to accept or reject a plan.

TAB 8B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: SUGGESTIONS FOR AMENDING RULE 9031 (USING MASTERS NOT AUTHORIZED)

DATE: MARCH 4, 2025

Two suggestions to amend Rule 9031 have been submitted to the Advisory Committee, one by Chief Bankruptcy Judge Michael B. Kaplan of the District of New Jersey (24-BK-A) and the other by the American Bar Association (24-BK-C). These suggestions propose amendments that would allow masters to be used in bankruptcy cases and proceedings, a matter that the Advisory Committee has considered several times in the past and declined to propose. At its spring 2024 meeting, the Advisory Committee discussed the suggestions and agreed with the Subcommittee that they should be considered further.

The consensus at that meeting was that the Subcommittee should gather more information before making a recommendation. Specifically, it was agreed that a survey of bankruptcy judges should be undertaken to learn whether the judges thought the rules should allow masters to be used in bankruptcy cases and in what circumstances, if any, they had ever needed such assistance. Carly Giffin of the Federal Judicial Center offered the FJC's services in creating and conducting such a survey.

Dr. Giffin has now completed the survey, and 221 bankruptcy judges (69%) responded. Dr. Giffin reported on the results at the Subcommittee's February meeting. The report on the survey follows in the agenda book, and Dr. Giffin will discuss the results with the Advisory Committee at the meeting. While committee members will want to review the results in full, the

responses to two questions might be noted. Question 1 asked if respondents had ever presided over a case or proceeding in which they would have considered appointing a master if the option had been available. More than half (62%) said *no*, they had not, and just under a third (32%) said *yes*. The final question to all respondents asked their opinion on whether Rule 9031 should be amended to allow the use of masters in bankruptcy cases or proceedings. Nearly half of respondents (44%) said they were *neither in favor nor against* amending Rule 9031. Just over a third of respondents (35%) thought Rule 9031 *should be amended*, and just over a fifth (21%) said Rule 9031 *should not be amended*.

Upon reviewing the survey results, the Subcommittee concluded that there was sufficient interest in allowing masters to be used in bankruptcy cases or proceedings that it should continue to consider the Kaplan and ABA suggestions. It identified as next steps researching whether there is any constitutional or statutory impediment to authorizing bankruptcy judges to appoint masters and considering drafts of possible rule amendments to authorize their use. The Subcommittee welcomes the Advisory Committee's input.

Results of Survey on Possible Amendment of Federal Rule of Bankruptcy Procedure 9031

Carly Giffin

Senior Research Associate

Federal Judicial Center

The Advisory Committee on Bankruptcy Rules (Committee) received two suggestions to amend Federal Rule of Bankruptcy Procedure 9031 to allow for the use of special masters[1] in bankruptcy cases and proceedings. Chief Bankruptcy Judge Michael B. Kaplan of the District of New Jersey (24-BK-A) submitted one, and the American Bar Association (24-BK-C) submitted the other.

Currently, Rule 9031 is titled "Masters Not Authorized" and indicates that Federal Rule of Civil Procedure 53, which details guidelines for the use of special masters, does not apply in bankruptcy cases and proceedings. The Committee decided to collect more information from bankruptcy judges on the perceived need for masters in bankruptcy cases and proceedings, concerns about their use, and potential guidelines to consider if Rule 9031 were to be amended.

At the Committee's request, the Federal Judicial Center (Center) began gathering information by interviewing a small group of bankruptcy judges suggested by the members of the Committee's Business Subcommittee. The Center presented a summary of these interviews at the Committee's fall 2024 meeting. Based on that input the Committee asked the Center to conduct a survey of all bankruptcy judges. The Center worked with the members of the Business Subcommittee to develop the survey questions.

On January 7, 2025, the Center sent the survey to all 319 active bankruptcy judges. After extending the deadline a week, to January 28, 2025, 221 bankruptcy judges had completed the survey for a response rate of 69%.

[1] Debate remains about using a term other than "special master" or "master" to describe this role. However, current Rule 9031 uses the term "master," so that term will be used throughout this report.

Consideration of Use

Question 1 asked all respondents if they had ever presided over a case or proceeding in which they would have considered appointing a master if the option were available. More than half (62% or 167 respondents) said *no*, they had not, and just under a third (32% or 70 respondents) said *yes* (Table 1).

Table 1. Have you ever presided over a case or proceeding in which you would have considered appointing a master if that option were available?[2]

	f	%
Yes	70	32%
No	137	62%
Unsure/Do Not Remember	13	6%
Total Responses	220	

The 70 respondents who indicated that they had thought about appointing a master were asked in how many of their previous cases they had thought about such an appointment. The most common answer (45%, 31 respondents) was between two to three cases or proceedings. The remaining respondents were fairly evenly spread among the other response options (Table 2).

Table 2. In how many of your previous cases or proceedings would you have considered appointing a master if the option had been available?

	f	%
1	11	16%
2 to 3	31	45%
4 to 5	10	14%
More than 5	11	16%
Unsure	6	9%
Total Responses	69	

These 70 respondents were also asked how they had met the perceived need since they were not able to appoint a master, such as by the use of law clerks, experts, or

[2] While 221 bankruptcy judges responded to the survey, they could skip any question they wished. Thus, the number of respondents to any one question varies.

examiners. A total of 63 respondents provided an answer. Several comments listed more than one way to meet the need, so numbers sum to more than 63.

- Thirty-six comments (57% of 63 comments) described doing the work themselves, either with their law clerks or by conducting additional status conferences and oversight procedures.
- Fourteen comments (22% of 63 comments) said they used mediators.
- Thirteen comments (21% of 63 comments) said they used experts.
- Twelve comments (19% of 63 comments) described other methods, such as appointing additional committees, using case management directives, or ordering evidentiary hearings.
- Ten comments (16% of 63 comments) said they used examiners.
- Five comments (8% of 63 comments) indicated that in some circumstances judges felt the need had not been met.
- Four comments (6% of 63 comments) said they worked with the trustees.
- Two comments (3% of 63 comments) described appointing special masters notwithstanding the rule, with one saying they had done so before realizing it was not allowed and one reasoning that bankruptcy judges have authority to do so.

See Appendix A, page 9, for full comments.

Use, Concerns, and Limitations

All respondents, regardless of how they answered Question 1, were asked for what purposes they could see a master being useful to a bankruptcy judge, even if they would not consider appointing one themselves. Respondents could choose from a list of four purposes or fill in their own. The most common responses were overseeing large volume discovery or discovery disputes (158, or 71% of 221 respondents) and providing expertise in rarely encountered areas of law (125 respondents or 57% of 221 respondents). However, all listed purposes were endorsed by nearly half of respondents, though 13% said they could not think of any purpose for which a master would be useful (Table 3).

Table 3. Even if you would not consider appointing a master in your own cases or proceedings, for what purposes (if any) could you see a master being useful to a bankruptcy judge?[3]

	f	%
Overseeing large-volume discovery or discovery disputes	158	71%
Providing expertise in rarely encountered areas of law (e.g., international discovery, cryptocurrency)	125	57%
Overseeing fee disputes/fee awards	107	48%
Claims estimation or valuation	97	44%
Other, *please specify*	21	10%
None	28	13%
Total Respondents	221	

The 21 respondents who chose *other* in the above question were given the opportunity to list the area in which they felt a master could be useful, and all 21 respondents did so. While the responses were diverse, purposes listed in more than one comment were: assisting in rare or complex cases (3 comments or 14% of 21 comments), reviewing potentially privileged material (2 comments or 10% of 21 comments), and helping with technical or scientific issues (2 comments or 10% of 21 comments). See Appendix A, page 14, for the comments.

All respondents were then asked whether they had any concerns about allowing the use of masters in bankruptcy cases and proceedings. Respondents could choose from a list of six concerns or fill in their own. The most commonly selected concern, chosen by over two-thirds of respondents (152 respondents or 69% of 221 respondents), was that a

[3] Respondents could choose as many responses as they wished, so the responses sum to more than 221. Percentages were calculated using respondents as the denominator to better show the prevalence of a choice among respondents.

master would be an additional cost to the estate. Nearly half of respondents (103 respondents or 47% of 221 respondents) said they did not feel that masters were needed because examiners, experts, and other judicial adjuncts were sufficient. Other listed concerns were chosen by less than a third of respondents (Table 4).

Table 4. What concerns (if any) do you have about amending Rule 9031 to allow for the use of masters in bankruptcy cases and proceedings? [4]

	f	%
Cost of a master to the estate	152	69%
Not needed because of the ability to order the appointment of examiners, experts, or other judicial adjuncts	103	47%
Too broad decisional authority vested in, or delegation of judicial duties to, the master, notwithstanding de novo review provided for in Federal Rule of Civil Procedure 53(f)	68	31%
Perception of favoritism in master appointments	67	30%
Inability of parties to make all arguments to the bankruptcy judge, notwithstanding de novo review provided for in Federal Rule of Civil Procedure 53(f)	39	18%
Actual favoritism in master appointments	32	14%
Other, *please specify*	17	8%
None	29	13%
Total Responses	221	

The 17 respondents who chose *other* in response to the question were given the opportunity to describe their concern, and all 17 did so. The responses gave more detail about concerns already listed in Table 4, such as the issue of further delegating duties. See Appendix A, page 16, for full comments.

