

ADVISORY COMMITTEE  
ON  
BANKRUPTCY RULES

Chicago, IL  
September 26-27, 2011



ADVISORY COMMITTEE ON BANKRUPTCY RULES  
Meeting of September 26 - 27, 2011  
Chicago, Illinois

Introductory Items

1. Greetings; Introduction of new committee members (Judge Hamilton and Mr. Kilpatrick); and acknowledgment of the service of Judge Pauley and Mr. Lamberth. (Judge Wedoff)
2. Approval of minutes of San Francisco meeting of April 7 - 8, 2011. (Judge Wedoff)
  - Draft minutes.
3. Oral reports on meetings of other committees:
  - (A) June 2011 meeting of the Committee on Rules of Practice and Procedure. (Judge Wedoff and Professor Gibson)
    - Draft minutes of the Standing Committee meeting of June 2 - 3, 2011.
  - (B) June 2010 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Lefkow and Judge Wedoff)
  - (C) Upcoming November 2011 meeting of the Advisory Committee on Civil Rules (anticipated agenda items). (Judge Harris)
  - (D) Upcoming October 2011 meeting of the Advisory Committee on Evidence (anticipated agenda items). (Judge Wizmur)
  - (E) Upcoming October 2011 meeting of the Advisory Committee on Appellate Rules (anticipated agenda items). (Professor Gibson)
  - (F) Bankruptcy CM/ECF Working Group and the CM/ECF NextGen Project. (Judge Perris)

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues. (Judge Harris, Professor Gibson, and Professor McKenzie)
  - (A) Recommendation concerning Suggestion (11-BK-B) by Judge A. Benjamin Goldgar to amend Rule 3002(a) to require secured creditors to file proofs of claim. (Judge Harris and Professor McKenzie)

- Memo of August 26, 2011, by Professor McKenzie.
- (B) Recommendation concerning Suggestion (10-BK-K) by Judge Paul Mannes to amend Rule 4004(c)(1)(J) to delay the entry of a discharge if a scheduled hearing on a reaffirmation agreement has not concluded. (Judge Harris and Professor Gibson)
- Memo of August 20, 2011, by Professor Gibson.
5. Joint Report by the Subcommittees on Business Issues and Consumer Issues. (Judge Wizmur, Judge Harris, and Professor Gibson)
- Recommendation concerning the opinion issued by the Ninth Circuit BAP in *Charlie Y., Inc. v. Carey* (446 B.R. 384 (2011)) in which the BAP found an apparent “gap” in Rule 7054, i.e., the absence of a provision concerning the procedure for obtaining an allowance of attorney’s fees in adversary proceedings. (Judge Wizmur, Judge Harris, and Professor Gibson)
- Memo of August 20, 2011, by Professor Gibson.
6. Joint Reports by the Subcommittees on Consumer Issues and Forms. (Judge Harris, Judge Perris, Professor Gibson, and Professor McKenzie)
- (A) Recommendation on how and when to gather input on the new mortgage forms and the desirability of including a complete loan history on Form 10 (Attachment A). (Judge Perris, Judge Harris, and Professor Gibson)
- Memo of August 25, 2011, by Professor Gibson.
- (B) Oral report on consideration of a chapter 13 form plan. (Judge Perris, Mr. Rao, and Professor McKenzie)
- Judge Wedoff’s memo of August 26, 2011, requesting that bankruptcy judges provide the Advisory Committee with relevant information regarding the model chapter 13 plans, if any, used in their districts.
- (C) Recommendation concerning the amendment of section 109(h)(1) of the Bankruptcy Code by the Bankruptcy Technical Corrections Act of 2010, Pub. L. No. 111-327, regarding the timing of credit counseling for individual debtors. (Judge Harris and Professor McKenzie)
- Memo of August 22, 2011, by Professor McKenzie.
- (D) Oral report on revising Official Form 22A and advising the courts to rescind

Interim Rule 1007-I if the temporary exclusion from the means test for Reservists and National Guard members provided in Public Law No. 110-438 is no longer available after December 18, 2011. (Judge Wedoff and Mr. Wannamaker)

- Public Law No. 110-438.
- Page 1 of Official Form 22A.
- Interim Rule 1007-I.
- Page 1 of Official Form 22A as revised.

7. Report of the Subcommittee on Forms. (Judge Perris, Professor Gibson, Mr. Myers, and Dr. Wiggins)

Review of the draft individual forms developed by the Bankruptcy Forms Modernization Project and the question of whether the rules should be amended to establish standards regarding signatures by parties in the electronic context in which the courts currently operate. (Judge Perris, Professor Gibson, Mr. Myers, and Dr. Wiggins)

- Memo of August 30, 2011, by Judge Perris.
- Copies of revised individual forms.
- Generic Committee Note for draft individual forms.

8. Report of the Subcommittee on Business Issues. (Judge Wizmur, Professor Gibson, and Professor McKenzie)

(A) Consideration of Suggestion 10-BK-H by the Institute for Legal Reform for a rule and form to promote greater transparency in the operation of trusts established under section 524(g) of the Bankruptcy Code. (Judge Wizmur and Professor McKenzie)

- Professor McKenzie's memo will be distributed separately.

(B) Recommendation concerning Suggestion (10-BK-J) by Judge Linda Riegle to amend Rule 1014(b). (Judge Wizmur and Professor Gibson)

- Memo of August 22, 2011, by Professor Gibson.

(C) Recommendation concerning Suggestion 09-BK-J by Judge William F. Stone, Jr., for rules and an Official Form to govern applications for the payment of administrative expenses. (Judge Wizmur and Professor Gibson)

- Memo of August 30, 2011, by Professor Gibson.
- Summaries of surveys conducted by Molly Johnson and Beth Wiggins of the Federal Judicial Center on applications for administrative expenses. The full reports on the survey results were distributed with the materials for the spring

meeting in San Francisco and will be available at this meeting.

9. Report of the Subcommittee on Privacy, Public Access, and Appeals. (Judge Pauley and Professor Gibson)

Oral report on the revision of the Part VIII rules. (Professor Gibson)

- Draft of the proposed revision including changes made by the drafting group that met in Chicago in July.

10. Report of the Subcommittee on Attorney Conduct and Health Care. (Mr. Rao, Professor Gibson, and Professor McKenzie)

(A) Recommendation on Suggestion 10-BK-M by the States' Association of Bankruptcy Attorneys for a uniform rule for national admissions and local counsel requirements for governmental entities. (Mr. Rao and Professor Gibson)

- Memo of August 31, 2011, by Professor Gibson.
- A memo by attorney Holly T. Sellers of the Rules Committee Support Office on local rules allowing government counsel to appear in non-local districts will be distributed separately.

(B) Recommendation on Suggestion 10-BK-N by Judge Thomas Waldrep concerning a new rule to provide greater transparency in the process for retaining counsel to creditors' committees. (Mr. Rao and Professor McKenzie)

- Memo of August 22, 2011, by Professor McKenzie.

11. Oral Report of the Subcommittee on Technology and Cross Border Insolvency. (Mr. Baxter)

#### Discussion Items

12. Oral report on the impact of the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011). (Judge Wedoff and Professor McKenzie).

13. Oral report on the change in how the IRS allocates internet services in its "National Standards and Local Standards," which are used by debtors to complete Official Forms 22A and 22C. (Judge Wedoff)

14. Suggestion 11-BK-C by Wendell J. Sherk to amend Official Forms 22A and 22C to allow debtors with below-median income to file shortened versions of the forms. (Judge Wedoff)

15. Suggestion 11-BK-D by Sabrina L. McKinney to amend Official Form B10 to provide a space for designating the amount of a general unsecured claim. (Judge Wedoff)
16. Suggestion 11-BK-E by Judge A. Thomas Small to amend Rules 7016 and 8001 to permit parties to agree that their appellate options will be limited to no more than one appeal or to no appeal at all. (Judge Wedoff)
17. Suggestion 11-BK-F by Chief Judge Peter W. Bowie to amend Rules 7012, 7004(e), and 9006(f) to provide that the deadline for responding runs from the date of service of a summons, rather than the date of issuance. (Judge Wedoff)

#### Information Items

18. Oral report on the status of bankruptcy-related legislation. (Judge Wedoff, Professor Gibson, and Mr. Wannamaker)
19. Oral update on opinions interpreting section 521(i) of the Bankruptcy Code. (Professor Gibson)
20. *Bull Pen* (Mr. Wannamaker):
  - A. Proposed new Rule 8007.1 and the proposed amendment to Rule 9024 (indicative rulings), approved at September 2008 meeting.
  - B. Amendment to Official Form 23 to implement the proposed amendment to Rule 1007(b)(7), which would authorize providers of postpetition personal financial courses to notify the court directly of a debtor's completion of the course, approved at September 2010 meeting.
  - C. Amendment to Box 7 on Official Form 10 to add a reminder to attach the new mortgage attachment form under proposed Rule 3001(c), (Official Form 10 (Attachment A)), and the statement concerning open-end or revolving consumer credit agreements under proposed Rule 3001(c)(3)(A), approved at April 2011 meeting.
  - D. Consideration of the impact of proposed amendments to Civil Rules 37 and 45 published in August 2011.
21. Rules Docket (Mr. Wannamaker).
22. Future meetings:

Spring 2012 meeting, March 29 - 30, 2012, at the Arizona Biltmore <http://www.arizonabiltmore.com> in Phoenix, Arizona. Possible locations for the fall 2012 meeting.

23. New business.

24. Adjourn.







**ADVISORY COMMITTEE ON BANKRUPTCY RULES**

<p><b>Chair:</b></p> <p>Honorable Eugene R. Wedoff          United States Bankruptcy Court          Everett McKinley Dirksen United States Courthouse          219 South Dearborn Street          Chicago, IL 60604</p>	<p><b>Reporters:</b></p> <p>Professor S. Elizabeth Gibson          Burton Craig Professor of Law          5073 Van Hecke-Wettach Hall          University of North Carolina at Chapel Hill          C.B. #3380          Chapel Hill, NC 27599-3380</p> <hr/> <p>Professor Troy A. McKenzie          New York University School of Law          40 Washington Square South          New York, NY 10012</p>
<p><b>Members:</b></p> <p>Michael St. Patrick Baxter, Esq.          Covington &amp; Burling LLP          1201 Pennsylvania Avenue, NW          Washington, DC 20004-2401</p>	<p>Honorable Karen K. Caldwell          United States District Court          United States Courthouse and Post Office          101 Barr Street          Lexington, KY 40507</p>
<p>Honorable Jean C. Hamilton          United States District Court          Thomas F. Eagleton          United States Courthouse          111 South Tenth Street, Room 16N          St. Louis, MO 63102-1116</p>	<p>Honorable Arthur I. Harris          United States Bankruptcy Court          Howard M. Metzenbaum U. S. Courthouse          201 Superior Avenue, Room 148          Cleveland, OH 44114-1238</p>
<p>Honorable Sandra Segal Ikuta          United States Court of Appeals          Richard H. Chambers Court of Appeals Building          125 South Grand Avenue, Room 305          Pasadena, CA 91105-1621</p>	<p>Honorable Robert James Jonker          United States District Court          Gerald R. Ford Federal Building          110 Michigan Street, N.W., Room 685          Grand Rapids, MI 49503</p>
<p>Honorable Adalberto Jordan          United States District Court          Wilkie D. Ferguson, Jr. U. S. Courthouse          400 North Miami Avenue, Room 10-1          Miami, FL 33128</p>	<p>Richardo I. Kilpatrick          Kilpatrick &amp; Associates, P.C.          903 N. Opdyke Road, Suite C          Auburn Hills, MI 48326</p>

J. Christopher Kohn, Esq. Director, Commercial Litigation Branch Civil, U.S. Dept. of Justice (ex officio) P.O. Box 875, Ben Franklin Station Washington, DC 20044-0875 (1100 L Street, N.W., 10 <sup>th</sup> Flr, Rm 10036) Washington, DC 20005)	J. Michael Lamberth, Esq. Lamberth, Cifelli, Stokes & Stout, P.A. 3343 Peachtree Road, N.E., Suite 550 Atlanta, GA 30326
David A. Lander, Esq. Gallop Johnson & Neuman 101 South Hanley Road Suite 1700 St. Louis, MO 63105	Professor Edward R. Morrison Columbia Law School Greene Hall, Room 819 435 West 116 <sup>th</sup> Street New York, NY 10027
Honorable William H. Pauley III United States District Court 2210 Daniel Patrick Moynihan U. S. Courthouse 500 Pearl Street New York, NY 10007-1581	Honorable Elizabeth L. Perris Chief Judge United States Bankruptcy Court 700 Congress Center 1001 Southwest Fifth Avenue Portland, OR 97204-1145
John Rao, Esq. National Consumer Law Center 7 Winthrop Square, 4 <sup>th</sup> Floor Boston, MA 02110-1245	Honorable Judith H. Wizmur Chief Judge United States Bankruptcy Court Mitchell H. Cohen U. S. Courthouse 2 <sup>nd</sup> Floor – 400 Cooper Street Camden, NJ 08102-1570
<b>Advisors and Consultants:</b> Patricia S. Ketchum, Esquire 113 Richdale Avenue #35 Cambridge, MA 02140	Mark A. Redmiles, Deputy Director Executive Office for U.S. Trustees 20 Massachusetts Ave., N.W., Suite 8000 Washington, DC 20530
James J. Waldron Clerk, United States Bankruptcy Court Martin Luther King, Jr. Federal Building and United States Courthouse Third Floor, 50 Walnut Street Newark, NJ 07102-3550	<b>Liaison Member:</b> Honorable James A. Teilborg United States District Judge United States District Court 523 Sandra Day O'Connor U. S. Courthouse 401 West Washington Street – Suite 523 Phoenix, AZ 85003-2146
<b>Liaison from Committee on the Administration of the Bankruptcy System:</b> Honorable Joan Humphrey Lefkow United States District Court Everett McKinley Dirksen U. S. Courthouse 219 South Dearborn Street, Room 1956 Chicago, IL 60604	

Revised: August 19, 2011

<p><b>Secretary:</b></p> <p>Peter G. McCabe Secretary, Committee on Rules of Practice &amp; Procedure Washington, DC 20544</p>	<p><b>Rules Committee Support Officer</b></p> <p>Jonathan Rose Rules Committee Support Officer, Committee on Rules of Practice &amp; Procedure Washington, DC 20544</p>
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Advisory Committee on Bankruptcy Rules  
Subcommittee/Liaison Assignments, Effective March 1, 2011

<p><b>Subcommittee on Consumer Issues</b>          Judge Arthur I. Harris, Chair          Judge Sandra Segal Ikuta          Judge William H. Pauley III          Judge Karen K. Caldwell          Judge Judith H. Wizmur          John Rao, Esq.          David A. Lander, Esq.          James J. Waldron, <i>ex officio</i>          Mark A. Redmiles, Esq., <i>EOUST liaison</i></p>	<p><b>Subcommittee on Business Issues</b>          Judge Judith H. Wizmur, Chair          Judge Robert James Jonker          J. Christopher Kohn, Esq.          J. Michael Lamberth, Esq.          Michael St. Patrick Baxter, Esq.          David A. Lander, Esq.          Professor Edward R. Morrison          James J. Waldron, <i>ex officio</i>          Mark A. Redmiles, Esq., <i>EOUST liaison</i></p>
<p><b>Subcommittee on Forms</b>          Judge Elizabeth L. Perris, Chair          Judge Judith H. Wizmur          Judge Arthur I. Harris          J. Christopher Kohn, Esq.          John Rao, Esq.          J. Michael Lamberth, Esq.          James J. Waldron, <i>ex officio</i>          Mark A. Redmiles, Esq., <i>EOUST liaison</i>          Patricia S. Ketchum, Esq., <i>Consultant</i></p>	<p><b>Forms Modernization Project</b>          Judge Elizabeth L. Perris, Chair          Judge Judith H. Wizmur          Judge Arthur I. Harris          J. Christopher Kohn, Esq.          John Rao, Esq.          J. Michael Lamberth, Esq.          James J. Waldron, <i>ex officio</i>          Mark A. Redmiles, Esq., <i>EOUST liaison</i>          Patricia S. Ketchum, Esq., <i>Consultant</i></p>
<p><b>Subcommittee on Privacy, Public Access and Appeals</b>          Judge William H. Pauley, III, Chair          Judge Sandra Segal Ikuta          Judge Karen K. Caldwell          Judge Adalberto Jordan          Judge Elizabeth L. Perris          J. Christopher Kohn, Esq.          Michael St. Patrick Baxter, Esq.          David A. Lander, Esq.          Mark A. Redmiles, Esq., <i>EOUST liaison</i></p>	<p><b>Subcommittee on Style</b>          Judge Karen K. Caldwell, Chair          Judge Sandra Segal Ikuta          Judge Judith H. Wizmur          Judge Arthur I. Harris          J. Christopher Kohn, Esq.          J. Michael Lamberth, Esq.          David A. Lander, Esq.          Michael St. Patrick Baxter, Esq.</p>

<p><b>Subcommittee on Attorney Conduct and Healthcare</b>  John Rao, Esq., Chair  Judge William H. Pauley, III  Judge Karen K. Caldwell  Judge Robert James Jonker  Judge Arthur I. Harris  J. Michael Lamberth, Esq.  Mark A. Redmiles, Esq., <i>EOUST liaison</i></p>	<p><b>Subcommittee on Technology and Cross Border Insolvency</b>  Michael St. Patrick Baxter, Esq., Chair  Judge Sandra Segal Ikuta  Judge William H. Pauley III  Judge Adalberto Jordan  Judge Arthur I. Harris  Professor Edward R. Morrison  Mark A. Redmiles, Esq., <i>EOUST liaison</i></p>
<p><b>Civil Rules Liaison:</b>  Judge Arthur I. Harris  -----  <b>Evidence Rules Liaison:</b>  Judge Judith H. Wizmur</p>	<p><b>CM/ECF Working Group and CM/ECF Next Gen Liaison:</b>  Judge Elizabeth L. Perris</p>

### Advisory Committee on Bankruptcy Rules

Members	Position	District/Circuit	Start Date	End Date
Eugene R. Wedoff Chair	B	Illinois (Northern)	Member: 2004 Chair: 2010	---- 2013
Michael St. Patrick Baxter	ESQ	Washington, DC		2008 2014
Karen K. Caldwell	D	Kentucky (Eastern)		2009 2012
Arthur I. Harris	B	Ohio (Northern)		2010 2012
Sandra Segal Ikuta	C	Ninth Circuit		2010 2012
Robert James Jonker	D	Michigan (Western)		2010 2013
Adalberto Jose Jordan	D	Florida (Southern)		2010 2013
J. Christopher Kohn*	DOJ	Washington, DC		---- Open
Richardo I. Kilpatrick	ESQ	Michigan		2011 2014
David A. Lander	ESQ	Missouri		2008 2014
Edward R. Morrison	ACAD	New York		2010 2013
Jean Hamilton	D	Missouri (Eastern)		2011 2014
Elizabeth L. Perris	B	Oregon		2007 2013
John Rao	ESQ	Massachusetts		2006 2012
Judith H. Wismur	B	New Jersey		2008 2014
S. Elizabeth Gibson Reporter	ACAD	North Carolina		2008 Open
Principal Staff: Peter G. McCabe 202-502-1800 Jonathan C. Rose 202-502-1820 James Wannamaker 202-502-1900				
* Ex-officio				



## LIAISON MEMBERS

<b>Appellate:</b>	
Dean C. Colson	(Standing Committee)
<b>Bankruptcy:</b>	
Judge James A. Teilborg	(Standing Committee)
<b>Civil:</b>	
Judge Arthur I. Harris	(Bankruptcy Rules Committee)
Judge Diane P. Wood	(Standing Committee)
<b>Criminal:</b>	
Judge Marilyn Huff	(Standing Committee)
<b>Evidence:</b>	
Judge Judith H. Wizmur	(Bankruptcy Rules Committee)
Judge Paul S. Diamond	(Civil Rules Committee)
Judge John F. Keenan	(Criminal Rules Committee)
Judge Richard Wesley	(Standing Committee)

**ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS**

<p><b>Secretary:</b> Peter G. McCabe Secretary Committee on Rules of Practice &amp; Procedure Washington, DC 20544</p>
<p><b>Rules Committee Support Officer:</b> Jonathan C. Rose Rules Committee Support Officer 1 Columbus Circle Suite 4-170 Washington, DC 20544</p>
<p>James N. Ishida Senior Attorney-Advisor Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544</p>
<p>Jeffrey N. Barr Attorney-Advisor Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544</p>
<p>James H. Wannamaker III Senior Attorney Bankruptcy Judges Division Administrative Office of the U.S. Courts Washington, DC 20544</p>
<p>Scott Myers Attorney-Advisor Bankruptcy Judges Division Administrative Office of the U.S. Courts Washington, DC 20544</p>
<p>Ms. Gale B. Mitchell Administrative Specialist Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544</p>
<p>Ms. Lisa Webb Staff Assistant Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544</p>
<p>Ms. LiAnn Shepard Program Assistant Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544</p>

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**FEDERAL JUDICIAL CENTER**

Joe Cecil (Rules of Practice & Procedure) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003	Marie Leary (Appellate Rules Committee) Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003
Molly T. Johnson (Bankruptcy Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003	Emery G. Lee (Civil Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003
Laural L. Hooper (Criminal Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003	Tim Reagan (Evidence Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003



# TAB 1



Greetings; Introduction of new members

Item 1 will be an oral report.





# TAB 2



ADVISORY COMMITTEE ON BANKRUPTCY RULES  
Meeting of April 7 - 8, 2011  
San Francisco, California

**(DRAFT MINUTES)**

The following members attended the meeting:

Bankruptcy Judge Eugene R. Wedoff, Chair  
Circuit Judge Sandra Segal Ikuta  
District Judge Karen Caldwell  
District Judge Robert James Jonker  
District Judge Adalberto Jordan  
Bankruptcy Judge Arthur I. Harris  
Bankruptcy Judge Elizabeth L. Perris  
Bankruptcy Judge Judith H. Wizmur  
J. Christopher Kohn, Esquire  
J. Michael Lamberth, Esquire  
David A. Lander, Esquire  
John Rao, Esquire

The following persons also attended the meeting:

District Judge Laura Taylor Swain, past chair  
Professor S. Elizabeth Gibson, reporter  
Professor Troy McKenzie, assistant reporter  
District Judge Lee H. Rosenthal, chair of the Committee on Rules of Practice and Procedure (Standing Committee)  
District Judge James A. Teilborg, liaison from the Standing Committee  
District Judge Joan Humphrey Lefkow, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee)  
Bankruptcy Judge Dennis Montali  
Professor Daniel Coquillette, reporter of the Standing Committee  
Peter G. McCabe, secretary of the Standing Committee  
Patricia S. Ketchum, advisor to the Committee  
Mark Redmiles, Deputy Director, Executive Office for U.S. Trustees (EOUST)  
Lisa Tracy, Counsel to the Director, EOUST  
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey  
James Ishida, Administrative Office of the U.S. Courts (Administrative Office)  
James H. Wannamaker, Administrative Office  
Stephen "Scott" Myers, Administrative Office  
Molly Johnson, Federal Judicial Center (FJC)  
Philip S. Corwin, Virtualaw LLC  
David Melcer, Bass & Associates

The following members were unable to attend the meeting:

Michael St. Patrick Baxter, Esquire  
Professor Edward R. Morrison

For the first morning of the meeting, the Committee met jointly with the Appellate Rules Committee. Attendance of the joint meeting is noted at Agenda Item 10-1.

The following summary of matters discussed at the meeting is written in the order of the meeting agenda unless otherwise specified, not necessarily in the order actually discussed. It should be read in conjunction with the agenda materials and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee.

An electronic copy of the agenda materials, other than materials distributed at the meeting after the agenda materials were published, is available at <http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/ResearchingRules/Reports.aspx> Votes and other action taken by the Committee and assignments by the Chair appear in **bold**.

#### Introductory Items

1. Greetings; Introduction of new members and new assistant reporter.

The meeting began as a joint committee discussion with the Advisory Committee on Appellate Rules to consider this Committee's progress in revising the Bankruptcy Appellate Rules. The members of both Committees and the other attendees introduced themselves, and the Chair took the opportunity to welcome the Committee's newest members, District Judge Adalberto Jordan (S.D. FL) and Judge Robert James Jonker (W.D. MI), and its new assistant reporter, Professor Troy McKenzie (New York University School of Law).

The report of the joint committee discussion is at Agenda Item 10.

2. Approval of minutes of Santa Fe meeting of September 30 - October 1, 2010.

The Santa Fe minutes were approved with minor changes noted by Judge Harris and Mr. Kohn.

3. Oral reports on meetings of other committees:

- A. January 2011 meeting of the Standing Committee.

The Chair said the Committee had no action items before the Standing Committee last

January but that there was constructive feedback regarding the Bankruptcy Appellate Rules revision project. He said the Reporter provided the Standing Committee with two revisions of FRBP 8003 to illustrate the alternative structural approaches for the revision project. One was a self-contained version of rule that repeated relevant provisions from the appellate rule, while the other simply made reference to the relevant appellate rule provisions. He said a clear preference emerged in favor of the self-contained version of the rule. Standing Committee members also said that the Part VIII rules should parallel the FRAP as much as possible and that when relevant changes are made to the FRAP, they should be reflected in the Part VIII rules as soon thereafter as possible.

B. January 2011 meeting of the Bankruptcy Committee.

Judge Lefkow said the Bankruptcy Committee's primary focus at its January meeting was its recommendation for additional bankruptcy judgeships and for the conversion of 28 existing temporary bankruptcy judgeships to permanent judgeships. She said that although the need for additional judges has been documented in court surveys performed by the AO, it is unlikely that Congress will act on the recommendation because it would require additional funds to the judiciary. There also appears to be reluctance in Congress to convert temporary judgeships to permanent judgeships, so the currently proposed legislation would simply extend the temporary judgeships for five years.

Judge Lefkow said courtroom sharing was another big issue before the Bankruptcy Committee and that it was working with the Space and Facilities Committee and the Committee on Court Administration and Case Management to develop a policy, to be considered by the Judicial Conference this fall, that would require some level of courtroom sharing by bankruptcy judges with respect to future court construction.

C. November 2010 and April 2011 meetings of the Advisory Committee on Civil Rules.

Judge Harris said that the focus of the November Civil Rules meeting continued to be issues pertaining to electronic discovery. Two issues of particular concern are national standards for both preservation of evidence and imposition of sanctions. He said the Civil Rules Committee's Discovery Subcommittee was reviewing both issues, and it reported difficulty in drafting a rule on preservation because it concluded that there are an infinite variety of situations arising before litigation that could trigger preservation obligations. The Discovery Subcommittee was more optimistic that it could agree on the language of a rule addressing sanctions and expected to discuss a proposed sanctions rule at its April meeting.

Judge Harris said the Civil Rules Committee also proposed changes to Rule 45 that it recommended be published for comment this summer. Because Bankruptcy Rule 9016 makes Rule 45 applicable in bankruptcy, he recommended that a subcommittee consider the proposed

changes. **The Business Subcommittee was asked to consider the impact of the proposed Rule 45 transfer provision on bankruptcy cases.**

D. October 2010 and April 2011 meetings of the Advisory Committee on Evidence.

Judge Wizmur said the Supreme Court has approved the proposed restyled evidence rules.

E. April 2011 meeting of the Advisory Committee on Appellate Rules.

The Reporter said that the Appellate Rules Committee recommended publishing proposed amendments to FRAP 13, 14 and 24 and was considering amendments to FRAP 28 and 29. She said she had also been working with the reporter of the Appellate Rule Committee, Professor Catherine Struve, in preparing the version of the Bankruptcy Appellate Rules that both committees reviewed in the joint session at the beginning of this meeting.

F. Bankruptcy CM/ECF Working Group, the CM/ECF NextGen Project, and the *Pro Se* Pathfinder Project.

Judge Perris said that the courts are currently on version 4.1 of CM/ECF and that version 5.0 was in the works. She said that the requirements phase of bankruptcy NextGen is mostly complete, and that the requirements groups across bankruptcy and district courts are now synchronizing with each other and should complete their work in early 2012. The next step will be to prioritize requirements, with the idea that NextGen will be rolled out in a series of steps. Judge Perris explained that there are also a number “pathfinder” projects underway.

Mr. Waldron gave the Committee an overview of a pathfinder project for *pro se* filers. He said the idea was to encourage *pro se* filers to file electronically by answering a set of questions that would complete the official forms, which could then be sent to the court over the internet. He said this pathfinder workgroup was considering practical issues, such as how to make clear that the filing does not actually occur until the debtor drops off a wet signature page and the filing fee at the courthouse. The working group is also trying to create a system that would allow for some parts, such as chapter 13 filings, to be turned off.

#### Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

A. Recommendation concerning comments submitted on the proposed amendment to Rule 3001(c), dealing with the information required to support a proof of claim when the claim is based on an open-end or revolving consumer credit agreement.

Judge Harris said the proposed amendment was in its second year of publication. As revised, the rule would require holders of open-end consumer credit claims to provide certain information at the time the claim is filed, subject to a possible sanction of not being able to use that information in response to a claim objection. (As previously published, rather than merely reporting required information, the rule would have required that the last account statement be attached.) The proposed rule amendment would also require the claim holder to provide the writing underlying an open-end consumer credit claim if a party in interest made a written request for that documentation. Four witnesses testified on the proposed amendment to Rule 3001(c), and there were a number of comments.

Comments and testimony from consumer advocates and the debtor's bar generally supported the proposed rule as amended. Some debtor advocates, however, said the republished version was too lenient and urged that holders of open-ended consumer credit claims be required to attach writings that support the claim, as is required by the current version of the rule and as would be required if the claimant were suing on the debt in state court. The creditor's bar, on the other hand, maintained that since most claims are uncontested, the rule goes too far in providing for discovery-type sanctions simply for the failure to provide information at the time of filing. Creditors also said the rule as published was unclear on whether it applied to home equity loans.

Judge Harris said the Subcommittee had carefully considered the comments and testimony and concluded that the amendment should go forward with three changes from the published version: (1) a 30-day time limit would be made applicable for responses to any request for documentation; (2) the new provision would be subject to an exception for home equity loans; and (3) the Committee Note would clarify that entitlement to prima facie validity under Rule 3001(f) would not depend on whether or not a request for the underlying writing was made or satisfied. There was some discussion about the wording of the exception for home equity loans, to the effect that it should not be limited to the debtor's principal residence. **A motion to approve the proposed amendment to Rule 3001(c) as set forth in the materials carried without objection, with the wording at lines 15 and 16 changed to read "a security interest is claimed in the debtor's real property." A corresponding change to the committee note was also approved.**

- B. Recommendation concerning Suggestion (09-BK-H) by Judge Margaret Dee McGarity and Suggestion (09-BK-N) by Judge Michael E. Romero on behalf of the Bankruptcy Judges Advisory Group to amend Rule 3007(a) to provide for disposition of objections to claims by negative notice and to clarify the proper method of serving objections to claims.

Judge Harris said that at the fall 2010 meeting, the Subcommittee presented a recommendation to the Committee to revise Rule 3007(a) to authorize negative notice of claims objections and to clarify the method of service—allowing generally that service is adequate if

sent to the name and address on the proof of claim. As a result of the Committee's discussion of the recommendation, the Subcommittee was asked whether an exception to the proposed procedures should be made for depository institutions, and whether the proposed 21-day notice period should be changed back current notice period of 30 days.

Judge Harris said that after reviewing the relevant statutory provisions, the Subcommittee concluded that Congress has mandated Rule 7004(h) service on depository institutions in all contested matters, and that they should therefore be excepted from the proposed 3007(a) negative notice procedure for claims objections. He said that no one member felt strongly about shortening the notice period to 21 days, and that the Subcommittee therefore recommended it stay at 30 days. **The Committee approved the Subcommittee's recommendation without objection, and voted to publish for comment proposed 3007(a) in August 2011.**

- C. Recommendation concerning proposed technical amendment to Rule 3001(c)(1) to conform the rule to Instruction 7 on Official Form 10, the Proof of Claim, which directs claimants not to send original documents.

**A motion to amend Bankruptcy Rule 3001(c)(1) to require the filer to attach only copies (not originals) of writings supporting the claim passed without objection.** Because the amendment would merely conform the rule to current practice and to instruction 7 on the proof of claim, the Committee concluded that publication for comment is not necessary.

- D. Recommendation concerning proposed amendment to Rule 5009(b) to conform the rule to the proposed amendment to Rule 1007(b)(7) to allow personal financial management course providers to file a statement of completion.

Judge Harris said that the Committee previously approved for publication in August 2011 proposed amendments to Rule 1007(b)(7) and Form 23 that would allow personal financial management course providers to directly notify courts that the debtor completed the course. He said that a conforming amendment should be made to Rule 5009 to relieve the clerk of the requirement to send a notice to the debtor regarding the need to file Form 23 if the course provider has already notified the court that the course has been completed. **A motion to publish for comment proposed changes to Rule 5009 as set forth in the materials approved without objection.**

- 5. Joint Report by the Subcommittees on Consumer Issues and on Forms.

Recommendation concerning amendment to Schedule C (Official Form 6C) as a result of the Supreme Court's decision in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), in which the Court dealt with the extent of a claimed exemption.