[4] Respondents could choose as many responses as they wished, so the responses sum to more than 221. Percentages were calculated using respondents as the denominator to better show the prevalence of a choice among respondents.

All respondents were then asked, were Rule 9031 to be amended, if they thought it should contain any procedural requirements or limitations not currently contained in Federal Rule of Civil Procedure 53. Two-thirds of respondents (66% or 146 of 221 respondents) said they were *unsure*, and 26% of respondents (58 of 221 respondents) said *no*. Only 8% of respondents (17 of 221 respondents) said *yes* (Table 5).

Table 5. If Rule 9031 were amended to allow for the use of masters in bankruptcy cases and proceedings, do you think it should include any procedural requirements or limitations not currently contained in Civil Rule 53?

	f	%
Yes	17	8%
No	58	26%
Unsure	146	66%
Total Responses	221	

The 17 respondents who said, *yes*, they did believe additional requirements or limitations should be included were asked to describe what they believed would be necessary or helpful, and 16 respondents did so.

- Five comments (31% of 16 comments) noted other provisions of the Bankruptcy Code or Bankruptcy Rules that would need to be considered: appointment and payment of professionals, making clear that Rule 5002 applies to masters, disinterestedness requirements, and sections 327, 328, and 330 of the Bankruptcy Code.
- Three comments (19% of 16 comments) noted that provisions (a)(1)(A), (B), (C), (h), and (g) of Civil Rule 53 that should be eliminated.
- Two comments (13% of 16 comments) suggested that the Office of the U.S. Trustee should be involved in choosing the master.
- Two comments (13% of 16 comments) used the opportunity to argue against amending the rule.

All other comments expressed unique ideas. See Appendix A, page 18, for full comments.

Next, all respondents were asked if, were Rule 9031 amended, they would be in favor of having the option to have another bankruptcy judge serve in this role. Most respondents (56% or 124 of 220 respondents) said *yes*, but a quarter (25% or 55 of 220 respondents) said *no*. The rest (19% or 41 of 220 respondents) were *unsure* (Table 6).

Table 6. If Rule 9031 were amended, would you be in favor of having the option of appointing another bankruptcy judge to serve in this role, should his/her caseload allow?

	f	%
Yes	124	56%
No	55	25%
Unsure	41	19%
Total Responses	220	

The 96 respondents who chose *no* or *unsure* were asked why they would hesitate to have another bankruptcy judge appointed as a master, and 78 respondents provided comments.

- Twenty comments (26% of 78 comments) said their concern with appointing another bankruptcy judge to serve as a master was that this might lead to confusion about the role of each of the bankruptcy judges involved, with even the presiding bankruptcy judge being reluctant to disagree with another judge such that a case or proceeding would effectively have two judges.
- Thirteen comments (17% of 78 comments) expressed concerned that other bankruptcy judges would be too busy.
- Ten comments (13% of 78 comments) noted that if a bankruptcy judge were able to perform the task, that bankruptcy judge should be the presiding judge.
- Seven comments (9% of 78 comments) said that it was unlikely that another bankruptcy judge would have the necessary expertise.
- Four comments (5% of 78 comments) noted they could already refer part of a case to a willing colleague.
- Three comments (4% of 78 comments) were concerned about whether judicial immunity would extend to serving as a master.
- Two comments (3% of 78 comments) were concerned that such a provision could be abused as a way to pass unattractive work along to another bankruptcy judge.

The remaining comments expressed idiosyncratic concerns about the use of another bankruptcy judge as a master. See Appendix A, page 21, for full comments.

Overall Opinion

Then, all respondents were asked their overall opinion on amending Rule 9031. Nearly half of respondents (44% or 97 of 220 respondents) said they were *neither in favor nor against* amending Rule 9031. Just over a third of respondents (35% or 77 of 220) thought Rule 9031 *should be amended* and just over a fifth (21% or 46 of 220) said Rule 9031 *should not be amended* (Table 7).

Table 7. Which of the following most accurately represents your views on the potential amendment of Rule 9031 to allow for the use of masters in bankruptcy cases or proceedings?

	f	%
Believe that Rule 9031 **should** be amended to allow for the use of masters.	77	35%
Believe that Rule 9031 **should not** be amended to allow for the use of masters.	46	21%
Am **neither in favor nor against** amending Rule 9031 to allow for the use of masters.	97	44%
Total Responses	220	

All respondents were given the opportunity to elaborate on their overall opinion about amendment and 53 respondents did so. The comments gave more detailed explanations of the uses or concerns described above. The most common sentiments expressed were the belief that masters would be used rarely or only in complex cases (21 comments or 40% of 53 comments) and, conversely, that bankruptcy judges already have sufficient tools at their disposal in the form of examiners, experts, trustees, and neutrals (7 comments or 13% of 53 comments). See Appendix A, page 28, for full comments.

Lastly, all respondents were given the opportunity to share any final thoughts or comments they had, and 27 respondents gave a final comment. The most common sentiments were an expression that having the ability to appoint a master would be another helpful tool for bankruptcy judges to have access to (7 comments or 26% of 27 comments), concerns about the expense (3 comments or 11% of 27 comments), or belief that bankruptcy judges should do this work themselves (2 comments or 7% of 27 comments). See Appendix A, page 34, for full comments.

Appendix A: Open-Ended Comments

In the case(s) or proceeding(s) in which you would have considered appointing a master, how did you meet that need (e.g. use of experts, examiners, law clerks)?[5]
I found that an examiner and trustee were suitable.
We did the work in chambers.
I used an examiner or asked the parties to agree to a procedure permitting outside review of the debtor's records.
went without
My law clerk and I did the work ourselves.
Examiner and law clerks
I would have liked to appoint a discovery master. Instead, I handled the discovery issues myself in numerous hearings. The process was time consuming and had limitations based on the more formal judicial role vs. a more informal role as a master or mediator. A discovery master in complex cases could likely resolve discovery disputes more easily, and I believe parties could be more candid with a third party rather than the judicial officer who would be deciding the case.
Appointed mediators.
law clerk
Did things myself
I reviewed the materials in chambers with law clerks when the matters were discovery matters. When the matters required something besides document review, I think that I just

[5] The ID numbers have been redacted from this set of comments due to the very specific, and thus potentially identifying information provided.

cajoled people into working through things or appointed a mediator to assist in working through things. I do not have a specific recollection though.
law clerks
I appointed a chief restructuring officer in a couple cases. I used a financial expert in others. I formed an additional committee in two cases I have used a receiver with specific directives in the appointment order. I have used a fee examiner. I have appointed mediators
I have used discovery mediators to review documents and work with the parties to narrow the discovery issues if possible. I then reviewed the documents where no agreement was reached.
I had to rely on myself or law clerks. In some cases, the matter in which I would have appointed a master was enough of a side issue that the issue was resolved in mediation.
In several cases I was able to persuade the parties to agree to mediation before a mutually agreeable expert. In other cases, I required expert reports and reached my own conclusions.
Read expert reports carefully and lots of research and time by me and law clerks
Creative orders placing duties on the debtor-in-possession. Encouraging parties in interest, including the United States Trustee, to seek particular relief.
In some instances, I urged the parties to meet with a settlement judge, conducted a status conference and/or appointed a trustee.
I relied on law clerks or did the work myself
I have not taken any other action, but just relied on the standard adversarial process, or appointed a settlement judge.
In one case, I ended up appointing a court expert. I can't recall what occurred in the other case or two.
Do not specifically recall. Probably a combination of myself and my law clerks. As an aside, it would be useful for this survey to define master so answers are as helpful as possible.
I conducted a number of telephonic status conferences to oversee the progress the attorneys were making on getting the information needed or actions taken by the debtor. In a couple

of cases, I had the subchapter V Trustee take a more active role and in one case I had the Chapter 12 Trustee be much more active than normal.
Examiner in one case, and simply made do with clerk resources.
In the last 5 years I have had 2 or 3 cases where significant attorney-client privilege, work product issues arose. Because I did not have the authority to appoint a special master to conduct the in camera review of a significant volume of documents, I did so myself with assistance from one of my law clerks. Most recently, the privilege issues arose concerning [REDACTED: Number of] documents that one side asserted attorney-client privilege as to most of those documents and attorney work product as to others. After reviewing the documents, I overruled the privilege or protection as to [REDACTED: Percentage of documents] documents, although for many of the documents, I permitted redaction of some privileged information. This clearly could have been a task for which I would have appointed a special master. In some other cases, privilege issues arose as to a few documents; I would not have appointed a special master in those cases.
Did without on one, used expert on other.
Self, Law clerks and then the major issues settled before trial.
Through appointment of 706 experts, mediators and examiners. All of these alternatives posed independent problems.
I am currently presiding over [REDACTED: Nature of case] and could envision finding it helpful to appoint a discovery expert to assist with discovery issues, particularly as it relates to navigating privilege issues and performing in camera review of thousands of documents.
I handled the case and related issues myself.
My law clerks and I handled the issues.
In all but one, I did nothing. In one, I appointed an examiner (a retired circuit judge with a substantial background in intellectual property)' to provide recommendations regarding the likely outcome of an objection to a claim that involved IP issues.
experts
I set the matter for an evidentiary hearing and issued a decision based on the evidence presented.