At the fall 2010 meeting, the Committee discussed the impact of the Supreme Court's



decision in *Schwab v. Reilly* on Official Form 6C and decided that the form should be amended to provide an express option for the debtor to state an intent to exempt the full fair market value of an asset, regardless of the dollar amount of that value. The Committee asked the Consumer and Forms Subcommittees to develop a recommendation for amending the form.

Judge Harris said that after considering several options, the Subcommittees recommended either of the two proposed versions set out at page six of the memo in the materials. The first was a revised version of the five-column option favored by many committee members at the fall meeting, and the second was a revised version of a four-column option considered but rejected at the fall meeting.

In discussing the Subcommittees' recommendation, **the Committee first voted to recommend that one of the two options be published for comment in the August 2011.** One member argued in favor of the five-column version because it would make it easier for a trustee to scan to see if the full market value box was checked and then determine if an objection to the exemption was necessary. Several other members argued in favor of the four-column version as being less ambiguous and more consistent with *Schwab*. **In a second vote the Committee recommended the four-column version for publication.**

6. Report of the Subcommittee on Forms.
  - A. Recommendations concerning comments and testimony on proposed new mortgage claim forms: Official Form 10 (Attachment A), Official Form 10 (Supplement 1), and Official Form 10 (Supplement 2).

Judge Perris recounted the comments and testimony about the mortgage claim forms.

Attachment A: Judge Perris said that Attachment A was to be included with all mortgage proofs of claim at the time of filing. She said that when the form was drafted, Committee members debated whether to require full account histories or an account summary. Ultimately, members decided that a detailed loan history was probably not needed in many cases and that the summary form that was published provided the debtor with sufficient information to determine whether there was a dispute about the amounts due. Two bankruptcy judges testified, however, that a detailed loan history was necessary to determine whether the lender had applied funds as required under the loan documents and applicable law.

Judge Perris said several subcommittee members were persuaded by the bankruptcy judges' testimony and similar written comments that reconsideration should be given to requiring a detailed loan history. The Subcommittee concluded, however, that any such revision of proposed Attachment A would have to be republished. Because the mortgage-related rule changes that anticipate the mortgage forms have already been approved by the Supreme Court and are scheduled to go into effect December 1, 2011, the Subcommittee recommended that

Attachment A go into effect this year as published, and that the Committee reconsider whether a detailed loan history attachment should be developed after courts have had experience with the summary attachment. After a short discussion, **Attachment A was approved without objection, and the Subcommittee was directed to report back at the fall 2011 meeting about how feedback on experience with the new form should be obtained.**

Supplement 1 and Supplement 2: Judge Perris said that Subcommittee recommended some minor, mostly stylistic, changes to Supplement 1 (Notice of Mortgage Payment Change) and Supplement 2 (Notice of Postpetition Mortgage Fees, Expenses, and Charges), as set out in the materials. **A motion to approve Supplements 1 and 2 as set out in the materials was approved with the following change:** the word “claim” in the declaration in each form was changed to “notice.”

- B. Recommendations concerning comments on proposed amendments to Official Form 10, Proof of Claim.

After considering the comments, the Subcommittee recommended approving Form 10 as published with the following changes as described in the materials: delete the debtor/trustee checkbox on page 1 because that information has been added to the revised signature block on the form; add a statement to the committee note that the new request for email addresses does not affect notice or service requirements. **The Committee approved Form 10 changes described above, with a December 1, 2011 effective date.**

As described at page 8 of the memo in the agenda book, the Subcommittee also recommended adding language to box 7 of Form 10 that addressed the need to attach the new mortgage attachment form under proposed Rule 3001(c) and the statement concerning open-end or revolving consumer credit agreements proposed Rule 3001(c)(3)(A). However, because the change to Rule 3001(c)(3)(A) cannot take effect until December 2012, the Subcommittee recommended that the proposed changes to box 7 be put in the bullpen until the spring 2011 meeting. **The Committee approved the proposed changes to box 7 and put the proposal in the bullpen until the spring 2012 meeting to be sent to the Standing Committee at that meeting.**

- C. Recommendation concerning comments on proposed amendment to Form 25A.

The Reporter said there were no comments on the proposed amendment to Form 25A, and **a motion to approve the form as published passed without objection.**

- D. Recommendation concerning amending Official Forms 22A and 22C as a result of the Supreme Court’s decision in *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716 (2011).

When Official Form 22A-C were adopted following enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the Committee chose to avoid resolving ambiguous statutory language regarding the means test. Instead, the forms were drafted to allow debtors to apply the means test in the manner they believed was appropriate under the Code, even if other readings were possible. With respect to local standards for transportation ownership/lease expenses, Forms 22A and 22C direct the debtor to “[c]heck the number of vehicles for which you **claim** an ownership/lease expense” (emphasis added). The Committee Note states that the “forms take no position on the question of whether the debtor must actually be making payments on a vehicle in order to claim the ownership/lease allowance.”

In *Ransom*, the Supreme Court held that “a person cannot claim an allowance for vehicle-ownership costs unless he has some expense falling within that category.” After *Ransom* was decided, Mr. Redmiles urged an amendment to Official Forms 22A and 22C to make clear that the debtor is not entitled to claim an allowance for a vehicle based simply on ownership. The Subcommittee considered the suggestion and agreed to recommend that line 23 on Form 22A and line 28 on Form 22C be amended to substitute “you are obligated to make a loan or lease payment” for “you claim an ownership/lease expense.”

Mr. Redmiles said he generally supported the Subcommittee’s suggested change, but argued that merely being “obligated” to make payments was not enough, and that the debtor should not be allowed to claim the expense unless payments were actually being made. Some members suggested possible revisions to the Subcommittee’s proposal, and others argued that because the current version of the form merely asks the debtor to report the number of vehicles for which he or she “claims” and ownership expense, it is already consistent with *Ransom*. **A motion to make no changes to Official Forms 22A and 22C in response to *Ransom* carried seven votes to four.**

- E. Recommendation concerning Suggestion 10-BK-G by Judge Margaret Mahoney and Comment 10-BK-M by States’ Association of Bankruptcy Attorneys (SABA) to adopt a form chapter 13 plan.

Judge Perris said there was a large demand for uniformity in chapter 13 plans around the country, and that after considering suggestions from Judge Mahoney and the States’ Association of Bankruptcy Attorneys, the Subcommittee recommended appointing a working group to study the idea. **A motion to create a working group was approved without objection.** The Chair, Judge Perris, Judge Harris and Professor McKenzie agreed to confer regarding establishing the members of the working group.

- F. Recommendation concerning Suggestion 10-BK-I by Aaron Cahn to revise the definition of “Insider” on page 1 of Official Form 7, Statement of Financial Affairs, to conform to the statutory definition in 11 U.S.C. § 101(31).

As set forth in the materials, the Subcommittee recommended that the phrase “any owner of 5 percent or more of the voting or equity securities” be deleted and that in its place “persons in control” be inserted in the definition of “insider” in Official Form 7. It further recommended that the citation at the end of the definition be made more precise by substituting “11 U.S.C. § 101(2), (31)” for “11 U.S.C. § 101.” **A motion to recommend publishing for comment the Subcommittee’s suggested change to the definition of “insider” carried without objection.**

- G. Oral report on amendment to Director’s Form 240A/B(Alt.), Reaffirmation Agreement, to conform to the Bankruptcy Technical Corrections Act of 2010.

Mr. Wannamaker explained that certain statutory language quoted in Director’s Forms 240 A/B had been changed by Bankruptcy Technical Corrections Act of 2010, and that the AO has updated the form as shown in the materials. He explained that the changes are minor and not substantive and that the AO therefore plans to make the form effective December 1, 2012, when this year’s official forms go into effect. **The Committee voted to endorse the change.**

- H. Recommendation concerning Suggestion 10-BK-E by Scooter LeMay of the Middle District of Alabama for the addition of a bar code indicating the form number for each official form.

**A motion to refer the suggestion to the Forms Modernization Project and bring it to the attention of the CM/ECF NextGen Project was approved.**

- 7. Oral report on status of the Bankruptcy Forms Modernization Project (FMP).

Judge Perris provided background on the project to new members, explaining that the goals of the FMP are to clarify and streamline the forms, and to reduce errors. She said the FMP has divided the revised forms into individual and business forms and reported that most of the individual forms are done and are being tested.

Ms. Johnson continued the status report by stating that the Federal Judicial Center has begun testing the individual forms. The initial testing group consisted of 15 law clerks who completed the forms using data from five actual cases, and the FMP working groups have revised the draft forms in response to comments from the clerks. Ms. Johnson said that the draft forms are also being reviewed by college students and commercial forms vendors. Judge Perris said that the FMP hopes to evaluate and incorporate comments from the testing groups over the next several months, and present the individual forms to the Committee this fall and next spring with a recommendation that they be published for comment in August 2012. She said the business forms will be next.

Judge Perris said that it was initially anticipated that the FMP would finish its work and the modernized forms would be ready to go into effect about the same time CM/ECF NextGen

becomes effective. It now appears, however, that the FMP forms may be finished before NextGen is complete. Timing is important because the FMP forms are expanded by substantial amounts of instructional material intended to educate the debtor, but not needed by attorneys, judges, and many other end users. Because most of the benefit of the new forms to end users (custom reports and finding information easily through computer search functions) will be realized only if the court's case management system is able to accept and store individual data elements, it might be preferable to delay some or all FMP forms until NextGen is implemented. This question will be discussed at the next FMP meeting.

8. Reporter's recommendations on comments on proposed amendments to Rule 7054 and Rule 7056.

The Reporter said that there were no comments on proposed Rule 7056 and only one comment on proposed Rule 7054. For the reasons discussed in the materials, the Reporter recommended that both rules go into effect as published. **The Committee agreed and voted to recommend that both rules be approved as published, with an anticipated effective date of December 1, 2012.**

9. Report of the Subcommittee on Business Issues.

- A. Oral report on status of Suggestion 09-BK-J by Judge William F. Stone, Jr., for rules and an official form to govern applications for the payment of administrative expenses.

Judge Wismur said that Judge Stone's suggestions raised the question of whether the Committee should establish a national procedure for administrative expense requests, and that at this point the Subcommittee was simply researching the issue. To help inform the Committee, Judge Wismur said the Federal Judicial Center surveyed bankruptcy clerks and attorneys from the ABI and from the ABA business law section about existing court procedures and whether there is a need for a national procedure.

Ms. Johnson conducted the survey and said it revealed that about half of the courts have some sort of procedure in place. Procedures vary. Some courts have a motion process, and others have a process like the one used for proofs of claim. About two-thirds of responding attorneys said that their practice would benefit from a national procedure, but Ms. Johnson said it is difficult to know if the response is representative because only 90 out of over a thousand attorneys responded. Also, only a few respondents had "great difficulties" with current procedures.

Generally, only attorneys that practiced in multiple districts saw a benefit in a national rule. Some of the problems the survey identified with today's fragmented approach are the need

to learn local procedures, the requirement in many courts for debtor's counsel to file a motion to set an administrative bar date, the need to hire local counsel to assert the claim, and the lack of an administrative claims register.

**The Committee agreed that the Subcommittee's work warranted further development, and the Chair asked the Subcommittee to offer potential responses at the fall meeting.**

- B. Recommendation concerning Suggestion 10-BK-H by the Institute for Legal Reform (ILR) for a rule and form to promote greater transparency in the operation of trusts established under 11 U.S.C. § 524(g).

Judge Wizmur explained that the Subcommittee gave careful consideration to the ILR's suggestion for a draft rule that would require quarterly reporting of trust finances, including payments made and requests submitted, itemized by individual claimant. She said the Subcommittee noted the serious nature of the request and the concerns that motivated it. At the same time, the Subcommittee was concerned that the proposed rule might exceed the scope of federal rule-making authority. One of the issues raised in this regard was that asbestos trusts are established pursuant to confirmed plans in Chapter 11 cases, and the jurisdiction of the courts after a plan is confirmed is limited. Accordingly, the Subcommittee recommended that the Committee consider the scope of its rule-making authority before addressing the merits of the Institute's suggestion.

The Chair noted that shortly before the meeting that Representative Lamar S. Smith, Chairman of the House of Representatives Judiciary Committee, sent a letter urging the Committee's full consideration of the ILR's proposed rule. According to the letter, Representative Smith has also asked the Government Accountability Office to study the transparency § 524(g) trusts and he expects that the study will be complete in time for the Committee's further consideration.

Several members also questioned whether there was a bankruptcy need for quarterly reporting of trust distributions broken down by individual. One response was that it would be helpful for the Committee to obtain the views of interested parties—including those of the ILR and the National Bankruptcy Conference—on the authority for a procedural rule governing asbestos trusts after confirmation. **At the end of the discussion, the Committee decided to give the suggestion further consideration at its fall meeting, after hearing responses from interested parties.**

- C. Recommendation concerning Suggestion 10-BK-F by Douglas M. Neistat concerning a rule requiring publication of notice of the sale of estate assets pursuant to 11 U.S.C. § 363(f) on a national registry similar to one maintained by

the Central District of California.

Judge Wizmur said that the Subcommittee considered the suggestion and agreed that the practice in the Central District of California of requiring notice on its website appears to be a good way to publicize sales of estate assets and thereby attract potential buyers (as long as people become aware of the practice). It is not the only effective method of providing notice, however, and Judge Wizmur said that a brief sampling of the local rules of 20 other districts revealed no other court with a similar requirement. The Subcommittee, therefore, voted not to recommend that the practice be mandated by rule for all bankruptcy courts at this time.

Rather, the Subcommittee recommended referral to the Bankruptcy Judges Advisory Group (BJAG). If the BJAG views the Central District of California's Local Rule 6004-1(f) favorably, it could encourage the AO to call this practice to the attention of all bankruptcy courts, urge the AO to create a national registry for courts that want to publish their notices of sales of estate property, or refer the matter back to the Advisory Committee if it believes the practice should be mandated by national rule. **The Committee approved the Subcommittee's recommendation, and asked staff to refer the suggestion to the BJAG.**

#### 10-1. Joint Discussion with the Advisory Committee on Appellate Rules.

The Chair and Judge Jeffery S. Sutton, Chair of the Advisory Committee on Appellate Rules, called the joint meeting to order. Attending from the Appellate Rules Committee were Judge Kermit E. Bye, Judge Robert Michael Dow, Jr., Justice Allison Eid, Judge Peter T. Fay, Professor Amy Coney Barrett, Mr. James F. Bennett, Ms. Maureen E. Mahoney, Mr. Richard G. Taranto, and Professor Catherine T. Struve, Reporter of the Appellate Rules Committee. Also attending were Mr. Douglas Letter, Appellate Litigation Counsel, Civil Division, U.S. Department of Justice; Mr. Jeffrey N. Barr from the AO; Ms. Holly Sellers, a Supreme Court Fellow assigned to the AO; and Ms. Marie Leary from the FJC.

The Chair thanked the Appellate Rules Committee for agreeing to the joint meeting and explained that one goal of the Committee's Part VIII revision project was to achieve consistency with the Appellate Rules. Judge Sutton said he expected the meeting would be interesting and helpful to the Appellate Rules Committee, especially concerning the Committee's insights on electronic filing.

Judge Pauley and the Reporter provided background on the revision project. Judge Pauley said that the revision project arose in the Subcommittee on Privacy, Public Access, and Appeals, from the efforts of former Committee member Eric Brunstad, who produced an initial draft of the proposed revision. He added that the Subcommittee has held two mini-conferences on the subject and there have been a number of iterations of the draft.

The Reporter said that a recurring background issue has been whether the revised Part VIII rules should simply incorporate the Appellate Rules by reference, similar to how the Part VII rules incorporate many Civil Rules by reference, or if they should repeat language from the appellate rule when appropriate. When presenting his initial draft revision to the Committee, Mr. Brunstad said he tried incorporation by reference, but found it to be unworkable. The Reporter said that when she presented two alternate drafts of one of the revised rules at the Standing Committee meeting last January, the approach of verbatim incorporation was clearly favored.

The Reporter proposed that the joint meeting focus on issues of common interest to the two Committees. Those include issues relating to electronic filing and transmission, as well as issues concerning the intersection of the Bankruptcy and Appellate Rules (especially with respect to appeals directly from the bankruptcy court to the court of appeals).

The Reporter said with respect to electronic filing, the Committee hoped for feedback on the possibility of incorporating into the rules a default standard of electronic filing and transmission. She asked, for example, how such a change would affect the rules concerning the submission of briefs, the form of briefs, and how the record is assembled. She said it would be particularly useful to learn about the experience in the Sixth Circuit and other appellate tribunals, such as the Ninth Circuit Bankruptcy Appellate Panel (BAP), that have also moved toward electronic filing.

An Appellate Rules Committee member said that the rules would likely need to accommodate paper filings because many appeals are made by inmates who do not have access to computers. The Reporter noted that a similar accommodation is made by bankruptcy courts for paper filings from *pro se* filers, but that those paper documents are scanned by the clerk's office to maintain an electronic record. The Chair added that a requirement that attorneys file electronically has worked well.

Mr. Green said that within the Sixth Circuit, some 40 to 45 percent of the filings are paper filings by inmates and that the court converts those filings to PDF format. He said that the Sixth Circuit generally will not accept paper filings from attorneys and does not accept the appendix or record excerpts in paper form. Instead, the judges access the electronic record themselves. The Chair asked whether the Sixth Circuit's system has worked well, and Judge Sutton responded that although he thinks it is the right approach, it took years for judges' chambers to adjust, and that in the view of many judges the system simply transfers the burden of printing to chambers.

The Reporter asked how the record is handled in the Sixth Circuit. Mr. Green responded that the electronic case filing architecture differs in the court of appeals, so that the Clerk's Office must transfer the electronic record from the court below into the court of appeals' system. The Clerk's Office is able to use that method to provide the judges of the court of appeals with electronic links to the record, and appellate counsel identify for the court the relevant portions of



the record. Judge Sutton noted that before the Sixth Circuit changed to electronic case filing there was a need to include time in the case schedule to assemble the appendix; now, he said, this step is no longer necessary.

The bankruptcy judges present reported that electronic filing works well for them, explaining the key benefits as allowing the judge to access the docket and filings from anywhere. Further, because of off-site backups, filings are less likely to be lost or destroyed.

The Reporter explained how proposed Rule 8006 handles certification of direct appeals, and Professor Struve reviewed how proposed new Appellate Rule 6(c) would address the procedure for permissive direct appeals under section 158(d)(2) of the Bankruptcy Code. Both reporters posed questions and invited comments on the proposed procedures.

The Reporter asked for feedback on briefing requirements, and specifically on the situation of a district court allowing a smaller page limit for briefs than the one that applies in the court of appeals, making it potentially difficult for a party to preserve all the points that it wishes to argue on appeal. Several participants, including a district judge member of the Appellate Rules Committee, favored specific brief requirements, including length limits that were consistent at both levels of appeal.

In closing, the Reporter said that Committee is on track to discuss a portion of the revision project at its fall 2011 meeting and another portion at the spring 2012 meeting, with a goal to publish the revised rules in August 2012. In the meantime, she said a working group will further refine the proposal and she invited participation by interested appellate rules committee members in the working group. She and the Chair both expressed the Committee's desire to continue coordinating efforts with the Appellate Rules Committee and thanked them for their participation.

Judge Sutton offered to appoint personnel from the Appellate Rules Committee to the working group, and expressed commitment to coordinating the two Committees' work going forward. He thanked Chair and the Committee for inviting the Appellate Rules Committee to join them.

Judge Sutton also noted that this was Judge Rosenthal's last meeting with the both Committees, and he thanked her for tireless work as Chair of the Standing Committee. Judge Rosenthal returned the praise, and thanked the Advisory Committees for their thorough, thoughtful, and innovative work.

10-2. Oral report by the Subcommittee on Privacy, Public Access, and Appeals on the revision of the Part VIII rules.

The Reporter asked for reflections on the discussion with the Appellate Rules Committee, and members said that it was very helpful and that coordination should continue. The Reporter then asked for feedback on specific issues in the current working draft.

With respect to Rule 8005—Election to Have Appeal Heard by District Court Instead of BAP—the Reporter asked for further consideration of the procedure for determining validity of an election to have appeal heard by the district court rather than BAP, including the possible use of an Official Form for both notice of appeal and statement of election (to reduce errors due to failure to satisfy the current requirement of a separate election statement). Members generally favored the proposed “Notice of Appeal and Statement of Election” form at page 280 of the materials. Judge Perris, who participated in drafting the form, noted a Part VIII revision working group would also need to draft an election form for the appellee. The Chair said the working group should also make a recommendation about who decides a dispute (district court or BAP) if the election is not clear.

The Reporter said that Rule 8006—Certification of Direct Appeal to Court of Appeals—contains a new provision that the case remain pending in bankruptcy court (for purposes of the rule only) for 30 days after the filing of the first notice of appeal. She said the purpose as to give the bankruptcy court a longer opportunity to rule on a request for certification. Judge Montali asked how the propose rule works if there is premature notice of appeal, e.g., if the judge orally announces the ruling, but the judgment isn’t entered for two weeks. The Reporter suggested changing the trigger to run from the ‘effective date’ of the judgment.

Rule 8007—Stay Pending Appeal; Bonds; Suspension of Proceedings. The Reporter said that the draft no longer specifies the appellate scope of review of denial of stay by the bankruptcy court because there is a division of authority under FRAP 8, and she asked if the scope of review should go back in. Judge Montali suggested keeping the de novo standard of review because he thought the effective result of an abuse of discretion standard would be no appellate review at all. Judge Ikuta suggested abuse of discretion for review of factual determinations, and Judge Jordon said even de novo doesn’t mean de novo of the facts; that would still be clear error. The Chair said this was another issue the working group should carefully consider.

Rules 8013, 8014, 8015, 8016—Form and Format of Briefs and Other Documents. The Reporter said the issue for the working group to consider in these rules is the level of detail about briefing that should be specified in rule. She said her sense from the joint meeting was that there is value to having clear rules about briefing with at least some level of detail, as similar to FRAP as possible.

Rule 8017—Brief of an Amicus Curiae. The Reporter asked whether there was support for the provision in the current draft that allows the appellate court to request an amicus-curiae brief on its own motion. She pointed out that the procedure would differ from FRAP 29, which

does not give the appellate court discretion to request an amicus-curiae brief.

Rule 8018—Serving and Filing Briefs; Appendices. The Reporter said the draft lengthens some time periods for filing briefs over current Rule 8009, while still retaining some periods that are shorter than some in FRAP 31. She said the working group should consider whether the proposed time periods should be adjusted, as well as whether the rule should dispense with appendices if the electronic record is used.

Rule 8028—Suspension of Rules in Part VIII. The Reporter said the working group will need to consider whether the draft rule has too many exceptions to its authority, noting that current Rule 8019 has only three exceptions.

The Reporter suggested the following procedure for preparing a draft for consideration by the Committee. After the meeting, the Chair will create a working group composed of members from the Appeals and Style Subcommittees, the Chair, the Reporters and personnel of the Appeals Committee appointed by Judge Sutton. Judge Caldwell volunteered to be a member.

The Reporter proposed that over the summer the working group would engage in a careful review, revision, and editing of current draft. Members discussed in-person drafting sessions verses conference calls, and favored in-person sessions if possible.

The Reporter suggested asking Joe Kimble to perform a style review after the working group completes its work, with a goal to present half of the draft to the Committee in at the fall 2011 meeting and half at the spring 2012 meeting, with a recommendation to publish the Part VIII package in August 2012. **The proposed procedure was approved.**

11. Oral Report of the Subcommittee on Technology and Cross Border Insolvency.

No report.

12. Oral Report of the Subcommittee on Attorney Conduct and Health Care.

No report.

13. Oral report on technical amendment to Rule 2015(a)(3) to correct reference to 11 U.S.C. § 704(a)(8).

**Motion to revise Rule 2015(a)(3) to include the correct the statutory reference -- from § 704(8) to § 704(a)(8) -- approved without objection.**

Discussion Items

14. Suggestion 10-BK-J by Judge Linda Riegler to amend Rule 1014.

**Referred to Business Subcommittee.**

15. Suggestion 10-BK-M by James Jacobsen on behalf of the States' Association of Bankruptcy Attorneys for a national rule on admission to practice before the bankruptcy courts and local counsel requirements for governmental entities, and for a national uniform chapter 13 plan.

**The attorney practice suggestion was referred to Attorney Conduct Subcommittee; the chapter 13 plan suggestion was treated Agenda Item 6E.**

16. Suggestion by Judge Thomas W. Waldrep, Jr., for new rules to provide more transparency in the selection process for creditors' committees and to discourage unethical behavior by counsel.

**Referred to Attorney Conduct Subcommittee.**

17. Suggestion 10-BK-K by Judge Paul Mannes to amend Rule 4004(c)(1)(J) to permit delay in the entry of a discharge if a scheduled hearing on a reaffirmation agreement has not concluded.

**Referred to Consumer Subcommittee.**

18. Suggestion by David Andersen to eliminate unneeded and wasted regular mailings in bankruptcy cases.

The Reporter explained that Mr. Andersen's suggestion was to require most postpetition notices only to those parties who affirmatively request such notices. **After a brief discussion, the Committee decided to refer the suggestion to the CM/ECF NextGen working group and the BJAG.**

19. *Charlie Y, Inc., v. Carey*, B.A.P. 9<sup>th</sup> Cir. (Mar. 4, 2011), in which the Bankruptcy Appellate Panel found that there is a gap in Rule 7054 as to the procedure for requesting allowance of attorney's fees in adversary proceedings.

The Chair said the *Carey* case raises the issue of whether Rule 7054 should incorporate Civil Rule 54(d). **Referred to the Consumer and Business Subcommittees.**

20. Oral report on impact of the sunset of the National Guard and Reservists Debt Relief Act of 2008, Pub. L. No. 110-438, on Interim Rule 1007-I and Official Form 22A.

The Chair explained that the statute, codified at 11 U.S.C. § 707(b)(2)(D)(ii), applies to cases commenced in the three years after December 19, 2008, and that if Congress declines to extend its applicability, the Committee will need to remove certain language from Official Form 22A, for cases filed on or after December 19, 2011, and will need to decide when to sunset Interim Rule 1007-I. **The Committee decided to consider the issue at its next meeting.**

Information Items

21. Oral report on the status of bankruptcy-related legislation.

Mr. Wannamaker updated the Committee on pending bankruptcy-related legislation.

22. Oral update on opinions interpreting 11 U.S.C. § 521(i).

The Reporter said that there were no new developments. Courts are still divided on whether automatic dismissal under § 521(i) is self-effectuating, which makes it difficult to develop a rule governing automatic dismissal. The Reporter said she will continue to monitor the case law.

23. Bullpen:

As a result of decisions at this and prior meetings, except where indicated, the bullpen items listed below will be forwarded to the Standing Committee for consideration at its June 2011 meeting.

- A. Amendment to Rule 1007(b)(7) to authorize providers of postpetition personal financial courses to notify the court directly of a debtor's completion of the course, approved at September 2010 meeting
- B. Technical amendment to Rule 1007(c) to conform to the December 1, 2010, amendment to Rule 1007(a)(2) changing the deadline for the debtor in an involuntary case to file a list of creditors, approved at September 2010 meeting.
- C. New Rule 8007.1 and the amendment to Rule 9024 (indicative rulings), approved at September 2008 meeting, **will remain in the bullpen, to be incorporated into the revised Part VIII rules.**

Draft Minutes, Bankruptcy Rules Committee, Spring 2011

- D. Amendments to Rule 9006, Rule 9013, and Rule 9014, to address the timing of the service of any written response to a motion, rather than only opposing affidavits, approved at September 2010 meeting.
  - E. Amendment to Official Form 1 to implement new Rule 1004.2 by providing space for a chapter 15 debtor to indicate the country of its center of main interests and each country in which a foreign proceeding is pending, approved at September 2010 meeting.
  - F. Technical and conforming amendments to Official Forms 9A - 9I, notices of the meeting of creditors, including amendments to implement the proposed amendment to Rule 2003(e), approved at September 2010 meeting.
  - G. Amendment to Official Form 22C to implement the Supreme Court's decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), by directing an above-median-family-income debtor to state any change from the income or expenses reported elsewhere on the form that has occurred or is virtually certain to occur during the 12-month period following the date of the filing of the petition, approved at September 2010 meeting.
  - H. Amendment to Official Forms 22A and 22C to permit deduction of expenses for business cell phone service necessary for the production of income, if not reimbursed by the debtor's employer, approved at September 2010 meeting.
  - I. Amendment to Official Form 23 to implement the proposed amendment to Rule 1007(b)(7), which would authorize providers of postpetition personal financial courses to notify the court directly of a debtor's completion of the course, approved at September 2010 meeting.
  - J. As a result of the decision at Agenda Item 6B, the proposed amendments to Box 7 of Official Form 10 were moved to the bullpen until the spring 2012 meeting.
24. Rules Docket.

The Chair thanked Mr. Wannamaker for maintaining the Rules Docket.

25. Future meetings:

Fall 2011 meeting, September 26 - 27, 2011, at the Sofitel Water Tower Hotel in Chicago, Illinois.

The Chair announced the location of the fall 2011 meeting, and asked for location

suggestions for the spring 2012 meeting.

26 New business.

No new business.

27. Adjourn.

In adjourning the meeting, the Chair thanked all in attendance for their participation and gave special thanks to Judge Swain for her past leadership and guidance of the Committee. Judge Rosenthal added her personal thanks to Judge Swain and asked that the minutes reflect the profound gratitude of the Standing Committee for the work performed by Judge Swain during her tenure as chair.

Respectfully submitted,

Stephen "Scott" Myers





# TAB 3



Reports on meetings of other committees

Item 3 will be oral reports.



# TAB 3A



COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
Meeting of June 2-3, 2011  
Washington, D.C.  
**Draft Minutes**

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**ATTENDANCE**

The mid-year meeting of the Judicial Conference Committee on Rules of Practice and Procedure was held in Washington, D.C. on Thursday and Friday, June 2 and 3, 2011. The following members were present:

Judge Lee H. Rosenthal, Chair  
Douglas R. Cox, Esquire  
Roy Englert, Esquire  
Judge Marilyn L. Huff  
Chief Justice Wallace Jefferson  
Dean David F. Levi  
William J. Maledon, Esquire  
Judge Reena Raggi  
Judge Patrick J. Schiltz  
Judge James A. Teilborg  
Judge Diane P. Wood

Deputy Attorney General James M. Cole participated in part of the meeting. In addition, the Department of Justice was represented by Kathleen Felton, Esquire; Elizabeth J. Shapiro, Esquire; Jessica Hertz, Esquire; and Ted Hirt, Esquire.

Judge Neil M. Gorsuch was unable to attend the meeting.

Judge Anthony J. Scirica, former chair of the committee, participated in much of the meeting, and Judge Barbara J. Rothstein, Director of the Federal Judicial Center, attended a portion of the meeting. Also participating were the committee's consultants: Joseph F. Spaniol, Jr.; Professor Geoffrey C. Hazard, Jr.; and Professor R. Joseph Kimble.

Providing support to the committee were:

Professor Daniel R. Coquillette	The committee's reporter
Peter G. McCabe	The committee's secretary
Andrea L. Kuperman	The committee's chief counsel
James N. Ishida	Senior attorney, Administrative Office
Jeffrey N. Barr	Senior attorney, Administrative Office
Joe Cecil	Research Division, Federal Judicial Center
Emery G. Lee	Research Division, Federal Judicial Center

Representing the advisory committees were:

- Advisory Committee on Appellate Rules —
  - Judge Jeffrey S. Sutton, Chair
  - Professor Catherine T. Struve, Reporter
- Advisory Committee on Bankruptcy Rules —
  - Judge Eugene R. Wedoff, Chair
  - Professor S. Elizabeth Gibson, Reporter
  - Professor Troy A. McKenzie, Associate Reporter
- Advisory Committee on Civil Rules —
  - Judge Mark R. Kravitz, Chair
  - Professor Edward H. Cooper, Reporter
- Advisory Committee on Criminal Rules —
  - Judge Richard C. Tallman, Chair
  - Professor Sara Sun Beale, Reporter
  - Professor Nancy J. King, Associate Reporter
- Advisory Committee on Evidence Rules —
  - Judge Sidney A. Fitzwater, Chair
  - Professor Daniel J. Capra, Reporter



## **INTRODUCTORY REMARKS**

### *Committee Changes*

Judge Rosenthal reminded the committee that her term as chair will expire on October 1, 2011, and that Chief Justice Roberts had named Judge Kravitz as her successor. The Chief Justice also named Judge David Campbell to succeed Judge Kravitz as chair of the Advisory Committee on Civil Rules and Judge Raggi to succeed Judge Tallman as chair of the Advisory Committee on Criminal Rules. Judge Rosenthal said that these selections were truly extraordinary and will greatly benefit the rules program.

She pointed out that Judge Tallman was attending his last Standing Committee meeting and had been an enormously successful chair of the Advisory Committee on Criminal Rules. Among his many accomplishments, she noted, were the package of technology amendments scheduled to take effect on December 1, 2011, the pending amendments to Rule 12 (pretrial motions) and Rule 15 (depositions), and the comprehensive and meticulous review of prosecutors' obligations to disclose exculpatory and impeachment information to the defense. She emphasized that he had steered the committee carefully among major competing interests and considerations. In doing so, he had shown consistently great insight and was a delight to work with.