I have appointed professionals with certain skill sets that may or may not qualify as "masters." I believe Bankruptcy Judges have this ability, notwithstanding the lack of reference to FRCP 53.
With law clerk assistance, I essentially performed the task myself.
in general, where a master might have been of assistance, I have instead appointed a mediator who then aided in resolving a series of similar disputes within a large case, or have relied on case management, directions to the parties to confer and report to the court (for example on discovery issues), and similar procedures and processes.
Court Staff
I don't know what you are asking here.
I have probably met the need by having additional hearings, and working with my law clerks on the relevant issues.
In one of the two cases, I relied on the expert reports provided by each side. In the other, I relied on the parties' briefs.
Law clerks
I would have liked to appoint an examiner to handle E-Discovery disputes in a [REDACTED: Amount in the millions] fraudulent transfer adversary proceeding. My law clerk and I handled the issues ourselves.
I did the tedious work over disputed discovery
use of experts
Parties ultimately settled after discovery process was scheduled.
Court-appointed experts
I did not see a legal basis to appoint a master so I managed without the master. I recall thinking in each case that this was a sub-optimal result and worried the parties would have been better served by an independent professional's opinion.
Adjudicated dispute myself.
Law clerks and arguments from counsel.

The case was a mass tort bankruptcy that, if not dismissed, would have greatly benefited from a professional beyond the scope of an examiner or expert and beyond the expertise of a law clerk.
Use of experts and law clerks.
I ordered global mediation with two respected mediators (one a retired bankruptcy judge) being the co-mediators of several hotly contested matters in the case. These matters, if not resolved, made confirmation of a plan likely impossible. Also, two new independent directors were brought in, and the Creditors Committee was given expanded oversight powers.
By appointing a mediator pursuant to our Local Rules.
Examiner or just extra court hearings.
Law clerks and I worked REALLY hard to get through the information
Law clerks
1. Discovery disputes, such as document- and/or ESI--intensive production (massive undertakings, not just a few items at issue) and withholding production of allegedly att'y/client privileged or work product materials comprising hundreds or even thousands of entries on a privilege log. My law clerk and I have to handle these. 2. Fee disputes involving hundreds or even thousands of narrative entries and/or multiple firms billing on same litigation. My law clerk and I have to handle these.
In each case I felt I needed a special master for particularly ugly discovery disputes. I had actually appointed a special master early in my judicial career, not realizing that I had no authority to do so. Neither party complained, the special master was successful, and the parties paid him. THEN I found out about no authority and have, since then, done my best to navigate the discovery BS with which I am confronted from time to time.
I worked through it myself. Lots of discovery conferences, etc.
Experts.
My law clerk and I plowed in and tried to do our best to master the material, but I am not sure that the court got to the right result without some assistance.

<u>Even if you would not consider appointing a master in your own cases or proceedings</u>, for what purposes (if any) could you see a master being useful to a bankruptcy judge? Other, *please specify*	**ID #**
Resolving discrepancies in debtor's records.	**8**
to handle alleged victim claims process	**31**
It would be helpful in large ch. 11 cases where the parties are more likely to afford the fees associated with appointing a master.	**40**
Reviewing fees	**46**
Plan negotiation disputes	**47**
In one case I needed to determine the potential for success of [REDACTED: Variable value estate property] in a different state, [REDACTED: State name], in order to [REDACTED: Value estate property] in my state [REDACTED: State name]. In another case I needed to determine where the [REDACTED: Name of foreign jurisdiction] would likely place venue over a certain type of contract breach that occurred in [REDACTED: State name], in order to decide whether I had jurisdiction. In another, an issue of state labor law was dispositive of a critical issue of administrative expenses, and I had to twist arms to get the parties to mediate before a labor law expert. (I could go on. I've been on the Bench for [REDACTED: Span over a decade].)	**53**
Review and resolution of contested privilege assertions. Also, resolving disputes as to the content and form of proofs of claims.	**84**
Assistance in or generally conducting settlement or mediation conferences.	**93**
Assisting with mediation of complex matters.	**98**
Assistance with books, inventory, restaurant expertise, manufacturing and distribution assistance.	**100**
I see this as valuable in rare or extremely large cases. An examiner can also perform many of these tasks.	**118**
Reviewing potentially privileged materials	**119**

Cases involving complex technical or scientific issues.	**122**
If there were complicated, multi-party issues that would warrant doing so.	**126**
Making recommendations about current management's suitability to remain in place.	**140**
Given that I am an Article I judge with limited authority to enter a final judgment (see Stern v. Marshall), I can envision some constitutional challenges to an Article 1 judge appointing a master to make findings of fact and conclusions of law. So, I would only consider appointing a master in very limited circumstances.	**157**
Hard to say because no power to appoint one	**168**
Fed. R. Civ. P. 44.1 determination of foreign law (e.g., to determine property rights in foreign land). Chapter 5 voiding power/recovery analyses.	**178**
possibly assisting in preference issues	**196**
Dealing with mass tort situations (I recognize that this might be included within the above categories)	**199**
Something I don't know or foresee could warrant a master	**210**

What concerns (if any) do you have about amending Rule 9031 to allow for the use of masters in bankruptcy cases and proceedings? Other, *please specify*	**ID #**
The biggest concern is the cost to financially strapped debtors.	**40**
Other than the one case I [REDACTED: Specific description of large case], I have not had an experience where a master would have been necessary. So, that is to say I could see in some mega cases it would be helpful.	**83**
While I have a concern about the cost to the estate and the perception of favoritism, my answer here is really none, because it is only "natural and required" that cost and conflicts or potential conflicts be considered in making the appointment. So these issues are already adequately and properly addressed, in my view.	**93**
Parties losing confidence in Judge's ability to handle the matters.	**94**
I think that any favoritism issues could be resolved by having the parties propose the masters	**96**
Already have this authority and Rule 31 adds limits that don't presently exist	**111**
Potential negative reaction or optics of bankruptcy judges delegating duties referred to them by district judges.	**117**
Article I judge authority to appoint	**129**
Many cases I preside over are too small to bear the economic weight of a master. Sometimes, I wonder if the power to appoint alone would have beneficial effects on case administration.	**140**
I don't believe that I would allow a master to submit findings of fact and conclusions of law, given my own limitations under Stern v. Marshall.	**157**
There are already jurisdictional concerns raised routinely - this adds to those concerns.	**164**
I am not sure of the need for a Master given that our Local Rules provide for the appointment of a Mediator that would seem to function in a similar capacity	**170**
Displaces a core duty of a bankruptcy judge	**171**

Related to the item #1 above, is the risk that the appointment of a special master would add another procedural layer in the case and impose unnecessary complexity.	**180**
with the volume of cases at a low point, is it truly not needed as allowing or seeking the assistance of other judges with low volume cases might be a more efficient way to accomplish these ends	**196**
(1) Cost to non-estate parties. (2) Yet another set of things to argue about (causing expense, delay, etc.). We already have Stern v Marshall disputes (not often, but when they arise they're often used as a litigation tactic including increasing expense to the side least able to afford it). I worry about the same thing if Bankruptcy Judges have de novo review of Masters' work, which is then subject to de novo review or possibly other standards by a District Judge and/or the BAP, and then the Circuit Court, and then the Supreme Court - too many layers of review, and too many uncertainties and room for more arguments (like all of the issues your survey points out - was there bias, what are the limits of the Master's authority, does "de novo" review require re-trial or re-argument of some issues or can the BK Judge decide on the papers, etc., etc.).	**199**
I think this would be perceived by Article III judges as giving bankruptcy judges too much power to delegate work the bankruptcy judges should be doing themselves or having fellow bankruptcy judges assist. It would be like a magistrate judge appointing a special master to assist a magistrate judge with case management or discovery disputes.	**212**

What additional procedural requirements or limitations do you think should be included?	ID #
This is a spectacularly terrible idea whose adoption would do substantial harm to the bankruptcy system. It is a solution in search of a problem. By and large, bankruptcy judges are not overworked. This is the job for which we signed up. We should just do our jobs. But more importantly, the two most important problems faced by the chapter 11 process is that (a) the cases are too expensive; and (b) the perception that the cases operate to enrich the insiders at the expense of outsiders. There is no doubt that this would make cases more expensive. And the experience in many cases in which special master were appointed (such as the NJ asbestos cases and the Kobel litigation) demonstrates how it would also exacerbate the second problem. Accordingly, if this proposal were to be adopted, it should certainly be limited to special masters who are already bankruptcy or magistrate judges -- which would address the concerns about cost and the favoritism.	**17**
It would need to be reconciled with the Code sections regarding appointment and payment of professionals. A reading of Rule 53 raises multiple issues in conflict with longstanding code provisions.	**19**
Make clear rule 5002 applies to masters	**23**
To be clear, I do NOT think bankruptcy courts should appoint masters. Layering a master into an Article I court is a recipe for appellate disaster. I believe that we have sufficient tools at our disposal to fairly adjudicate our cases without the power to appoint special masters. I do believe there could be a distinct appearance of cronyism if judges were to begin to appoint special masters in their cases. It seems to me with the potential for the appointment of trustees, examiners, turnaround professionals, responsible persons, fee examiners, court appointed experts, and like, we have everything we need to make sure our cases run as smoothly as possible. I recognize that some of these could be appointed sua sponte and others would need to come at the impetus of the debtor, the committee, etc., but I still think we have everything that we need. If certain courts are overwhelmed by their caseloads, they should consider intra-division transfers or complex procedure orders to address caseload management. In Rule 9031 were amended -- All masters should be subject to the disinterestedness and fee application requirements. Appointment should be limited to asbestos or other mass tort cases.	**41**