Judge Rosenthal pointed out that the terms of Mr. Cox and Mr. Maledon were also due to expire on October 1, 2011. She emphasized the importance of both members' contributions to the Standing Committee and noted that the committee will celebrate their distinguished service more formally at the next meeting.

### *Remembering Judge John M. Roll*

Judge Tallman asked the committee to remember and honor the late Chief Judge John M. Roll, a beloved former member of the Advisory Committee on Criminal Rules. He pointed out that Judge Roll had contributed mightily to the federal rules process, had been a major force in restyling the Federal Rules of Criminal Procedure, and had worked tirelessly in the cause of justice until his untimely death.

### *Judicial Conference Report*

Judge Rosenthal reported that no proposed rule amendments had been presented to the Judicial Conference at its March 2011 session. In January 2011, the Conference's Executive Committee approved the committee's report on the privacy rules, which was then submitted to Congress.

She noted that the Conference in March had been asked to approve a proposal from the Court Administration and Case Management Committee to revise the standard for senior judges to participate in en banc decisions. The Conference deferred the matter, however, to allow the rules committees time to collaborate with the Court Administration Committee on the matter. Judge Sutton affirmed that the Advisory Committee on Appellate Rules was currently in the process of considering the proposal, but would most likely not recommend a change in the rules.

#### *Pending Rule Amendments*

Judge Rosenthal reported that the Supreme Court had approved all the rule amendments approved by the Judicial Conference in September 2010, except for two minor language changes in the restyled evidence rules. She pointed out that it is clear that the Court reviews the proposed rules extremely closely, and it had raised specific concerns regarding the language of four of the restyled rules. Judge Rosenthal worked with the chair and reporter of the Advisory Committee on Evidence Rules to address those concerns. In the end, two of the rules were promulgated by the Court as originally presented to it, and minor changes were made in the text of the other two rules with the approval of the Judicial Conference's Executive Committee.

Judge Rosenthal noted that the amendments were now pending before Congress and scheduled to take effect on December 1, 2011. She added, though, that there may be some concerns in Congress over some of the bankruptcy rule amendments.

Professor Capra announced that the restyled evidence rules had won two prestigious legal-writing awards – the Clear Mark Award for clear legal writing and the Burton Reform in Law Award. He said that principal credit for this major achievement belonged to Professor Kimble and the style committee – Judge Teilborg, Judge Huff, and Mr. Maledon.

#### *Legislative Report*

Ms. Kuperman reported that the proposed Lawsuit Abuse Reduction Act of 2011 had been introduced in each house of Congress, and a hearing had been held before the House Judiciary Committee. The proposed legislation, she said, would restore the 1983 version of FED. R. CIV. P. 11 (sanctions), thereby eliminating the current safe harbor provision in the rule and making imposition of sanctions mandatory for rule violations. She noted that the committee had sent a letter to Congress opposing the legislation, noting, among other things, that an empirical study by the Federal Judicial Center had demonstrated that the 1983 version of the rule simply did not work, had led to strategic gamesmanship by lawyers, and had resulted in satellite litigation over imposition of sanctions. Nevertheless, the House bill was scheduled for markup within a week. The Senate bill, she added, was still pending before the Senate Judiciary Committee.

Ms. Kuperman reported that the proposed Sunshine in Litigation Act of 2011 was similar to other Sunshine Acts introduced in every Congress since the 1990s. It would prevent a court from issuing a discovery protective order without first making particularized findings of fact that the order would not restrict the disclosure of information relevant to protection of public health and safety. The latest version of the legislation, she noted, was limited to cases where the pleadings state facts relevant to protection of public health or safety. The committee, she said, had written to the Senate expressing its opposition to the bill on the grounds that it was inconsistent with the Rules Enabling Act and would make discovery more burdensome and costly. Nevertheless, she said, the Senate Judiciary Committee favorably reported a substitute version of the bill.

Ms. Kuperman reported that efforts were well underway to obtain legislation to conform 28 U.S.C. § 2107 to the pending amendment to FED. R. APP. P. 4(a)(1) (time to file a notice of appeal in a civil case), scheduled to take effect on December 1, 2011. The amendment will clarify the time to appeal in civil cases in which one of the parties is a United States officer or employee sued in an individual capacity for acts or omissions in connection with official duties.

She added that no legislation was pending to deal with pleading standards in civil cases in light of the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, 129 S. Ct. 1937 (2009).

#### **APPROVAL OF THE MINUTES OF THE LAST MEETING**

**The committee without objection by voice vote approved the minutes of the last meeting, held on January 6-7, 2011.**

#### **REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES**

Judge Sutton and Professor Struve presented the report of the advisory committee, as set forth in Judge Sutton's memorandum and attachments of May 2, 2011 (Agenda Item 6).

*Amendments for Publication*

## FED. R. APP. P. 28 and 28.1

Judge Sutton reported that the proposed amendments to FED. R. APP. P. 28(a) (briefs) would remove the current requirement that an appellant's brief contain separate statements of the case and of the facts. The proposed changes in Rule 28(b) (appellee's brief) and Rule 28.1 (cross-appeals) complement those in Rule 28(a).

Rule 28(a) currently requires a brief to contain a statement of the case – including the nature of the case, the course of proceedings, and the disposition below – followed in order by a statement of the facts. The current rule, he said, has confused practitioners and led to redundancy of information in briefs. Moreover, it is not logical in most cases for an attorney to address the case before setting forth the underlying facts.

Judge Sutton noted that the revised rule would allow appellants to weave the two statements together and present the events to the court in a more logical order, such as in chronological order. The proposed rule would consolidate subdivisions (a)(6) and (a)(7) into a single new subdivision that requires a “concise statement of the case setting out the facts relevant to the issues submitted for review and identifying the rulings presented for review. . . .” That approach, he said, was very similar to the Supreme Court's Rule 24.1(g).

Judge Sutton noted that the advisory committee had discussed the proposed revisions with leading appellate lawyers and had received largely favorable reactions to them. A member added that the proposed rule would be very beneficial because it is open-ended and flexible, rather than prescriptive.

**The committee without objection by voice vote approved the proposed amendments for publication.**

## APPELLATE FORM 4

Judge Sutton reported that the advisory committee was proposing to modify APPELLATE FORM 4 (affidavit accompanying a motion for permission to appeal in forma pauperis). Questions 10 and 11 on the current form ask litigants to disclose: (1) the name of any attorney or other person (such as a paralegal or typist) whom they have paid, or will pay, for services in connection with the case; and (2) the amount of the payments. Critics have said that the questions are overly intrusive and unnecessary in making a determination of in forma pauperis status. They also assert that the questions may raise issues involving attorney-client privilege and work-product protection.

Judge Sutton explained that the advisory committee would replace the current two questions with a single new Question 10 that would read as follows: “Have you spent – or will you be spending – any money for expenses or attorney fees in connection with this lawsuit? If yes, how much?” In addition, some technical changes would be made in the form.

He also reported that the advisory committee believed that it may be time to separate the appellate forms from the full, three-year Rules Enabling Act process. That issue was also discussed during the presentation of the report of the Advisory Committee on Civil Rules. (See pages 30-31 of these minutes.)

**The committee without objection by voice vote approved the proposed amendments for publication.**

*Informational Items*

FED. R. APP. P. 4(a)(1) and 28 U.S.C. § 2107

Judge Sutton reported that the advisory committee was continuing its efforts to secure legislation to amend 28 U.S.C. § 2107 to conform that statute to the amendment to FED. R. APP. P. 4(a)(1) (time to file a notice of appeal in a civil case) that will take effect on December 1, 2011. The legislative change, he said, was necessary to buttress the rule amendment because the Supreme Court held in *Bowles v. Russell*, 551 U.S. 205 (2007), that appeal time limits set forth in statutes are jurisdictional in nature. The proposed statutory amendment, he said, mirrors the amended rule and will clarify the time to appeal in civil cases when a federal officer or employee is sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States.

Judge Sutton noted that in pursuing the legislation, Congressional staff had expressed concern that the additional time provided by the rule and statute might not be applicable if they themselves were sued. The proposed statutory language gives all parties 60 days, rather than 30 days, to file a notice of appeal if one of the parties is “a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection [with official duties], including all instances in which the United States represents that [person] when the judgment, order, or decree is entered or files the appeal for that [person].”

Congressional staff appeared to have read the safe harbors in that text as applicable only to representation by the Department of Justice, and not to representation by congressional counsel. Judge Sutton argued, though, that the reference to representation by the “United States” clearly covers representation by congressional counsel, as all agree that the reference to a suit against “a United States officer” covers members of Congress and their staff.

It is likely, he said, that the legislation will proceed as planned. It is important to have it enacted in time to take effect along with the amended rule on December 1, 2011.

#### FED. R. APP. P. 29

Judge Sutton reported that the advisory committee had not yet determined whether and how to proceed with a proposed amendment to FED. R. APP. P. 29 (amicus briefs) that would treat federally recognized Indian tribes the same as states for the purpose of filing amicus briefs. He noted that both the advisory committee and the Standing Committee had been divided on the merits of the proposal. Moreover, two of the three circuit courts that hear the bulk of the cases in which tribes file amicus briefs had shown little interest in changing the rule. But, he said, the Ninth Circuit – the court with the largest number of cases – had now informed the advisory committee that it favored adoption of a national rule permitting Indian tribes to file amicus briefs without party consent or court permission.

Judge Sutton pointed out that a recent study by the Federal Judicial Center had demonstrated that the courts of appeals deny very few applications from Indian tribes to file amicus briefs. Accordingly, the key issue at stake is the sovereignty and dignity of the tribes, not the actual denial of any rights.

#### JOINT MEETING WITH THE BANKRUPTCY ADVISORY COMMITTEE

Judge Sutton reported that the advisory committee had met jointly in April 2011 with the Advisory Committee on Bankruptcy Rules to discuss proposed, major revisions to Part VIII of the bankruptcy rules. Part VIII governs appeals from a bankruptcy judge to a district court or bankruptcy appellate panel. The meeting, he said, had been very productive.

#### **REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES**

Judge Wedoff and Professor Gibson presented the report of the advisory committee, as set forth in Judge Wedoff's memorandum and attachments of May 6, 2011 (Agenda Item 9). He reported that the advisory committee had 22 action items to present, falling into three categories:

1. Eight matters published in August 2010 and ready for final approval by the Judicial Conference;
2. Five matters for final approval by the Conference without publication; and
3. Nine matters to be published for public comment.

To aid in presenting the 22 proposals, Judge Wedoff grouped them by subject matter, rather than by procedural status, and he discussed the subjects in the following order:

1. Procedures for creditor claims and claim objections;
  2. Incorporating recent Supreme Court rulings;
  3. Simplified procedure for filing a certificate of debtor financial education;
  4. Adjusting time deadlines; and
  5. Other corrections and adjustments.
- 
1. Creditor Claims and Claim Objections

*Background and Procedural Status*

Judge Wedoff reported that several bankruptcy judges have voiced concern about the accuracy and adequacy of the information that creditors submit to support their claims, especially in cases where the original creditor has sold the debt to another entity before the bankruptcy case is filed. The problems arise most frequently with regard to home mortgages and credit-card debt. As a result, it is often unclear: (1) who the original holder of the debt was; (2) what the current balance on the debt is; and (3) what it will take to pay off the debt. Moreover, he added, there is often no way for a debtor or trustee to know from the documentation filed with the proof of claim whether the statute of limitations has passed.

To address these problems, he said, the advisory committee in 2009 published proposed amendments to FED. R. BANKR. P. 3001 (proof of claim) and proposed new FED. R. BANKR. P. 3002.1 (notice related to claims secured by a security interest in the debtor's principal residence).

Proposed Rule 3001(c)(2) – scheduled to take effect on December 1, 2011 – will require that additional supporting information accompany proofs of claim in all individual-debtor cases. The revised rule also prescribes the sanctions that may be imposed by the court against a creditor in an individual-debtor case that fails to provide that information.

Another proposed amendment in 2009, new subdivision 3001(c)(1), would have required creditors holding claims based on an open-end or revolving consumer-credit agreement to file with the proof of claim a copy of the last account statement sent to the debtor before the bankruptcy petition was filed. The advisory committee, however, withdrew the proposal because of adverse comments from representatives of bulk purchasers of credit-card debt asserting that often a copy of the last account statement simply cannot be produced.

Instead, the committee was now proposing a new subdivision 3001(c)(3) that would require the creditor of a claim based on an open-end or revolving consumer-credit agreement to provide with the proof of claim five specific pieces of information in support of the claim. That provision was published for further comment in August 2010 and is currently before the Standing Committee for final approval. (See pages 12-13 of these minutes.)

*Mortgage Debt*

OFFICIAL FORM 10

Judge Wedoff explained that the proposed changes to OFFICIAL FORM 10 (proof of claim) were minor and relatively technical. The form would ask claimants for additional information about the interest rate on secured claims, and some of the instructions would be clarified. The revised form also adds space for an optional uniform claim identifier number, which will assist creditors in facilitating electronic payment in chapter 13 cases. In addition, he said, stylistic and formatting changes would be made.

**The committee unanimously by voice vote approved the amendments for final approval by the Judicial Conference, effective December 1, 2011.**

OFFICIAL FORM 10 (ATTACHMENT A)  
OFFICIAL FORM 10 (SUPPLEMENT 1)  
OFFICIAL FORM 10 (SUPPLEMENT 2)

Judge Wedoff pointed out that the three new forms associated with OFFICIAL FORM 10 were designed to implement new Rule 3002.1. The new rule – scheduled to take effect on December 1, 2011 – will assist in implementing § 1322(b)(5) of the Bankruptcy Code. It permits a chapter 13 debtor to cure a default and maintain home mortgage payments over the course of the plan.

OFFICIAL FORM 10, ATTACHMENT A (mortgage proof of claim attachment) implements Rule 3002.1(c)(2). It will give the debtor and the trustee important information on the status of a claim secured by a security interest in the debtor's principal residence. The holder of the claim must specify the principal and interest due on the residence as of the date of filing the petition; itemize pre-petition interest, fees, expenses, and charges included in the claim; and specify the amount needed to cure any default.

OFFICIAL FORM 10, SUPPLEMENT 1 (notice of mortgage payment change) implements Rule 3002.1(b). It applies in chapter 13 cases where the debtor is maintaining current payments on the principal residence and attempting to cure any default. The debtor and trustee need to know whether there have been any changes in the installment payment amount. The new form provides the notification and requires the



holder of a home mortgage claim to provide 21 days' advance notice of any escrow account payment adjustment, interest payment change, or other mortgage payment change.

OFFICIAL FORM 10, SUPPLEMENT 2 (notice of post-petition mortgage fees, expenses, and charges) implements Rule 3002.1(c). It will be used in a chapter 13 case by the holder of a home mortgage claim to notify the debtor and trustee of the amount of all post-petition fees, expenses, and charges and the dates incurred.

Judge Wedoff noted that no opposition had been voiced to the forms during the public comment period, with one important exception regarding OFFICIAL FORM 10 (ATTACHMENT A). He explained that two bankruptcy judges had pointed out that the manner in which mortgage servicers treat mortgage payments varies considerably. The servicers commonly credit late-received payments to late charges and attorney fees before applying them to the principal. Therefore, fees and charges may pile up, and the debtor or trustee cannot tell how the payments have been allocated without a full mortgage history.

The judges proposed that home-mortgage claimants be required to submit a complete loan history with their proofs of claim reflecting all amounts received and credited by the lender. This would allow the debtor and trustee to compare and reconcile the claimed arrearages with their own payment records.

Judge Wedoff noted that the proposed new OFFICIAL FORM 10 (ATTACHMENT A) does not require a loan history because the advisory committee concluded that it is not necessary in most chapter 13 cases. It might also impose an undue burden on the mortgagee and overwhelm debtors with too much detail. Moreover, the additional loan history information that debtors or trustees need in a specific case may be obtained through discovery.

In addition, the advisory committee concluded as a practical matter that there was simply insufficient time to redraft the form to incorporate additional information and still meet the deadline of having the form take effect at the same time as new Rule 3002.1, on December 1, 2011. Amending the form to require a loan history, for example, would require republication and an additional year's delay in issuing the form. Therefore, he said, the committee had decided to approve the form as currently drafted, but to keep the matter on its docket and gather information about the experience of debtors and creditors with the new rule and forms after they go into effect. Informed by those experiences, the committee will be in a better position in the future to decide whether to require the holder of a claim secured by the debtor's principal residence to attach a complete loan history to the proof of claim.

A member noted that OFFICIAL FORM 10, ATTACHMENT A will likely be opposed by bankruptcy judges who have developed their own forms and do not want to switch to a new national form that gives them less information. Her own chief bankruptcy judge, for example, had expressed concern that the proposed new form may preclude continued use of his more detailed local form. Judge Wedoff and Professor Gibson responded that FED. R. BANKR. P. 9009 allows the official forms to be used “with alterations as may be appropriate.” They also suggested that a district might consider using the national form, but also requiring a supplemental local form asking for additional information. A member favored the use of supplemental local forms and said that they would inform the advisory committee in fashioning any needed changes in the national form in the future.