There is one that should not be included. Specifically, the requirement of consent of the parties, set forth in FRCP 53(a)(1)(A), should not be included. The decision should be left to the judge.	**60**
Would it be possible to involve the Office of the U.S. Trustee in selecting the identity of the master to be appointed? This works well in the context of trustees and examiners so that there isn't a problem with perceived or actual favoritism in the selection of these professionals.	**69**
Conflict disclosure requirements consistent with other estate professionals	**84**
The Rule would need to be expanded to permit, for example, fee examiners and possible mediators (although they may be covered elsewhere). Rule 53 is a limitation on what masters can do. Right now, because that rule does not apply in bankruptcy cases, we are not so limited. As, or more importantly, I do not believe any substantive legal issues/proceedings should be delegated to a master. It is unclear to me what a master can do in this regard and the level of review of any reports/orders. It seems like another layer of time and expense.	**89**
Eliminate: 53 (B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted... and also 53 (C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence. and also eliminate (h) Appointing a Magistrate Judge. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge states that the reference is made under this rule. consider the procedure under (g) Compensation. as to how the master is paid form the estate - fee app, less formal submission, limiting disclosure of specific tasks	**96**
Perhaps incorporate the disinterestedness requirement of 11 USC 327	**116**
The master may not be appointed trustee in the case.	**120**
Right of parties to be heard on scope of authority and terms of order	**127**
I'm not sure I would appoint a master to a matter that would require them to make proposed findings of fact and conclusions of law. I would not want to have two judicial officers making proposed facts/conclusions of law that would ultimately be reviewed, yet again, by a District Court judge.	**157**

If FRCP 53 is rendered applicable to bankruptcy cases via amendment to FRBP 9031, I would except FRCP 53(h) from that application, as it pertains to magistrate judges.	**175**
They would include addressing the issue of selection (perhaps via selected by or from a pool maintained by the UST) and clarifying that the procedures and restrictions found in sections 327, 328 and 330 also apply to special masters. Situations are conceivable where parties, rather than or in addition to the bankruptcy estate, should bear some or all of the cost of a special master, as determined by the court. Consideration also should be given to whether any procedural guardrails are needed to prevent selection pools from taking on a "clubby" appearance and to encourage drawing appointees from as broad a range of qualified candidates as possible.	**180**
Prohibit the judge from being able to select the master. Too much opportunity for favoritism and cronyism. Have the UST pick somebody if this rule amendment actually passes, which I hope it doesn't.	**219**

Why would you hesitate to have another bankruptcy judge serve in this role?	ID #
Lack of impartiality.	**5**
Depending on the judge, I would have concerns about the level of expertise required.	**8**
Because most judges are accustomed to making decisions, not making recommendations (despite the "Stern mess" caused by the current structure of bankruptcy courts).	**13**
If a Judge is to handle it, then the assigned Judge should do so. Why appoint a Master then?	**15**
Our caseloads are very heavy. None of us need the extra work.	**20**
Bankruptcy Judges have enough work to do on their assigned cases.	**21**
If a bankruptcy judge can do it, the judge assigned to the case should handle it w/o passing it off to someone else.	**27**
Too risky to have the bankruptcy judge play a different role. I believe the primary need for the special master is to gather and then find facts.	**28**
On the one hand, it would be cost effective. But if another judge is doing the work, perhaps it is work that should not be delegated.	**32**
It is sometimes difficult to obtain a judge to mediate a case.	**35**
Not sure what their role would be.	**46**
Cases benefit from having the certainty and authority of one judicial officer presiding over them.	**48**
I think that there should only be one bankruptcy judge "presiding" in a bankruptcy case. My colleagues and I mediate one another's cases all the time, but we honor confidentiality, and so do not report to one another as to failed efforts.	**53**
I would be looking for time and expertise that I did not have, so it is unlikely another bankruptcy judge would have enough of either	**54**
Makes no sense. If another judge can do the work, why not have the judge appointed to the case do it. No particular reason to use another judge unless that judge has particular expertise such as in intellectual property, cryptocurrency, or the like.	**58**
If a bankruptcy judge can do it, then we should do it ourselves.	**59**

There would be no benefit to doing so. The judge presiding over the case should be the one deciding all matters in the case. It would not encourage the parties to settle their dispute because the "master" would not have the ultimate decision over that dispute.	**61**
Not sure I would be comfortable having de novo review of a decision of a colleague.	**62**
Obviously, they would be qualified. But, I am concerned about interfering with a bankruptcy judge's normal docket and workflow.	**64**
There's no point to appointing a master if we don't save judicial resources as part of the process -- and appointing another sitting bankruptcy judge would waste MORE resources since we'd need another sitting judge to get up to speed.	**66**
This seems like just passing your problems along to another judge. Perhaps a recall judge might be a good candidate, though.	**69**
If another judge is appointed as master, this leads to the question of why the presiding judge just doesn't do the work involved?	**70**
Risk of overworking a bankruptcy judge	**72**
Maybe	**77**
If a judge should undertake work that might otherwise be assigned to the special master it should be the judge assigned to the case.	**78**
may lead to confusion about which judge is the judge, concerns about bona fide de novo review of colleague's recommendation	**85**
Because of the burden it would create for that judge (although, I understand you are asking if we are in favor "should his/her caseload allow"). I would be hesitant to trouble another bankruptcy judge, but if the circumstances were just right and the judge was willing, particularly maybe a recall judge, I would be willing to appoint that person to serve in the role as master.	**88**
It would appear to be a subservient, not independent role. I do not see a colleague in that position. I distinguish this from appointing a colleague to serve as a mediator, a role in which s/he has a fully independent role--presiding over the mediation as s/he sees fit and not reporting to the judge except for very general progress report that are on the docket.	**89**
I don't think that is appropriate because unlike situations where a colleague mediates a case for you and there is no disclosure of the parties' positions or substantive interaction between the judges involved, in the Special Master situation there would necessarily be such	**93**

disclosure and interaction. Additionally, in certain situations (e.g., discovery disputes), it would have one bankruptcy judge sitting in review of another. Finally, and relatedly, I believe that appointing a colleague would at least partially defeat one of the purposes of the proposed rule, i.e., keeping the presiding judge involved in all aspects of the case, but in a supervisory role as to the delegated matters.	
If it's appropriate for a bankruptcy judge to handle, either (1) the assigned judge can do it or (2) the assigned judge can assign aspects of the case to the other judge so appointment of a bankruptcy judge as a "special master" does not strike me as being helpful or, indeed, making any sense.	**95**
I see this as mostly for discovery disputes that are complex and time consuming so another busy BK judge would also not have time to do this or may not have the expertise if this is a for a highly specialized role. also I think the appointing judge should be mindful that this appointment has an attendant expense and not let the parties think they are getting a "free" expert	**96**
The private sector provides ample candidates.	**100**
Seems to me there's real potential for less energetic judges to relatively easily and unfairly reallocate their caseload to other judges under the ruse of multiple "master" appointments. That said, in cases where there are substantial discovery specific or fee related issues, and a bankruptcy judge from another district is willing to serve as a "master," so be it.	**101**
it seems odd to ask a judge to be a "deputy judge" to another judge. I would appoint (and have appointed) a bankruptcy judge to be a mediator, but that seems different - it's a complementary role to the role of the judge presiding in the case.	**104**
It would not work.	**108**
If I cannot handle the matter because of lack of staff and resources, why would another b/r judge be in a different position. An exception would be a b/r judge with knowledge and experience in the area needing a special master.	**109**
If I'm the judge and feel like the workload on a specific issue is too intense for me to handle, then I would be reluctant to ask another judge to handle.	**112**
It would an additional "layer" of unnecessary entanglements and impediments to handling cases.	**115**
I would worry about how the appointment might impact other matters that the lawyers might have before the bankruptcy judge.	**119**

I would be concerned about shifting a significant volume of work to another judge and if the master is free, it would encourage parties seeking an appointment of one when they should be used sparingly. I can see an upside to using a judge for the opposite reason... no cost to the estate.	**120**
Because another bankruptcy judge would likely not have the special technical or scientific expertise to provide any needed benefit. As I stated previously, I am not in favor of using special masters in bankruptcy cases to resolve discovery disputes or to review fee applications, but I am in favor of special masters to provide needed insights and education into complex technical or scientific areas. The former categories are the only two areas that I can think of where another bankruptcy judge might provide value.	**122**
No	**123**
One presiding judge in a case is enough. Further, it complicates each judge's role in the matter.	**124**
If I were to appoint another bankruptcy judge to handle a fee dispute, I would have no problem delegating the entire process/decision to that judge. I would be less comfortable appointing another bankruptcy judge to as a special master to adjudicate an issue that would impact on my own decisional process.	**125**
Tedious tasks	**127**
I am unsure that judicial immunity would apply to the judge serving in the role as a special master. The Chief Bankruptcy Judges in my Circuit have attempted to obtain guidance from the AO regarding the scope of judicial immunity when bankruptcy judges serve as settlement conference judges. The AO's response, however, has not alleviated my concerns regarding this issue. I would be hesitant to serve as a special master as a bankruptcy judge, due to the risk of frivolous litigation that I may personally be required to pay to defend against.	**128**
At any time a case can be assigned from one bk judge to another for all or part of it. This does not need a special master rule, so I don't see any reason to include it.	**132**
No but in [REDACTED: Name of district] we are too busy to serve as a special master to another judge.	**138**

I think it would be better to find subject matter experts in general. Judges play a distinct role, to resolve disputes in accordance with the law. Masters should be more practically oriented and workmanlike.	**140**
I don't think using other bankruptcy judges requires amending the rules to allow "masters." If a court needs to adjust workloads, that can be done under existing rules w/o introducing "masters" to bankruptcy cases. In other words, I would not hesitate to use a bankruptcy judge in this role. I would hesitate calling my fellow bankruptcy judges anything other than judges.	**141**
Judges should rule on cases or controversies before them, or in limited instances serve as judicial mediators. In the latter, the judge helps the parties understand the risk-reward calculus presented by a case to facilitate settlement. The judge does not make final determinations, leaving that to the parties. A master interjects herself into the adversary system in a way inconsistent with judicial responsibilities.	**142**
I am concerned that parties and possibly the presiding judge would be too deferential to a judicial master.	**146**
I think the master role should not be another judge. It is a different function than what a judge does. I also think it might make a judge hesitant to modify a decision under de novo review. If a judge is used as a master, the judge should not be from the same district to avoid these issues. If a judge from a different division is used, that may unnecessarily increase the costs of the master to the estate.	**147**
Depends on what the issue is.	**149**
burden on docket and potential liability	**151**
I see a special master being most helpful if he/she is an expert in some area, or is conducting an audit, things that a judge wouldn't' be suited for. If I ever had need for a special master to take over voluminous claims resolution, my opinion might change, but I haven't had need for that.	**156**
I don't want to be placed in a position where I would review a colleague's work.	**157**
I can assign part of a case to a willing judicial colleague now. I don't need a rule for that. I need a rule to appoint non-judges.	**158**

It should be used for non-bankruptcy expertise matters. Also, there are mechanisms in place for referrals to other bankruptcy judges similar to what we do when we mediate cases for one another.	**160**
I need more time to consider the implications.	**163**
The term "Master" implies that the person is other than a bankruptcy judge. If I wanted a bankruptcy judge to handle a matter or issue, I would feel it more appropriate to bring him/her in to preside over a judicial settlement.	**165**
The concern is perceived ex-parte discussions between judges.	**167**
Concern about putting another judge in that role, potential for conflicting decisions	**168**
I am not sure the parties (or I) would feel comfortable with the idea of co-judges. That's essentially what it would become.	**169**
All bankruptcy cases have an assigned judge. Appointing a bankruptcy judge as a master would divest the presiding judge of a core duty in favor of another bankruptcy judge. A bankruptcy judge handling all assigned responsibilities should not need to appoint another bankruptcy judge in the same case.	**171**
This may go without saying, but as long as the bankruptcy judge does not get compensated, I would have no hesitation appointing another judge.	**173**
Too much of a burden on my colleagues.	**174**
We are all very busy. None of my colleagues would have time for this. We are one of the busiest jurisdictions among all 90 bankruptcy courts.	**178**
Such an option needs to be further examined before inclusion in an amended Rule 9013. See the issues raised in Rosario v. Livaditis, 150 B.R. 224 (bankruptcy judge rejecting district court appointment under FRCP 53). Should there be venue restrictions? Such an examination should go beyond the procedural nuts and bolts, too. For example, would such appointments be included in the respective judge's (or district's) judicial caseload metrics and for budgeting purposes? If so, how?	**180**
Because I think that for what I would use a special master for - discovery disputes - it would be better served to have a non-bankruptcy judge in that role.	**181**
Some might perceive it as transferring the case to another judge for crucial decisions.	**194**

I am concerned that the roles of bankruptcy judge and special master would result in confusion and questions from the parties as to who is in charge of their case.	**201**
With the possible exception of mega cases, which are filed infrequently in our district, I would struggle to justify the appointment of a master due to the cost and the delegation of duties. For me, these concerns apply to a professional from the private sector as well as another bankruptcy judge.	**205**
I would hesitate to have another bk judge serve in the role of a court appointed expert because they would likely also need the assistance that caused me to want to appoint the expert in the first place.	**213**
If a judge is handling why wouldn't I just do it myself?	**217**
Judges should be judges. Stick to the day job.	**219**
The judge would not be familiar with the history and details of the case and may be reluctant to exercise adjudicative authority. As an alternative in larger cases, especially Chapter 11 mega-cases, assigning such cases to two judges from the outset to share the workload might make more sense.	**220**
I would have concerns about 1) the authority of a bankruptcy judge to act as a special master unless there is a corresponding amendment in the Bankruptcy Code itself, and 2) liability issues.	**221**

Please explain your answer if you wish [*pertaining to their views on the potential amendment*]	**ID #**
I would probably as a matter of course not want to consider appointing a master- I basically think what they do is my job. I do, however, perceive that there may be circumstances where one is appropriate, and the option perhaps should be available. Regardless, I fear some may use it to unnecessarily create a parallel adjudicator over matters that rightfully should be their responsibility.	**14**
Views set forth above. The downside risk associated with doing this (in terms of cost of the cases and public perception of our processes) substantially outweighs the vanishingly small benefit of adding additional resources to courts that, as far as I can tell, generally have more resources than we have work.	**17**
I think this tool could be helpful in the right case. I also think it will be used wisely (i.e. with a focus on cost). To this end, I think using other bankruptcy judges is perfect.	**18**
This suggestion comes out of the blue to me, and I have not really had any opportunity to consider the issue. Perhaps a more meaningful survey could be conducted if the request were accompanied by some explanatory materials? I suspect that some judges think this is self-evidently a necessary amendment while many (like me) have never considered the question.	**21**
perhaps needed in complex cases	**23**
I don't see the downside of having this option. I would rarely use it, if ever, but something new comes along often.	**26**
Between the opportunities to appoint trustees, examiners and court appointed experts, there is no real need for a court appointed master	**27**
The special master is a tool that belongs in the bankruptcy judge' toolbox just as district judges have it available to them	**28**
It is helpful to have options for exceptional cases.	**32**
Not sure I understand the need (except as noted below). Seems like we have experts who routinely perform some of the duties of a master (except discovery). I like the idea of appointing another judge as a master to conduct settlement conferences so that they are afforded immunity - but I am not sure R 53 allows for it without consent of the parties.	**39**

There is some benefit mainly in large/complex ch. 11 cases but not sure that it has much benefit in smaller cases due to the cost.	**40**
Judges should not be delegating their duties to make decisions to others, and that is what happens when appointing a special master. Delegating anything other than duties to make decisions can be done by appointing an examiner or trustee under existing rules.	**44**
We are doing this now in the big chapter 11 cases, just calling them something else. This would give the court another tool for managing workouts. I see no downside	**47**
There are matters, especially in large mass tort cases or complex chapter 11 cases, where a master would make sense on discrete issues.	**52**
It is a tool that should be seldom used but is necessary to have available in the right case	**54**
I have always considered the inability to appoint a special master as a noteworthy limitation on the ability of bankruptcy judges to fashion appropriate relief for the benefit of the estate.	**57**
I think it would be a useful tool in the right cases and would save time.	**62**
I have not had personal experience with the perceived need for the appointment of a special master. I might have a stronger opinion if the need were apparent in my cases.	**68**
I do not think it is appropriate for Bankruptcy Judges to delegate or avoid their judicial duties and this seems to allow for that to occur.	**71**
I haven't had many cases in the [REDACTED: Span of years over a decade] I have been a judge, but in those few cases I think another entity would have been very helpful. I would lean in favor of having a master just to have another tool to use.	**75**
There are important tasks that can properly be done by a special master--privilege review, detailed accounting, perhaps others--that should not require the work to be done in the first instance by a bankruptcy judge.	**78**
I do not perceive the necessity in a consumer district like mine but I acknowledge that other districts may have a need.	**85**
There is not a practical, economic purpose. A more useful rule would be to clarify that bankruptcy courts have the authority to order mediation.	**87**
It should be a tool that is available for us to use in the appropriate circumstance. My recently retired colleague appointed a discovery master (although I can't recall exactly what they have called that person but would be happy to find out and provide the details if somebody wants to reach out to me about this particular case) in another one of our [REDACTED:	**88**