**The committee unanimously by voice vote approved the three new forms for final approval by the Judicial Conference, effective December 1, 2011.**

*Open-Ended Credit Card Debt*

FED. R. BANKR. P. 3001(c)(3)

Judge Wedoff reported that the amendments to Rule 3001 (proof of claim) originally proposed by the advisory committee in 2009 would have required that a proof of claim based on open-end or revolving consumer-credit agreements be accompanied by a copy of the last account statement sent to the debtor before the bankruptcy filing. The additional documentation, he said, would merely provide needed definition to the basic requirement currently set forth in FED. R. BANKR. P. 3001(c) that “[w]hen a claim . . . is based on a writing, the original or a duplicate shall be filed with the proof of claim.” The debtor, he said, needs the information to associate the claim with a known account and to ascertain whether the claim is timely.

The proposal, however, was opposed vigorously by the bulk purchasers of credit-card claims on two grounds. First, they asserted that buyers of credit-card debt receive only a computer print-out of basic information when they purchase the debt and do not have access to the last account statement. Second, they said that producing the statements would raise serious privacy issues because the debtor’s full credit-card debts would be disclosed on the public record, including such sensitive matters as medical debts.

Judge Wedoff said that the advisory committee had redrafted the proposal in light of the comments from the credit industry, and it had published a substitute proposal in 2010 that would require creditors to provide certain specific information to the extent applicable – the name of the entity from which the creditor purchased the debt, the name of the entity to which the debt was owed at the time of the debtor’s last transaction, the date of the last transaction on the account, the date of the last payment, and the charge-off date.

He reported that the advisory committee had received no objections to the revised proposal based either on the unavailability of the information or on privacy concerns. Nevertheless, he said, some creditors are still opposed on the grounds that the amendments are not needed and would place an unreasonable burden on consumer lenders and debt purchasers.

Judge Wedoff noted, on the other hand, that the advisory committee had received several comments from debtors' representatives that the rule does not go far enough in making creditors document their claims, and it should require a complete chain of title. They assert that creditors regularly ignore the rule's current requirement of attaching to a proof of claim the writing on which it is based. As a result, they say, debtors do not receive sufficient information to pursue their interests effectively.

He explained that proposed FED. R. BANKR. P. 3001(c)(3)(B) would authorize a debtor or trustee to request a copy of the writing on which a credit-card claim is based, and the creditor would have a deadline of 30 days to comply with the request. That provision also received some opposition from the creditors, who recommended that the requesting party be required to make a threshold showing of need for the writing. The advisory committee decided, though, that a good cause showing is unnecessary and would lead to needless litigation. Realistically, he said, debtors will only seek a copy of the underlying contract if they have good reasons for doing so.

Judge Wedoff noted that a new objection raised by creditors relates to the provision in FED. R. BANKR. P. 3001(c)(2)(D) that lists sanctions that a court may impose when a creditor fails to provide required information. Under the rule, for example, a debtor or trustee could ask that certain papers not be allowed or that appropriate attorney fees be imposed. Creditors argue, he said, that the provision is overly harsh.

Judge Wedoff said that sanctions will rarely arise. The sanctions specified in Rule 3001(c)(2)(D), moreover, are the same as those available generally in every bankruptcy and civil case for violations of the rules. In addition, Rule 3001(c)(2)(D) actually serves as a limitation on actions that several bankruptcy judges have already been taking, such as ruling that a creditor's failure to produce needed information requires disallowance of a claim.

Judge Wedoff added that the sanction provision is not set forth in the proposed new Rule 3001(c)(3), but in Rule 3001(i), scheduled to take effect on December 1, 2011. That general provision, moreover, applies in all individual-debtor cases and is not limited to claims based on an open-end or revolving consumer-credit agreement.

**The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference.**

*Procedures for Objecting to Claims*

## FED. R. BANKR. P. 3007(a)

Judge Wedoff explained that there is confusion under the current rule about the proper procedure for filing an objection to a claim. The rule seems to require that every objection to a claim be noticed for a hearing, although many courts do not follow that procedure. The proposed amendments to Rule 3007(a) (objections to claim) would authorize a negative-notice procedure for filing objections and clarify the method for serving the objections.

The proposed amendments would allow a court to place the burden on a claimant to request a hearing after receiving notice of an objection. The change, he said, is consistent with § 502(b) of the Bankruptcy Code, which defines the phrase “after notice and a hearing” as allowing a court to act without a hearing if notice is properly given and a party in interest does not timely request a hearing.

With respect to the manner of serving objections to claims, Judge Wedoff explained that courts currently disagree on whether an objection to a claim must be served by one of the methods specified for service of a complaint in FED. R. BANKR. P. 7004 or whether it is sufficient to serve the objection by mail on the person designated on the proof of claim. The advisory committee concluded that the matter should be clarified, and it proposes that objections be served by first-class mail addressed to the person designated on the proof of claim to receive notices.

The committee, he said, also concluded that two types of claimants should be served in the manner prescribed by FED. R. BANKR. P. 7004 – insured depository institutions and officers and agencies of the United States. The service methods for depository institutions are statutorily mandated, and the size and dispersion of authority in the federal government necessitate service on the Attorney General and the appropriate U.S. attorney’s office, as well as on the person designated on the proof of claim.

**The committee unanimously by voice vote approved the proposed amendments for publication.**

## FED. R. BANKR. P. 3001(c)(1)

Judge Wedoff reported that FED. R. BANKR. P. 3001(c)(1) (supporting information for a proof of claim) would be amended to delete the option of filing with a proof of claim the original of a writing on which the claim is based. The instructions to OFFICIAL FORM 10 (proof of claim) direct claimants not to “send original documents, as attachments may be destroyed after scanning.” Those instructions reflect the current practice of filing copies, not originals, in the bankruptcy courts. The advisory committee

therefore would amend Rule 3001(c)(1) to conform it to the official form and current practice by replacing “the original or a duplicate” with “a copy of the writing” on which the claim is based.

**The committee approved the proposed conforming amendment for final approval by the Judicial Conference without publication.**

2. Responses to Recent Supreme Court Decisions

OFFICIAL FORM 6C

Judge Wedoff reported that the Supreme Court ruled in *Schwab v. Reilly*, 560 U.S. \_\_\_, 130 S. Ct. 2652 (2010), that if a debtor claims property as exempt and enters a specific dollar amount on OFFICIAL FORM 6C, he or she is limited to that amount. If the full fair market value of the property is found to exceed that amount, the trustee may use the overage.

The Supreme Court suggested in *Schwab* that the debtor could claim the full amount of the property by stating so on the face of the form. But the current form does not provide a space for the debtor to exercise that option. So the advisory committee proposed rearranging the form and adding an additional column to give the debtor two options: (1) to claim a specific dollar amount; or (2) to claim the full fair market value of the exempted property.

**The committee unanimously by voice vote approved the proposed amendments for publication.**

OFFICIAL FORMS 22A and 22C

Judge Wedoff reported that OFFICIAL FORM 22C (chapter 13 statement of current monthly income and calculation of commitment period and disposable income) would be amended to reflect the Supreme Court’s decision in *Hamilton v. Lanning*, 560 U.S. \_\_\_, 130 S. Ct. 2464 (2010). The case dealt with calculating a chapter 13 debtor’s “projected disposable income” under § 1325(b)(1) of the Bankruptcy Code. That income normally has to be devoted to paying unsecured claims.

The term “projected disposable income” is not defined in the Code, but “disposable income” is defined in § 1325(b)(2) as the debtor’s “current monthly income” less reasonably necessary expenses. In turn, “current monthly income” is calculated under § 101(10A) of the Code by averaging the debtor’s monthly income for the six months preceding the filing of the bankruptcy petition.

In *Lanning*, the debtor's financial situation had changed just before her chapter 13 filing, as she had received a one-time severance buyout from her former employer and had acquired a new job at a considerably lower salary. The buyout payment greatly inflated her gross income for the six-month period before she filed the bankruptcy petition.

The Supreme Court rejected the purely "mechanical" approach of considering only the debtor's average monthly income for the six months before the bankruptcy filing. Instead, it adopted a "forward looking" approach allowing courts to consider changes that have occurred, or are likely to occur, in a debtor's income and expenses after filing.

Judge Wedoff explained that OFFICIAL FORM 22C currently calculates disposable income based only on information about the debtor's pre-bankruptcy average monthly income and current expenses. In light of *Lanning*, though, the Advisory Committee decided to amend the form by adding a new paragraph 61. It will ask the debtor to specify any change in the income or expenses reported on the form that has occurred, or that is virtually certain to occur, during the 12-month period following filing of the bankruptcy petition.

Professor Gibson added that both OFFICIAL FORM 22C and OFFICIAL FORM 22A (Chapter 7 statement of current monthly income and means-test calculation) would also be amended to make a minor adjustment in the deduction for telecommunication expenses. The revision will allow deduction of telecommunication services, including business cell phone service, to the extent necessary for production of income, if not reimbursed by the debtor's employer.

**The committee unanimously by voice vote approved the proposed amendments for publication.**

3. Simplified Procedure for Filing a Certificate of Debtor Financial Education

FED. R. BANKR. P. 1007(b)(7)

Judge Wedoff explained that the Bankruptcy Code was amended in 2005 to require individual debtors in chapter 7, 11, and 13 cases to complete an instructional course on personal financial management approved by the local U.S. trustee or bankruptcy administrator before they may receive a discharge. The Code does not address what document must be filed to provide notice that the course has been completed, or who must file it. The procedure is set forth in FED. R. BANKR. P. 1007(b)(7) (schedules, statements, and other required documents), which requires the debtor to file a "statement of completion of a course concerning personal financial

management, prepared as prescribed by the appropriate Official Form” – OFFICIAL FORM 23 (debtor’s certification of completion of instructional course concerning financial management).

Judge Wedoff noted that the rule imposes the burden of providing notice of completing the course on the debtor, not on the course provider. If the debtor fails to file the notice, the court must close the case without a discharge, even if the debtor has in fact completed the course.

He said that the judges and clerks designing the judiciary’s Next Generation of CM/ECF system have recommended that approved providers of financial-management courses be authorized to file course-completion statements electronically and directly with the bankruptcy courts. That procedure will be more efficient, require less human involvement, and reduce the number of cases dismissed for failure to file the required certificate.

Judge Wedoff reported that the advisory committee had concluded that it would be inappropriate for a bankruptcy rule to impose a requirement directly on providers of personal financial-management courses. But Rule 1007(b)(7) should be amended to facilitate approved course providers filing the statements. The proposed amendments would eliminate the requirement that an individual debtor file Form 23 if a course provider has notified the court that the debtor has completed the course after filing the petition.

**The committee unanimously by voice vote approved the proposed amendments for publication.**

FED. R. BANKR. P. 5009(b)

Judge Wedoff reported that the proposed amendment to FED. R. BANKR. P. 5009(b) (notice of failure to file Rule 1007(b)(7) statement) conforms to the proposed amendments to Rule 1007(b)(7). Rule 5009(b) requires the clerk to send an individual debtor who has not filed the certificate of completing a financial-management course a notice within 45 days after the first date set for the meeting of creditors that the case will be closed without entry of a discharge unless the required statement is timely filed. The proposed amendment recognizes that the clerk need not send the notice if the course provider has already notified the court that the debtor has completed the course.

**The committee unanimously by voice vote approved the proposed amendment for publication.**

4. Timing and Deadlines

## FED. R. BANKR. P. 7054

Judge Wedoff noted that FED. R. BANKR. P. 7054 (judgment and costs) incorporates FED. R. CIV. P. 54(a)-(c) for adversary proceedings and provides for the award of costs. The proposed amendments would expand from one day to 14 days the time for a party to respond to the prevailing party's bill of costs and from five days to seven days the time for seeking court review of the costs taxed by the clerk. He noted that both time limits follow the general rule that time limits be expressed in multiples of seven days. He also pointed out that one public comment had suggested extending both time periods to 14 days, but the advisory committee decided that it was important to make Rule 7054(b) consistent with the civil rule, FED. R. CIV. P. 54(d)(1).

**The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference.**

## FED. R. BANKR. P. 7056

Judge Wedoff explained that FED. R. BANKR. P. 7056 (summary judgment) makes FED. R. CIV. P. 56 applicable in adversary proceedings. He added that it is also applicable in contested matters under FED. R. BANKR. P. 9014(c) unless the court directs otherwise. Civil Rule 56, as revised in 2009, sets a default deadline to file a summary judgment motion of 30 days after the close of all discovery. That deadline, however, is not appropriate in bankruptcy cases because hearings are frequently held very shortly after the close of discovery.

Therefore, the proposed amendment would depart from the civil rule and establish a new default deadline of 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought. That change would give the court at least 30 days to consider the motion before the hearing. Judge Wedoff emphasized that the deadlines under both FED. R. CIV. P. 56 and FED. R. BANKR. P. 7056 are default deadlines, applicable only if no local rule or court order sets a different date.

**The committee unanimously by voice vote approved the proposed amendment for final approval by the Judicial Conference.**

## OFFICIAL FORM 25A

Judge Wedoff explained that the proposed amendment to OFFICIAL FORM 25A (plan of reorganization in a small business chapter 11 case) would change the effective-date provision of a small business chapter 11 plan to conform to amendments to the bankruptcy rules that took effect in 2009. Those amendments increased from 10 days to 14 days the time periods for the duration of a stay of an order confirming a plan, FED. R. BANKR. P. 3020(e), and for filing a notice of appeal, FED. R. BANKR. P. 8002(a). Under



the proposed amendment to § 8.02 of the form, the effective date of the plan would generally be the first business day following the date that is 14 days after entry of the order of confirmation.

**The committee unanimously by voice vote approved the proposed conforming amendment for final approval by the Judicial Conference without publication, effective December 1, 2011.**

FED. R. BANKR. P. 1007(c)

Judge Wedoff reported that the proposed amendment to FED. R. BANKR. P. 1007(c) (time limits to file documents) was a technical and conforming change to remove an inconsistency in the current rule with FED. R. BANKR. P. 1007(a)(2) (filing documents in an involuntary case). Rule 1007(c) prescribes time limits for filing various lists, schedules, statements, and other documents. It specifies that in an involuntary case the debtor must file the list of creditors specified in Rule 1007(a)(2), as well as certain other documents, within 14 days of entry of the order for relief. In 2010, however, Rule 1007(a)(2) was amended to reduce to seven days the time for an involuntary debtor to file the list of creditors. As a result, the proposed amendment would delete from subdivision (c) the inconsistent reference to the time limit for filing the list of creditors in an involuntary case.

**The committee unanimously by voice vote approved the proposed conforming amendment for final approval by the Judicial Conference without publication.**

FED. R. BANKR. P. 9006(d)

Judge Wedoff explained that FED. R. BANKR. P. 9006(d) (time limit for serving motions and affidavits) would be amended to draw attention to the fact that it prescribes default deadlines for service of motions and written responses. A bankruptcy judge had suggested deleting the rule because most districts have their own local rules governing motion practice. Moreover, Rule 9006(d) may be overlooked by parties filing and responding to motions because motion practice and contested matters generally are covered by Rules 9013 (form and service of motions) and 9014 (contested matters).

The advisory committee concluded that Rule 9006(d) needed to be retained, but decided that it should be amended, highlighted, and made more like the civil rule on which it is based – FED. R. CIV. P. 6 (computing and extending time; time for motion papers). Unlike the civil rule, though, FED. R. BANKR. P. 9006 does not state in its title that it governs time periods for motion papers. Moreover, Bankruptcy Rule 9006 is not followed immediately by a rule that addresses the form of motions, as in the civil rules – FED. R. CIV. P. 7 (pleadings allowed; form of motions and other papers).

The advisory committee would amend the title of Rule 9006 to add a reference to the “time for motions papers.” Subdivision (d) would be amended to govern the timing of service of any written response to a motion, not just opposing affidavits. The title of the subdivision would be changed from “For Motions–Affidavits” to “Motion Papers.”

**The committee unanimously by voice vote approved the proposed amendments for publication.**

FED. R. BANKR. P. 9013

Judge Wedoff reported that the proposed amendment to FED. R. BANKR. P. 9013 (form and service of motions) would provide a cross-reference to the time periods in FED. R. BANKR. P. 9006(d) to call greater attention to the default deadlines for motion practice. In addition, some stylistic changes would be made to provide greater clarity.

**The committee unanimously by voice vote approved the proposed amendments for publication.**

FED. R. BANKR. P. 9014

Judge Wedoff reported that the proposed amendment to FED. R. BANKR. P. 9014 (contested matters) would add a cross-reference to the time limits for serving motions and responses in FED. R. BANKR. P. 9006(d).