Description of case] cases. He found that process to be extremely beneficial and from what I understand, the parties have also been pleased with the process. In this particular case they can afford to pay the discovery master so it generally seems to have been a win, win.	
I do not think it is necessary. Bankruptcy courts have tools at their disposal already to appoint neutrals to provide appropriate help. The amendment of the rule could actually limit what we currently do if these roles do not fit within any of the permitted uses.	**89**
This is a tool that has been successfully used by District Courts for decades, but only in appropriately limited and specific circumstances. Bankruptcy judges now preside over many of the same types of complex, heavily litigated cases (e.g., mass torts) that warranted the appointment of a Special Master in District Court Actions. That same tool should be available to Bankruptcy Judges for the very same reasons and in the same limited circumstances. In my view, it is difficult to see or understand the arguments against it.	**93**
Although special masters are needed only in unusual circumstances, I believe that they should be an available option.	**98**
The Bankruptcy Code has been in existence since 1978, and contains provisions sufficient to allow bankruptcy judges to address the issues contemplated by Fed. R. Civ. P. 53. If it ain't broke, don't try to fix it.	**101**
I simply do not have strong feelings either way. I think both courses of action have pros and cons. My caseload is such that I have time to adjudicate matters that might be delegated to a Master, but I can imagine courts with higher caseloads might appreciate the option of appointing a master.	**105**
Another option to reach the correct conclusions.	**109**
Do not see a need for it and am advised that we already have such authority without Rule 31 limitations. But those who I know that do anticipate needing masters want it.	**111**
A rule amendment may assist in unique or very large cases. In most cases, a master should not be necessary. I have all of the concerns raised earlier in the poll.	**118**
I've only had a couple of cases in which I think it would have been helpful to employ a special master, and both involved complex technical or scientific issues. When there are competing expert reports relied on instead, I think use of a special master in those situations could reduce the chance of judicial error. For issues (such as discovery and fee issues), I am opposed to the use of a special master, since bankruptcy judges are well equipped to resolve	**122**

those disputes. So long as that distinction is observed, I support the proposed rule amendment.	
[REDACTED: Personal thoughts on, and relationship to the author of, articles in the American Bankruptcy Law Journal concerning the 1987 Bankruptcy Code redraft and hesitancies to expand bankruptcy judge jurisdiction under it] mentioned special masters, but district judges had been using bankruptcy judges/referees as special masters in their cases and could not see bk judges now appointing special masters for their own cases. So this is an historical anomaly that should be dealt with, now almost 40 years later.	**132**
I don't know why the appointment of masters would be beneficial in bankruptcy considering we could appoint examiners and trustees. However, I am not in a district with large corporate debtors so perhaps the appointment of a master in a very large case could be useful considering our limited resources as bankruptcy judges.	**135**
I know several of my colleagues believe it would be helpful in their jurisdictions. In my personal experience, the type of cases in my jurisdiction do not require the appointment of a master. I am also concerned about a third party who increases the cost to the estate or a third party who does not understand the judicial code of conduct, so I would prefer that masters were another bankruptcy judge. At the moment, I think we are using other judges to mediate some of the disputes/issues that would otherwise be litigated in our court.	**136**
My expectation is that this proposed rule change is extremely unlikely to have any effect in my district or any other district in which the docket is principally composed of consumer cases. And even in those districts with larger and more sophisticated cases, one wonders how often (if at all) this additional procedural tool is really necessary to solve some problem of administration, that a master appointed under this rule avoids an administrative problem that can't be otherwise dealt with. My very limited experience in practice with special masters is that they tend to come with a substantial increase in litigation cost. Still, I expect that there are some bankruptcy disputes in which appointment of a master would arguably make sense, and I expect that the judges overseeing those matters could reasonably decide whether appointing a master is appropriate under the circumstances. So, I'm a very weak vote in favor.	**153**
I have no issue with the Rules providing for allowance of a master as long as the ability to appoint remains at the discretion of the individual bankruptcy judge and cannot be mandated.	**155**
I personally do not see the need. Even if allowed and we can appoint other bankruptcy judges - we could ask for their help already so doesn't seem necessary. Having said that I	**164**

am not in a district that is covered up and extremely busy so perhaps there is a need I don't appreciate.	
We are getting over our skis here. We are Article I judges (we shouldn't need helpers--technically that's what we are--helpers to the Article III District judges with regard to bankruptcy subject matter jurisdiction). And we have tools already that should be sufficient--ability to appoint a trustee, examiner, have a court-appointed expert under FRE, or send things to mediation. Lastly, I fear it will smack of judges picking buddies or otherwise showing favoritism. There is a reason that the UST picks trustees (with possible creditor vote) and not us.	**169**
As stated previously, our District provides for the appointment of a Mediator per Local Rule from a panel of certified mediators, so I am not sure of the need for a Master.	**170**
A master could be useful in a small number of cases. Providing the bankruptcy judge the option of a master could be beneficial. There is a perception that bankruptcy cases are administered for the benefit of the professionals retained in the case. I would be concerned that a master would be perceived as another professional looking to feed off the case.	**173**
More and more bankruptcy cases are filed due to mass torts. Given recent (and completely understandable) Supreme Court rulings and the likely inability of Congress to address amendment of 11 USC 524 anytime soon, making FRCP 53 applicable to bankruptcy cases might provide some relief to bankruptcy judges who find themselves handling a massive case (or perhaps several massive cases) without adequate resources.	**175**
The only potential downside may seem to be the cost, but that is a red herring. Bankruptcy judges can use reasoned discretion to apply the rule in cases in which the expense makes sense and does not unduly burden the parties and in which the benefit of a faster decision would outweigh the financial impact. We are experts at this type of balancing of competing interests.	**178**
At this time. I need to have information regarding the points and questions raised in my preceding comments before I can form an opinion about this.	**180**
I'm not sufficiently familiar with the pros and cons to have a considered opinion.	**182**
If the Rule is amended to allow the use, it is not mandated. It becomes a tool that may be used when the circumstances dictate.	**185**

In light of the lighter load of cases that exists in many bankruptcy courts, the bankruptcy courts as a whole have the ability to assist in other cases where the sitting bankruptcy judge needs the assistance of a "master". In days past, judges from other districts helped out in [REDACTED: Name of district] when there was a need. There is no reason that the resources of the bankruptcy courts with lighter loads could not assist -- and without the additional resources that masters would require.	**196**
Do not believe it is often necessary, but when it would be beneficial to facilitate Rule 1001(a) (just, speedy, and inexpensive determination of case) it should be available.	**198**
I have strongly felt concerns that adding the use of masters could add a whole new layer of things to argue about, causing expense, delay, complexity, and other problems. But I recognize that in rare instances it might be best to have the option to appoint a master, and I don't have any experience dealing with masters so I might not realize all of the considerations on each side of the issue.	**199**
Same reasons set forth in my answer to the preceding question.	**205**
Our caseloads include disputes in which a master may be helpful and appropriate. I expect the need to be infrequent, but potentially significant at times. The concerns you identify are real but can be addressed. I think the current FRCP 53 is adequate to meet bankruptcy-specific considerations, notably expense. That warrants closer examination than I've done, and if there are additional bankruptcy-specific challenges I'd favor addressing them within the Federal Rules of Bankruptcy Procedure.	**210**
I have not had enough experience prior to taking the bench with Rule 53 to evaluate the benefits in bankruptcy cases	**217**

If you have any additional thoughts or comments about the topics covered in this survey, please share them here.	ID #
If properly implemented, the option of using masters can provide a needed benefit without risk of adverse consequences.	**7**
I think that allowing bankruptcy judges to appoint special masters as needed provides another tool for the toolbox. It won't be needed in most cases, but it would be good to have when needed.	**8**
Regards all.	**14**
Your continued efforts at judicial education and improvement in our understanding of the law and rules is much appreciated.	**21**
Nope.	**39**
Looks like we are going back to the referee system. I don't want to appoint anyone.	**46**
Seems unnecessary, would add additional expense to a case, might further delay an appropriate outcome and so far have been made aware of any potential benefit to the Court, the estate, the parties or the public we serve.	**71**
This is an answer is search of a problem.	**87**
[REDACTED: Description of discussion with another judge]	**88**
Please see prior comments. Thank you.	**93**
na	**102**
This seems to be a useful tool to add to the case management toolkit - I would not expect it to be used often, but I would expect it to be very helpful in the situations where it can bridge a gap between what the judge can do and what other court-appointed neutrals such as examiners and mediators can do.	**104**
I think this would be a very helpful amendment and would contribute to the efficient administration of bankruptcy cases.	**119**
I think the cost is my biggest concern	**123**
It would be helpful to circulate summary of instances where special masters were appointed in district court	**127**

Feel free to call me for more information on my view of history. BTW, I think that I used a court-appointed expert in a case that dealt with a patent and another to value a large housing development when there really were no comparable and I had two experts on each side and needed someone to make sense of the conflicting appraisals. Both were some years ago and I do not remember all the details. I may also have done this concerning an insurance company. In all three I could have used a special master, which would have been faster and less expensive. [REDACTED: Name and contact information]	**132**
Thanks for asking for comments. I would be interested in knowing how this was brought up and the reasoning for the need in the original proposal.	**164**
Difficult to consider because having never had that power	**168**
I understand that people might want to explore this--particularly in connection with large, complex cases. But, I am sure, if permitted, Masters would become a common thing (than just being utilized in a big, complex case) and that would make bankruptcy even more expensive than it already has become. I feel like lawyers would hate it frankly (lawyers having to deal with two "judges" in a case--and pay for one of them--that's what it would feel like to them). There is a reason why clients are doing out-of-court workouts more and more. Bankruptcy is expensive.	**169**
Thanks for providing an opportunity to provide input.	**171**
It's a tool. Not one that would be used often, but prior to going on the bench, I have seen special masters in federal litigation would were quite effective in moving complex proceedings along. So it makes sense to me that the tool should be available so that it can be used in those rare cases where it would be helpful. Examiners really should not be in the position of making (albeit reviewable) decisions.	**174**
Has there been a quantitative efficiency study made of this? Are there any metrics / forecasts regarding the particulars about the utilization of the special masters?	**180**
I believe that the examiner role serves a purpose in many instances, including fee disputes. But there is no help to us for discovery disputes and in districts like mine, with a HUGE AP load, having that ability would be critical, especially if the parties are paying.	**181**
Thank you for soliciting input.	**199**