**The committee unanimously by voice vote approved the proposed amendment for publication.**

5. Corrections and Adjustments

FED. R. BANKR. P. 2015(a)

Judge Wedoff reported that FED. R. BANKR. P. 2015(a) (duty to keep records, make reports, and give notice) would be amended with a technical change to correct its reference to § 704 of the Bankruptcy Code from § 704(8) to § 704(a)(8).

**The committee unanimously by voice vote approved the proposed conforming amendment for final approval by the Judicial Conference without publication.**

OFFICIAL FORM 1

Judge Wedoff said that OFFICIAL FORM 1 (voluntary petition) would be amended to include lines for a foreign representative filing a chapter 15 petition to state the

country of the debtor's center of main interests and the countries in which related proceedings are pending. The change merely implements the requirements of new FED. R. BANKR. P. 1004.2 (petition in a chapter 15 case), scheduled to take effect on December 1, 2011.

**The committee unanimously by voice vote approved the proposed conforming amendment for final approval by the Judicial Conference without publication, effective December 1, 2011.**

#### OFFICIAL FORM 7

Judge Wedoff reported that the proposed change to OFFICIAL FORM 7 (statement of financial affairs) would make the definition of an "insider" consistent with the Bankruptcy Code's definition of the term. The form currently defines an insider as one who holds more than a 5% voting interest in a corporate debtor – a bright-line test not found in the Code. The revised form, on the other hand, refers more generally to a person in a position to control the entity. He noted that the proposed change is substantive and needed to be published for public comment.

**The committee unanimously by voice vote approved the proposed amendment for publication.**

#### OFFICIAL FORMS 9A - 9I

Judge Wedoff explained that the proposed changes in OFFICIAL FORMS 9A - 9I (notice of meeting of creditors and deadlines) are technical and would conform the forms to an amendment to FED. R. BANKR. P. 2003(e), scheduled to take effect on December 1, 2011. Rule 2003(e) currently states that a meeting of creditors may be adjourned "by announcement at the meeting of the adjourned date and time without further notice." The 2011 amendment to the rule will require the presiding official to file a written statement for the record specifying the date and time to which the meeting is adjourned.

The revised forms would be amended to make the explanation of the meeting of creditors on the back of the form consistent with the amended rule. In addition, the revised forms correct a spelling error, correct a punctuation error, and call greater attention to the instructions.

**The committee unanimously by voice vote approved the proposed conforming amendments for final approval by the Judicial Conference without publication, effective December 1, 2011.**

#### *Information Items*

### MODERNIZING THE BANKRUPTCY FORMS

Judge Wedoff reported that the advisory committee, working through a subcommittee chaired by Judge Elizabeth L. Perris, was making substantial progress on its major project to modernize the bankruptcy forms. The goals of the project are to avoid redundant information on the forms, make them more user-friendly, elicit more accurate information, and take advantage of technological developments, especially the judiciary's Next Generation of CM/ECF system, currently under development.

He said that the forms project was currently running ahead of the projected deployment of the Next Generation system. A package of forms for use by individual debtors may be ready for publication in August 2012, and the committee may decide to release the forms serially and implement them before the Next Generation system is in place.

He noted that the bankruptcy process relies heavily on forms and added that Judge Perris, chair of the advisory committee's forms modernization project, will serve as the committee's representative on the new inter-committee subcommittee on forms.

### MODEL CHAPTER 13 PLAN

Judge Wedoff said that the advisory committee was considering developing a new model chapter 13 plan form. Under the pertinent case law, bankruptcy judges have an obligation to review proposed chapter 13 plans carefully and to deny any that include improper provisions. In *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. \_\_\_, 130 S. Ct. 1367 (2010), the Supreme Court upheld the enforceability of a chapter 13 plan that called for the discharge of a government-sponsored student loan. A loan of that sort, though, may only be discharged if the debtor brings an adversary proceeding and the bankruptcy court rules that failure to discharge the debt would impose an undue hardship on the debtor and the debtor's dependents.

In *Espinosa*, the discharge was never the subject of an adversary proceeding. But since the bankruptcy court confirmed the plan, even without the necessary finding of undue hardship, the Supreme Court ruled that it was a binding final judgment. The Court noted that bankruptcy judges have an obligation to review a chapter 13 plan carefully, to direct that debtors conform their plan to the requirements of the Bankruptcy Code, and to deny confirmation if the plan does not. But there are thousands of plans that busy judges must review and a great many variations among them. It would be very helpful, he said, to have a standard plan to aid in the review process.

### REVISING THE BANKRUPTCY APPELLATE RULES

Judge Wedoff reported that the advisory committee was proceeding well with its comprehensive revision of the bankruptcy appellate rules (Part VIII of the Federal Rules of Bankruptcy Procedure). It had just conducted a very productive joint meeting with the Advisory Committee on Appellate Rules to discuss issues presented by the intersection of the bankruptcy appellate rules and the Federal Rules of Appellate Procedure.

Professor Gibson added that a working group of advisory committee members, plus the reporter and a member of the appellate advisory committee, would conduct further drafting sessions in July 2011. Professor Kimble, the Standing Committee's style consultant, will then review the draft later in the summer. At its fall 2011 meeting, the advisory committee may be able to approve half, or possibly all, the rules. She said that some rules may be presented to the Standing Committee as early as January 2012, and the full package of proposed rules should be ready for publication in August 2012.

#### ASBESTOS TRUSTS

Judge Wedoff reported that the Chamber of Commerce had suggested a new rule that would require asbestos trusts created in accordance with § 524(g) of the Bankruptcy Code to file quarterly reports with the bankruptcy court that detail each claimant's demand for payment from the trust and each amount paid. He noted that the matter had been referred to the advisory committee's business subcommittee. The subcommittee, he said, had expressed concern over whether the committee has jurisdiction under the Rules Enabling Act to issue a rule requiring a trust to file documents after the debtor's plan has been confirmed and the bankruptcy court has closed the case.

Judge Wedoff said that the committee was in the process of seeking additional information on the matter from interested organizations with relevant expertise. In the meantime, he added, the committee had received a letter from the chairman of the Judiciary Committee of the House of Representatives asking that the proposal move forward.

### RESTYLING THE BANKRUPTCY RULES

Judge Rosenthal pointed out that the committee needed to decide in the not-too-distant future whether the bankruptcy rules should be restyled. She noted that restyling would be a major and difficult project, complicated by the interface of the bankruptcy rules with the Bankruptcy Code. Nevertheless, she suggested, there are various ways in which the matter might be accomplished.

### OFFICIAL SET OF BANKRUPTCY RULES

Judge Wedoff thanked Mr. Ishida for his dedicated and painstaking work in producing the first official version of the Federal Rules of Bankruptcy Procedure and in leading the successful efforts to have the rules printed for the first time in handy pamphlet form by the Government Printing Office.

### REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Kravitz and Professor Cooper presented the report of the advisory committee, as set forth in Judge Kravitz's memorandum and attachments of May 2, 2011 (Agenda Item 5). Judge Kravitz reported that the advisory committee had conducted its April 2011 meeting at the University of Texas Law School in Austin. Chief Justice Jefferson of Texas participated in the meeting, and Justice Stephen Breyer spoke to the committee.

#### *Amendments for Publication*

#### FED. R. CIV. P. 45

Judge Kravitz pointed out that the advisory committee had received many letters from lawyers complaining about the current Rule 45 (subpoenas) and its complexity. In 2008, the committee formed a subcommittee, with Judge David G. Campbell as chair and Professor Richard L. Marcus as reporter, to conduct a comprehensive study of the rule. Most of the members of the subcommittee, he said, were practicing lawyers.

As part of its extensive study, the subcommittee sorted through about twenty different areas for potential amendments to Rule 45, and it eventually settled on four areas that it deemed in need of amendment:

1. Notice of service of a subpoena;
2. Transfer of subpoena-related motions;
3. Trial subpoenas for distant parties and party officers; and
4. Simplification of the rule.

The subcommittee worked with many judges and lawyers in fashioning appropriate amendments to the rule, and in October 2010 it conducted a productive mini-conference in Dallas to obtain feedback from lawyers on the proposed amendments.

1. Notice

Judge Kravitz reported that Rule 45(b)(1) requires that each party be given notice of subpoenas that require document production. The advisory committee was informed that many lawyers are unaware of the notice requirement and regularly fail to comply with it. Accordingly, the advisory committee proposed moving the notice requirement to a more prominent position as Rule 45(a)(4) and adding a new caption entitled “Notice to Other Parties.” The amended rule also requires that the subpoena be attached to the notice, and include trial subpoenas.

Judge Kravitz noted that some attorneys had argued that the rule should go further and require additional notice each time that a subpoena is modified or updated. The American Bar Association had suggested that notice be provided not only of service of the subpoena, but also of compliance with it. Some lawyers wanted the rule to require a description of the materials produced and access to them. The advisory committee, however, unanimously rejected these proposals for two reasons.

First, the committee concluded that a national rule simply cannot prescribe every aspect of the lawyering process needed to obtain documents in a given case. As a practical matter, discovery materials are often produced on a rolling basis. Negotiations and production may occur over a considerable period of time, and lawyers need to communicate directly and periodically with their opponents and with the targets of subpoenas. They may also assert their need for additional notices and access in their Rule 26(f) plans or ask a court to include appropriate provisions in its scheduling order. These matters are too much dependent on context to be addressed by rule text

Second, the advisory committee wanted to avoid litigation over compliance issues. It was concerned that lawyers might be tempted to ask courts to preclude documents from evidence on the grounds that the other side’s notices were inadequate.

2. Transfer

Judge Kravitz explained that the proposed amendments to Rule 45 do not change the direction in the current rule that motions to enforce or quash a subpoena be made in the district of compliance, even though the underlying civil action may be pending in a different district. Proposed Rule 45(f), however, would in very limited circumstances explicitly allow the court for the district of compliance to transfer subpoena-related motions to the court presiding over the main action. He added that the bar was very supportive of including a transfer provision in the rule.

He said that the advisory committee was concerned about the standard for transferring a subpoena dispute, and it wanted to avoid making a transfer so easy that judges might reflexively transfer subpoena disputes on a regular basis. But he pointed out that there are strong reasons in certain cases to have enforcement of the subpoena handled by the judge who presides over the underlying case. The presiding judge, for example, may have already ruled on the same issues raised by the subpoena. The subpoena dispute, moreover, might relate to the merits of the underlying action or impact the judge's management of the case. The committee, he said, had concluded that local production issues should be handled locally in the district of compliance, and only issues affecting the merits or case management should be transferred. To balance these considerations, he said, the committee had decided on a standard that requires "exceptional circumstances" to permit transfer.

A member argued that "exceptional circumstances" was too narrow a standard. He said that the kinds of situations described in the Committee Note, in which a subpoena dispute relates to the merits of the main case, occur quite regularly and are not at all "exceptional." He suggested that "good cause" might be better.

Judge Kravitz said that the advisory committee recognized the importance of allowing the subpoenaed party to litigate a dispute in its own, convenient forum. It wanted to discourage transfers and therefore had selected the narrower term "exceptional circumstances." He noted that the American Bar Association's Litigation Section also favored the narrower standard, as it was concerned that a looser standard might tempt judges to transfer cases to remove them from their dockets. Members added that it might also encourage gamesmanship by some lawyers.

Judge Kravitz explained that the committee was proposing to publish the tougher standard, and it may later relax it if the public comments indicate that the standard should be more permissive. He noted, too, that even if a subpoena dispute is not transferred, the judge in the district of compliance may seek informal advice from the judge presiding over the main case. A participant added that the proposed rule merely establishes a framework for handling enforcement issues, and it is simply not possible to address or resolve every potential problem in a rule. He suggested that the committee note emphasize that point.

Judge Kravitz pointed out that proposed Rule 45(f) would also allow the court in the district of compliance to transfer subpoena-related motions if the parties and the person subject to the subpoena consent to the transfer. A member suggested, though, that only the views of the subpoenaed party should prevail, and the parties should not be allowed to block a transfer. Judge Kravitz agreed to have the advisory committee consider the matter further.



A member pointed out that the proposed language in Rule 45(f) attempts to resolve the issue of legal representation when a case is transferred and the witness does not have a lawyer in the other state. To ease the burden on the witness, who would have to hire another lawyer, the rule creates something akin to an automatic *pro hac vice* admission. It would allow an attorney authorized to practice in the court where the motion is made to file papers and appear in the court in which the action is pending.

A member cautioned that this provision constitutes attorney regulation and would preempt local court rules, state rules, and local legal culture. In effect, he said, the rule would order a district court to accept an out-of-state lawyer to practice before it, even though the lawyer may not be subject to regulation by the state bar or meet other requirements traditionally imposed by the district court. He predicted that the committee will receive negative public comments on the issue. A participant agreed, but emphasized that the particular proposal is limited and restrained, and it is good policy.

Judge Kravitz noted that if enforcement is transferred to the court where the underlying action is pending, that court may have to deal with contempt orders if the subpoena is not obeyed. Therefore, the advisory committee added proposed Rule 45(g), giving the transferee court flexibility to transfer the contempt matter back to the court having jurisdiction over the disobedient party.

Professor Cooper explained that the committee note points out that in the event of a transfer, disobedience constitutes contempt of both the court where compliance is required and the court where the action is pending. Judge Kravitz noted that contempt matters will normally be transferred back to the court of compliance because it is difficult for a judge to hold a person in contempt who is not actually before the judge. He added that the rule raises potential choice-of-law issues, but the committee had decided that these issues were not appropriate for treatment in procedural rules and should be left to case-law development.

### 3. Trial subpoenas

Judge Kravitz explained that there was a split of authority in the case law over whether subpoenas for parties or party officers to testify at trial may compel them to travel more than 100 miles from outside the state. Most recent district court opinions, he said, have followed *In re Vioxx Products Liability Litigation*, 438 F. Supp. 2d 664 (E.D.La. 2006). In *Vioxx*, an officer of the defendant corporation, who lived and worked in New Jersey, was required to testify at trial in New Orleans. The advisory committee, however, noted that there is a growing body of law rejecting *Vioxx*, as exemplified by *Johnson v. Big Lots Stores, Inc.*, 251 F.R.D. (E.D.La. 2008), holding that Rule 45 did not require attendance of plaintiffs at trial in New Orleans when they would have to travel more than 100 miles from outside the state.

The advisory committee concluded that Rule 45 was not intended to create the expanded subpoena power recognized in *Vioxx*, and the *Vioxx* decision should not be followed. The committee was also concerned that allowing subpoenas on an adverse party and its officers without regard to the traditional geographical limits would raise a real risk of lawyers using subpoenas tactically to apply inappropriate litigation pressure and undue burdens on their opponents.

In many cases, moreover, an adverse party's other employees, rather than its distant executives, are the best witnesses to testify about matters actually in dispute in a case. Judge Kravitz suggested that when a truly knowledgeable person chooses not to show up at trial, the jury notices the absence. In addition, he said, there are satisfactory alternatives to compelling personal attendance of distant witnesses at trial, such as audiovisual recording of deposition testimony and testimony at trial by contemporaneous transmission.

Judge Kravitz said that the advisory committee planned on publishing an appendix to the publication package setting out an alternative amendment that leans in the direction of *Vioxx* and permits a judge, for good cause, to order a party or its officer to attend trial and testify. The publication, however, will not indicate that the two choices are of equal value. Rather, it will state that the committee unanimously favors the *Big Lots* approach and rejects the *Vioxx* line of cases. But since there is a clear split of authority on the issue, an opposing approach is set forth in an appendix and comments are invited on both. He noted that at the committee's recent mini-conference, all the defense lawyers supported the *Big Lots* approach, while all the plaintiffs' lawyers, many of whom handle multi-district litigation, favored *Vioxx*.

A member strongly opposed publishing the appendix. Judge Kravitz responded that publication of both versions is advisable because the committee's approach is currently the minority view of the law. Publishing both versions, moreover, will avoid the need to republish the amendments if the public comments were to favor *Vioxx* and the advisory committee were to change its decision and adopt a *Vioxx*-inspired approach. A member added that another reason to publish an alternative text is to enhance the likelihood that the committee will receive thoughtful and focused comments on the issue.

A member observed that there are appropriate cases in which a judge should have authority to compel attendance of a particular executive or party at trial, despite the distance. It may be difficult, he said, to define those situations, but the courts should have discretion to bring in witnesses when they are really needed. Judge Kravitz added that lawyers at the recent mini-conference had said that if the person has meaningful knowledge and is really needed in a case, the court will normally make it clear to the parties that the witness should be brought in for the trial.

4. Simplification of the rule

Judge Kravitz pointed out that the current Rule 45 is very complex and needs to be simplified. The current rule, for example, requires independent determinations regarding the issuing court, the place of service, and the place of performance. To make those determinations, one has to consult ten different sections of the rule.