The availability of additional resources for use by bankruptcy judges makes sense. Even if I never had an occasion to use a special master, I'd support the ability of my colleagues to use one.	**203**
I think bankruptcy judges should be doing this work themselves or enlisting the assistance of fellow bankruptcy judges and not farming out the work to someone who is charging the bankruptcy estate or parties for these services.	**212**
Is this a solution in search of a problem?	**214**

TAB 8C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: BUSINESS SUBCOMMITTEE

SUBJECT: TECHNICAL AMENDMENTS TO RULE 2007.1(b)(3)(B)

DATE: FEB. 28, 2025

The restyled version of Rule 2007.1(b)(3)(B) includes a sentence that reads: "The report must be accompanied by a verified statement by each candidate, setting forth the candidate's connections with any entity listed in (A)(i)-(vi)." However, Rule 2007.1(b)(3)(A) lists the entities in six bullet points, not as (i) – (vi). Therefore, a technical correction is needed. The Subcommittee recommends that the sentence in Rule 2007.1(b)(3)(B) be amended to read "The report must be accompanied by a verified statement by each candidate, setting forth the candidate's connection with any entity listed in (A)." The only change is the deletion of the erroneous references to (i)-(vi). The change is shown on the attached marked copy of the Rule.

This amendment does not require publication. **The Subcommittee recommends the technical amendment to the Advisory Committee for approval and submission to the Standing Committee for final approval.** It would become effective Dec. 1, 2026.

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

Rule 2007.1. Appointing a Trustee or Examiner in a Chapter 11 Case

* * * * *

(b) Requesting the United States Trustee to Convene a Meeting of Creditors to Elect a Trustee.

* * * * *

(3) ***Reporting Election Results; Resolving Disputes.***

(A) *Undisputed Election.* If the election is undisputed, the United States trustee must promptly file a report certifying the election, including the name and address of the person elected and a statement that the election is undisputed. The report must be

[1] Matter to be omitted is lined through.

accompanied by a verified statement of the person elected setting forth that person's connections with:

- the debtor;
- creditors;
- any other party in interest;
- their respective attorneys and accountants;
- the United States trustee; or
- any person employed in the United States trustee's office.

(B) *Disputed Election.* If the election is disputed, the United States trustee must promptly file a report stating that the election is disputed, informing the court of the nature of the dispute and listing the name and address of any candidate elected

under any alternative presented by the dispute. The report must be accompanied by a verified statement by each candidate, setting forth the candidate's connections with any entity listed in (A)~~(i) (vi)~~. No later than the date on which the report is filed, the United States trustee must mail a copy and each verified statement to:

(i) any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report; and

(ii) any committee appointed under § 1102.

* * * * *

Committee Note

The second sentence of Rule 2007.1(b)(3)(B) is amended to delete the erroneous reference "any entity listed in (A)(i)-(vi)." There are no clauses (i)-(vi) in (A); the entities are listed in bullet points. Therefore the sentence is amended to refer to "any entity listed in (A)."

TAB 9

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: APPELLATE AND CROSS-BORDER SUBCOMMITTEE

SUBJECT: 24-BK-O RULE 7012

DATE: FEB. 4, 2025

Judge Catherine Peek McEwen has suggested (24-BK-O) that the Advisory Committee consider whether amendments to Bankruptcy Rule 7012 are appropriate in light of the pending amendments to Civil Rule 12(a), which clarify that a federal statute specifying a time for serving a responsive pleading supersedes the response times otherwise set by Civil Rule 12(a)(2) – (4) rather than just Civil Rule 12(a)(1). Civil Rule 12(a) is not applicable in a bankruptcy case.

The concern addressed by the Civil Rule amendment was that there are federal laws – in particular the Freedom of Information Act and the Government in the Sunshine Act – that establish 30-day time limits for responsive pleadings for actions against the United States or its agencies or officers or employees sued in an official capacity, while Civil Rule 12(a)(2) specifies 60 days. The language in Civil Rule 12(a)(1) reading "Unless another time is specified by this rule or a federal statute" previously qualified only the time periods specified in Civil Rule 12(a)(1) and was not applicable to the other subsections of Civil Rule 12(a).[i] Because 28 U.S.C. § 2072(b) states that "[a]ll laws in conflict with such rules [including the Civil Rules] shall be of no further force or effect after such rules have taken effect," the existing structure of Civil Rule 12(a) created the risk of conflicting with the existing federal laws, which was not the intent. There are several civil rules in addition to Civil Rule 12(a) that are qualified by deference to potential conflicting federal statutes, such as Civil Rules 17(a)(2), 24, 38(a), 39(c)(2), 40, 41(a)(1)(A), 43(a), 54(d) and 64(a).

Unlike the Civil Rules, which are governed by the supersession clause of 28 U.S.C. § 2072(b), the Bankruptcy Rules are authorized by 28 U.S.C. § 2075 which contains no such clause. Therefore, as a matter of federal law, if the Bankruptcy Rules are inconsistent with federal law, federal law prevails. There are no bankruptcy rules that include language qualifying their provisions by reference to conflicting federal statutes or federal law.

Therefore, the insertion of qualifying language such as "unless another time is specified by a federal statute" (or something similar) in Bankruptcy Rule 7012(a) is unnecessary and would be inconsistent with the structure of the bankruptcy rules under 28 U.S.C. § 2075. The Subcommittee recommended no action on the suggestion.

[i] Although no current statutes were found that specified a time for responsive pleadings in actions against a United States officer or employee sued in an individual capacity that were inconsistent with the time period specified in Civil Rule 12(a)(3), the Civil Rules Committee concluded that such laws could be enacted in the future and the qualifying language should apply to all subsections of Civil Rule 12(a).

TAB 10

TAB 10A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: S. ELIZABETH GIBSON AND LAURA BARTELL, REPORTERS

SUBJECT: 24-BK-J – 24-BK-M (SUGGESTIONS FROM SAI)

DATE: FEB. 28, 2025

We have received four new suggestions from Sai. In the first Sai suggests that the rules should preclude use of all-caps for party and case names and require that proper diacritics be used. In the second Sai suggests that the substance of local rules that are universal or near universal should be incorporated into the federal rules. Third, Sai suggests that to the extent that the various sets of federal rules of procedure have similar provisions, the provisions should be moved to a set of Federal Common Rules that apply across the various sets of federal rules except when individual differences are provided in the separate rules. Fourth, Sai calls for standardized pages equivalents for words and lines and elimination of monospaced fonts.

These suggestions were addressed to each of the Appellate, Bankruptcy, Criminal and Civil Rules Committees. The Appellate Rules Committee considered the suggestions at its fall meeting and removed them from its agenda.

1. **Style Names in Normal Case and Diacritics**. Sai makes four arguments in favor of the suggestion. Sai first notes that use of all-caps for individual names may encourage sovereign citizen/"organized pseudolegal commercial argument" litigants into thinking the individual is a "quasi-corporate entity created by the government" and thereby promote vexatious litigation. Second, Sai points out that capitalization and diacritics are inherent parts of names, and changing the font to all-caps and eliminating diacritics will often be culturally insulting and inaccurate. Third, putting party and case names in all-caps wastes time. Fourth, use of all-caps is bad typography and more difficult to read.

He suggests Federal Rule of Bankruptcy Procedure 8015(a) be amended to add a new paragraph (8) which would read "**Names**. All names must be set in their normal case and diacritics. In headings, lower-case letters may be set in small caps." Sai also suggests a committee note providing examples. Sai would similarly add a new paragraph (i) to Rule 8015 requiring every document created by the court or clerk to comply with the new paragraph and would add the words "and name styling" after "type style" in Rule 8013(f)(2)[1]. Sai made comparable suggestions to Appellate Rules 32 and 27, on which the bankruptcy rules are modeled.

Given that the Appellate Rules Committee is not pursuing these changes to its rules, we recommend that no change be made to the comparable Bankruptcy Rules.

[1] Sai cites Rule 8014(f)(2), but clearly means Rule 8013(f)(2).

2. **Adopting Common Local Rules as Federal Rules**. Sai believes that incorporating into the federal rules local rules that are universal or near universal would "simplify local rules, ensure that their provisions are in fact deliberate variations rather than oversights in the federal rules, simplify matters for people who practice in multiple courts, and simplify case law on the rules." Sai suggests that the Advisory Committee systematically survey the local rules, identify types of provisions that are common in local rules but not included in the federal rules, and adopt the most common form of those rules into the federal rules.

We believe that this suggestion should not be pursued for two reasons. One, the Appellate Rules Committee has declined to pursue it. Two, even if we were approaching it in the first instance, we believe that it is better practice to avoid federalizing rules when that is not necessary to the effective operation of the bankruptcy system.

3. **New Federal Common Rules**. Sai points out that a substantial amount of the rules are duplicative between rules sets and that adds "needless complexity, creates potential for issues of surplusage, and makes the Rules harder to maintain." Therefore, Sai suggests creating a new rules set, the Federal Common Rules, that would contain matters shared between rules sets. The separate rules sets would contain only those matters unique to their constituency.

Whatever merit Sai's observations have, we are not writing on a blank slate at this point in the development of the federal procedural rules, and we recommend against undertaking such a major restructuring at this point. The Appellate Rules Committee reached the same conclusion.

4. **Standardizing Page Equivalents for Words and Lines**. Sai points out that length limits in the Federal Rules of Bankruptcy Procedure, like those in the Federal Rules of Appellate Procedure, are stated in some places in terms of words, lines, or pages. For example, Rule 8013(f)(3) limits length of motions and replies by words; Rule 8014(f) limits submission of supplemental authorities by words; Rule 8015(a)(7) limits length of principal brief by pages, lines and words; Rule 8016(d)(1) limits number of pages in cross-appeal briefs; Rule 8016(d)(2) limits number of words and lines in appellant's and appellee's briefs on cross-appeals; Rule 8017(b)(4) limits length of amicus brief by words; Rule 8022(b)(1) limits length of computer-produced motion for rehearing by words; and Rule 8022(b)(2) limits length of handwritten or typewritten motion for rehearing by page). Rule 8015(a)(7) uses a ratio of approximately 433 words per pages, while Rule 8013(f)(3) and Rule 8022(b) use a ratio of about 260 words per page. There are other examples of discrepancies. Sai believes that these discrepancies are not justified and suggests standardization by a new definition of "pages" that would define the number of lines and words per pages. Sai also believes that the monospace limits are no longer technologically necessary and that the Advisory Committee should consider eliminating them.

Because we continue to have a large number of pro se debtors who do not use computer-generated filings, we believe the monospace limits retain an important role in bankruptcy procedure. Although we agree that there is no principled justification for different page/word limits for different documents in the rules, our limits closely track those included in the appellate rules, and if the Appellate Rules Committee has decided not to undertake the task of making the

various limits uniform, we do not believe the Bankruptcy Rules Committee should take the lead on this suggestion.

Recommendation: We recommend that the Advisory Committee take no action on these suggestions at this time. If one of the other rules committees decides to pursue them, the Bankruptcy Rules Committee can revisit its decision.

TAB 10B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON AND LAURA BARTELL, REPORTERS

SUBJECT: 24-BK-D and 24-BK-E MINORS AND PSEUDONYMS AND SSN IN BANKRUPTCY APPEALS

DATE: MARCH 3, 2025

At the Advisory Committee meeting on September 12, 2024, Tom Byron reported on suggestions that address particular issues relating to the privacy rules, including suggestions regarding redaction of social-security numbers in federal-court filings and a suggestion relating to initials of known minors in court filings. At the same meeting, the Advisory Committee decided to take no action on the suggestion from Senator Wyden (22-BK-I) concerning complete redaction of social-security numbers in bankruptcy court filings.

Since that time the other rules committees have been considering the same issues. The Criminal Rules Committee is likely to propose amendments to Criminal Rule 49.1 to require full redaction of an individual's social-security number, as well as the use of pseudonyms rather than initials for minors' names. The Civil Rules Committee is considering whether to propose similar amendments to Civil Rule 5.2, and the Appellate Rules Committee will be considering an amendment to its rule to generally require complete redaction of social-security numbers.

This memo discusses two issues for the Advisory Committee's consideration at the spring meeting. First, the Advisory Committee has not yet considered amendments to Bankruptcy Rule 9037(a)(3), which currently permits filings to include a minor's initials. Second, the decision of the Advisory Committee not to amend Rule 9037(a)(1), which permits bankruptcy filings to include the last four digits of the social-security number, creates the issue of whether the last four digits of the social-security number can be included in filings in bankruptcy appeals, even if doing so will be prohibited for appeals of civil and criminal cases.

Pseudonyms for Minors

Currently the various federal court privacy rules recognize the importance of protecting from disclosure in court filings the identity of persons known to be minors. The rules do so by requiring the substitution of initials for a minor's name. Last year the Department of Justice submitted a suggestion to the Criminal Rules Advisory Committee that Criminal Rule 49.1 be amended to require pseudonyms for minors rather than using initials. The suggestion explained that referring to child victims and child witnesses by their initials—especially in crimes involving the sexual exploitation of a child—may be insufficient to ensure the child's privacy

and safety. Because of the current uniformity of the privacy rules, the DOJ suggestion was also referred to the bankruptcy, civil, and appellate rules committees.[1]

The potential harm of disclosing a minor's identity may not be as great in bankruptcy cases as in the criminal context; nevertheless, protection against disclosure is desirable, as current Rule 9037(a)(3) recognizes. While the Advisory Committee identified a need to retain the last four digits of social-security numbers in certain bankruptcy filings—even if the civil and criminal rules require complete redaction—we can think of no bankruptcy reason to continue to require initials for minors if the other rules committees modify their comparable provisions to require pseudonyms instead.

Which Redaction Rule on Appeal?

Under Appellate Rule 25(a)(5), "[a]n appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal." The Appellate Rules govern bankruptcy appeals in the courts of appeals. Part VIII of the Bankruptcy Rules governs appeals to district courts and BAPs. Although Part VIII does not cross-reference Bankruptcy Rule 9037, as a general provision in Part IX of the rules, Rule 9037 applies to bankruptcy appeals covered by Part VIII. Civil Rule 81(a)(2) provides that the Civil Rules "apply to bankruptcy proceedings" only "to the extent provided by the Federal Rules of Bankruptcy Procedure," and nothing in the Bankruptcy Rules applies Civil Rule 5.2 to bankruptcy appeals to the district court.

If the Civil and Criminal Rules are amended to preclude the use of the last four digits of the social-security number, there will be a lack of uniformity with Bankruptcy Rule 9037(a)(1), which may cause some confusion regarding bankruptcy appeals. A policy issue is thus presented. In an appeal to the district court from a bankruptcy court, should the same privacy rule that otherwise applies in the district court (for civil and criminal cases) apply—thus requiring further redaction—or should the bankruptcy rule continue to apply? And likewise for appeals to the court of appeals: should the same rule that applies to civil and criminal appeals (complete redaction) apply, or should the bankruptcy rule be applicable? Which would cause less confusion—a unique rule for bankruptcy appeals in the district court and court of appeals, or changing rules for a bankruptcy case as it proceeds through the appellate process?

The Appellate Rules Committee will be considering an amendment to Appellate Rule 25(a)(5) that would resolve that issue for the courts of appeal. The proposed revision would provide as follows:

> (5) **Privacy Protection.** An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed

[1] Also referred was a suggestion made to the Criminal Rules Committee by the American Association for Justice and the National Crime Victim Bar Association. Those groups supported the DOJ suggestion, but also suggested that the pseudonyms for minors be gender neutral.

> by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case. The provisions on remote electronic access in Federal Rule of Civil Procedure 5.2(c)(1) and (2) apply in a petition for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act. In addition, a party or nonparty must, absent a court order, fully redact a social security number from any filing it makes, but this requirement does not apply to a clerk forwarding the record under Rule 11 or an agency filing the record under Rule 17.

A proposed committee note would explain:

> Whatever the justification for permitting unredacted or partially redacted social security numbers in other settings, there is no need for them in the publicly-available papers filed by litigants in a court of appeals. If it is necessary for the court to know the number, a court order can permit filing under seal.
>
> This prohibition does not apply to a clerk who forwards the record under Rule 11. Nor does it apply to an agency filing the record under Rule 17. In both cases, the record can be sent as it is. The prohibition does apply, however, to any litigant who reproduces portions of the record in an appendix under Rule 30.

If Appellate Rule 25(a)(5) were to be so amended, the issue becomes whether Part VIII of the Bankruptcy Rules should take the same approach for appeals to district courts and perhaps BAPs.[2] We believe the answer is yes. Any pleading created for filing in the district court could easily comply with the complete redaction requirement. The primary reason underlying the decision of the Advisory Committee to retain the last four digits of the social-security number in bankruptcy filings does not have any persuasive power when a matter is on appeal. No one will have any difficulty ascertaining the identity of a party to an appeal, and appellate briefs, appendices, and motions are unlikely to require the inclusion of social-security numbers. Even if there were truncated social-security numbers in documents included in the record that must be transmitted to the district court under Bankruptcy Rule 8010, the approach being considered by the Appellate Rules Committee would allow them to remain without the clerk needing to fully redact them before forwarding the record.

If the Advisory Committee agrees, a new provision could be proposed for Rule 8011 (Filing and Service; Signature) that incorporates Rule 9037 and adds language similar to that being considered for Appellate Rule 25(a)(5).

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[2] Because BAPs hear only bankruptcy appeals, there would be no problem in those courts of having different privacy rules for different types of cases. Nevertheless, if complete redaction of social-security numbers were to be required for appeals to district courts and courts of appeal, having the same rule for BAPs would probably reduce confusion.