To simplify the rule, the proposed amendments adopt the approach of the corresponding criminal rule regarding service of a subpoena. Under FED. R. CRIM. P. 17 (subpoenas), a subpoena is issued by the court where the action is pending and may be served anywhere in the United States. But the proposed civil rule differs from the criminal rule by specifying that the court of compliance is the court for the district where the subpoenaed party is located.

A member said that the proposal was a remarkable piece of work that will greatly improve Rule 45, even though he did not agree with a couple of its provisions. He said that it had been very carefully drafted, enjoyed a broad consensus, and should be published essentially as is. He argued against publishing any alternative version.

Judge Kravitz reiterated that the advisory committee was planning to include in the publication a preface stating that the committee has rejected the *Vioxx* view of nationwide service of trial subpoenas, but recognizes that there is a split of authority and welcomes public comments on the matter. He added that the publication will state clearly that each provision in the proposed rule had been approved unanimously by the advisory committee.

**The committee without objection by voice vote approved the proposed amendments for publication.**

#### FED. R. CIV. P. 37

Judge Kravitz noted that the advisory committee was recommending publication of a change in FED. R. CIV. P. 37(b)(1) as a conforming amendment to proposed Rule 45. It would add a second sentence to paragraph (b)(1) specifying that after a subpoena-related motion has been transferred, failure to obey a court order may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

**The committee without objection by voice vote approved the proposed amendment for publication.**

*Informational Items*

## PRESERVATION AND SPOILIATION

Judge Kravitz reported that the advisory committee was actively following up on the key issues raised by the bar at the May 2010 Duke Law School conference, especially those relating to discovery of electronically stored information. In particular, the committee was focusing on potential rule amendments addressing: (1) obligations to preserve information in anticipation of litigation; and (2) imposition of sanctions for failure to preserve. He added that in September 2011 the committee will convene a mini-conference with knowledgeable members of the bench and bar to consider these issues and potential rule amendments.

He said that the advisory committee will consider specific rule proposals on preservation and spoliation at its November 2011 and April 2012 meetings, and it may propose amendments for publication at the Standing Committee's June 2012 meeting.

## PLEADING STANDARDS

Judge Kravitz reported that Dr. Cecil and his colleagues at the Federal Judicial Center had conducted an amazing empirical study to ascertain whether the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, 129 S. Ct. 1937 (2009), have had an appreciable effect on motions to dismiss for failure to state a claim under FED. R. CIV. P. 12(b)(6). He summarized the Center's report as concluding that there was a slight increase in the number of dismissal motions filed in the district courts from 2006 to 2010, but no increase in the percentage of motions granted by the court without leave to amend.

A key conclusion to be derived from the study so far, he suggested, is that civil cases are not being jettisoned out of the federal system in the way that some academic writers have claimed. He noted, though, that the Center's study could not capture whether plaintiffs are simply not filing cases in the federal courts that they might have filed before *Twombly* and *Iqbal*. He added that the committee had asked the Center to begin analyzing the cases in which the courts granted a motion to dismiss, but with leave to amend, to see what happened later in those cases. The Center will also attempt to ascertain whether any discovery preceded the amendments to the complaints and whether the amendments repaired the problems in the complaints.

## FORMS

Judge Kravitz reported that the advisory committee was contemplating removing the illustrative civil forms from the full operation of the Rules Enabling Act process. He pointed out that some of the forms, such as the patent infringement complaint form, are

of questionable validity and have been subject to criticism. The committee, though, would probably continue to deal with forms in some way. One alternative would be to abrogate FED. R. CIV. P. 84 (forms) and have the forms handled like the bankruptcy forms, for which Judicial Conference approval is sufficient. Another approach would be to have the forms issued and maintained by the Administrative Office with committee approval.

Judge Rosenthal added that the advisory committees currently handle forms in a variety of different ways, and greater consistency among the different sets of rules might be in order. She said that she would appoint an inter-committee Forms Subcommittee, led by representatives of the Advisory Committee on Civil Rules and chaired by Judge Gene E. K. Pratter. The subcommittee will coordinate information among the advisory committees, but most of the work will be done by each advisory committee separately conducting a detailed examination of its own forms. The work, she said, will begin in the summer of 2011. Judge Kravitz added that the advisory committee may make a recommendation to the Standing Committee regarding FED. R. CIV. P. 84 in June 2012.

#### DUKE SUBCOMMITTEE

Judge Kravitz reported that the advisory committee had appointed an ad hoc subcommittee, chaired by Judge John G. Koeltl, to implement the recommendations made at the 2010 Duke Law School conference. The subcommittee's work, he said, was proceeding hand-in-hand with that of the committee's discovery subcommittee. Its scope of inquiry includes not only potential changes to the Federal Rules of Civil Procedure, but also potential pilot projects and experiments conducted by the Federal Judicial Center and others and educational efforts to educate judges about what they can do to make better use of the many management tools provided by the present rules.

He reported that participants at the Duke conference had emphasized that more cooperation among parties and lawyers was needed in the discovery process to reduce unnecessary costs and delay. In addition, they stressed the importance of bringing greater proportionality to the discovery process, as contemplated in FED. R. CIV. P. 26(b)(2)(C). He added that proportionality is also a key concept in determining a party's need to preserve materials in anticipation of litigation.

Judge Kravitz said that the advisory committee was not proposing rule amendments addressing cooperation and proportionality at this time. But he reported that Judge Paul W. Grimm, a member of the committee, was developing a set of materials to provide detailed guidance on the importance of proportionality in civil discovery and to give practical examples for the bench and bar to work with.

## FED. R. CIV. P. 6(d)

Judge Kravitz noted that Rule 6(d) (additional time after certain kinds of service) contains a glitch resulting from a 2005 amendment that established a uniform rule for calculating three added days. Until 2005, the rule had been clear that a party has three added days to act after service “upon the party” by certain designated means. The amended rule, though, merely provides three added days “after service.” That revised language may be read as giving additional time to both the serving party and the party being served. To restore the rule to its intended meaning, the advisory committee would simply change the language of Rule 6(d) to state that: “When a party may or must act within a specified time after service being served . . . 3 days are added after the period would otherwise expire. . . .”

Judge Kravitz noted that there may be other places in the rules where changes have introduced unintentional errors. The question before the committee, therefore, concerns timing – whether the advisory committee should correct any errors as it uncovers them or accumulate the fixes and include them in a package of non-controversial, technical amendments. The glitch in Rule 6(d), he emphasized, had not caused any problems, and there has been no case law on it. That fact, he said, argues for deferring making a corrective amendment at this time. Moreover, the rule will likely need to be reconsidered in the near future to determine whether to eliminate electronic service as one of the service methods that trigger the extra three days for the receiving party to act.

**REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES**

Judge Tallman and Professor Beale presented the report of the advisory committee, as set forth in Judge Tallman’s memorandum and attachments of May 12, 2011 (Agenda Item 7).

*Amendments for Final Approval*

## FED. R. CRIM. P. 5(c)(4)

Judge Tallman reported that the proposed amendment to FED. R. CRIM. P. 5(c)(4) (initial appearance for persons extradited to the United States) clarifies that the initial appearance for a defendant charged with a criminal offense in the United States, arrested outside the country, and surrendered to the United States following extradition must be held in the district where the defendant has been charged. He added that the rule applies even when a defendant arrives first in another district and has already been informed of his or her rights during the earlier stages of the extradition proceedings. The amendment,

he said, will avoid the delay in the extradited person's transportation resulting from an unneeded initial appearance in the district of initial arrival in the United States.

**The committee without objection by voice vote approved the proposed amendment for final approval by the Judicial Conference.**

FED. R. CRIM. P. 5(d) and 58(b)(2)(H)

Judge Tallman explained that the United States has treaty obligations that require it to advise detained foreign nationals that they may have their home country's consulate notified of their arrest and detention. The executive branch, through the Department of Justice, is responsible for informing the defendants, and the Department has effective procedures and training programs in place to do so. Bilateral agreements with numerous countries also require consular notification whether or not the detained foreign national requests it.

The proposed amendment to FED. R. CRIM. P. 5(d) (initial appearance in a felony case) was designed as a back-up precaution to ensure that the government fulfills its international obligations to make the required consular notification. It will also produce a court record establishing that the defendant has been notified.

The proposed amendment to FED. R. CRIM. P. 58(b)(2)(H) (initial appearance in a misdemeanor case) would add the identical requirement in misdemeanor cases.

**The committee without objection by voice vote approved the proposed amendments for final approval by the Judicial Conference.**

FED. R. CRIM. P. 15

Judge Tallman reported that the proposed amendments to Rule 15 (depositions) would establish a clear procedure for taking depositions outside the United States without the defendant's presence in certain limited circumstances if the district court makes a number of case-specific findings. The amendments had been presented before to the Supreme Court for approval, but the Court returned them without comment to the advisory committee in 2010 for further consideration.

The advisory committee, he said, believed that the Supreme Court's concern was over the ultimate admissibility of the deposition as evidence at trial. He pointed out that the committee note accompanying the rule had made it clear that a district judge's decision to permit a deposition to be taken under revised Rule 15 was an entirely separate matter from the later judicial determination of whether the deposition should be admitted into evidence at trial.

Judge Tallman reported that the advisory committee had voted to resubmit the proposed rule to the Judicial Conference and the Supreme Court. At first, it decided not to change the text of the rule, but to give greater prominence in a revised committee note to the difference between taking a deposition and admitting evidence. But after further consultation among the committee chairs and reporters of the criminal rules committee, the evidence rules committee, and the Standing Committee, a consensus was reached that it would be desirable to make that point explicitly in Rule 15(f) itself. Accordingly, in a handout distributed at the meeting, the advisory committee recommended that the Standing Committee add the following text to Rule 15(f): “An order authorizing a deposition to be taken under this rule does not determine its admissibility.”

In addition, the advisory committee revised the committee note further to clarify the relationship between the authority to take a deposition under Rule 15(c)(3) and the admission of deposition testimony at trial. The revised note therefore states that although “a party invokes Rule 15 to preserve testimony for trial, the Rule does not determine whether the resulting deposition will be admissible in whole or in part.”

He noted that the defense bar had understandably opposed the rule on Confrontation Clause grounds. That, he said, is further reason to clarify the bifurcated nature of the proceedings and emphasize the limited scope of the amendments.

Judge Tallman explained that the amendments establish a two-step process: (1) court authorization to take a deposition; and (2) later, if an objection is made, a court ruling on admissibility of some or all of the deposition at trial. He noted that the party conducting the deposition may not in fact seek to introduce it at trial. Circumstances may change, for example, and it may become possible later to bring the witness to the United States to testify at trial.

The courts, he said, will determine admissibility on a case-by-case basis applying the Constitution and the Federal Rules of Evidence. A court, moreover, might not admit a deposition into evidence because of the Confrontation Clause or FED. R. EVID. 402. It might refuse to admit it because of unforeseen problems created by foreign law or foreign officials in taking the deposition, or because of problems with the technical equipment, communications, or recording.

He pointed out that courts will continue to be faced with ad hoc requests to take depositions outside the United States. International criminal investigations are increasing as the world grows smaller, and courts have been adapting and authorizing new evidence-gathering techniques on a case-by-case basis. The advisory committee, he said, was firmly convinced that the Department of Justice had made the case for the proposed procedure and had concluded that it was appropriate to establish a uniform, national procedure through Rule 15. The proposed amendments, he added, were modeled in large



part on procedures approved by the Fourth Circuit in *United States v. Ali*, 528 F.3d 210 (4<sup>th</sup> Cir. 2008), *cert. denied*, 129 S. Ct. 1312 (2009).

A member urged that the proposed amendments be given particularly careful reflection because the Supreme Court had returned the earlier version of the same proposal without approving it. The advisory committee, moreover, was now only making a small change in the rejected proposal, based on what it believes to have been the Court's concern over admissibility.

A member said that she had no problem with approving the revised proposal and sending it back to the Supreme Court with the recommended changes in the rule and the committee note. She added that it might be helpful to include information in the note stating that the rule applies only to the United States legal system and does not attempt to govern whatever laws there are in other countries. Many foreign countries, for example, require that any deposition be taken only in accordance with their own court procedures.

A member observed that the current Rule 15 could be construed as only permitting depositions to be taken if the defendant is physically present. Therefore, some judges may now deny authorization for any foreign deposition outside the defendant's presence. The proposed rule, therefore, is an improvement because it will remove that potential impediment and permit a judge to authorize a foreign deposition in the defendant's absence in limited, appropriate circumstances. The situations in which the revised rule will be used are very few, and courts have been handling them to date on an ad hoc basis.

The member asked whether it would be better for the proposed rule to make it clear that Rule 15 does not absolutely foreclose foreign depositions at which the defendant is not present, without detailing all the specific conditions that would have to be met. As drafted, the proposed amendments are very strict in setting forth all conditions that have to be met. Clearly, they are designed that way deliberately to maximize the likelihood of eventual admissibility of the testimony. But the revised rule later goes on to state that it does not govern admissibility. That seems strange because admissibility is the very reason for taking the deposition.

It is possible, she said, that the Supreme Court might eventually rule that no set of circumstances will permit a deposition to be taken in the defendant's absence. At that point, the courts will be left with a rule that imposes strict conditions, even in cases where the Confrontation Clause may not be implicated. But compliance with the conditions will never lead to admissible evidence. Moreover, by listing all the specific conditions, the revised rule may invite satellite litigation. It might well be more effective just to allow a deposition to be taken at the court's discretion and then admit if it satisfies the requirements of the Sixth Amendment and the Federal Rules of Evidence.

Deputy Attorney General Cole stated that the rule will rarely be used, but it is very much needed in certain cases. The potential occasions for its use cannot all be foreseen, but they are expanding every day with the gathering of evidence of international crimes that impact the United States. The proposed rule, he said, had been carefully crafted to achieve the right balance between admissibility of essential information in a few important criminal cases and protecting defendants' rights under the Confrontation Clause. It will be used only in situations where a deposition is truly important – in large part because of restrictions imposed by foreign countries and the amount of effort it takes for the Department of Justice to coordinate with the State Department and others in arranging for depositions overseas.

He said that the Department was comfortable with the strict criteria set out in the rule and did not find them onerous. The rule will, he said, provide welcome guidance to judges and help the Department establish a record that will assist it in obtaining admissibility.

**The committee without objection by voice vote approved the proposed amendments for final approval by the Judicial Conference.**

FED. R. CRIM. P. 37

Judge Tallman reported that FED. R. APP. P. 12.1 and FED. R. CIV. P. 62.1, which took effect on December 1, 2009, established a uniform national procedure for obtaining indicative rulings. The proposed new FED. R. CRIM. P. 37, he said, is parallel to FED. R. CIV. P. 62.1 and would make the indicative ruling procedure applicable in criminal cases.

The proposed new rule would facilitate remand from the court of appeals when certain post-judgment motions are filed in the district court after an appeal has been docketed and the district court has stated that it would grant the motion if the court of appeals were to remand for that purpose or that the motion raises a substantial issue. The matter might arise, for example, if the district court were to state that it would grant a motion for a new trial on the basis of newly discovered evidence.

**The committee without objection by voice vote approved the proposed new rule for final approval by the Judicial Conference.**

*Amendments for Publication*

FED. R. CRIM. P. 12

Judge Tallman explained that the Supreme Court in *Cotton v. United States*, 535 U.S. 625 (2002), changed what had previously been thought to be the law by holding that an indictment's failure to state an offense does not deprive the court of jurisdiction over

the case. But FED. R. CRIM. P. 12 (pleadings and pretrial motions) currently allows a claim that the indictment fails to state an offense to be raised at any time, even on appeal, because it had been thought to be jurisdictional.

Based on a request from the Department of Justice, the advisory committee decided to amend Rule 12, in light of *Cotton*, to require that a motion to dismiss an indictment for failure to state an offense be made before trial. The proposed change, however, opened up a number of difficult issues concerning the appropriate standard for relief when a claim is untimely filed. In addition, Standing Committee members expressed concern over whether the term “waiver” should continue to be used in the rule and whether other types of motions should also be revisited.

Judge Tallman reported that the advisory committee had been studying proposals to amend Rule 12 since 2006, and amendments were now before the Standing Committee for the third time. He pointed out that at the last Standing Committee meeting, in January 2011, members had offered comments that were enormously helpful in guiding the advisory committee’s current proposal.

The advisory committee, he said, undertook an additional, comprehensive review and approved a more fundamental revision of Rule 12 at its April 2011 meeting. The current version, which the committee now seeks approval to publish, addresses all the members’ concerns and makes some additional improvements in the rule.

Proposed Rule 12(b)(1), he said, specifies that a motion asserting that the court lacks jurisdiction may be made at any time while a case is pending. Proposed Rule 12(b)(3) then lists all the common defenses, objections, and requests that must be raised by motion before trial. For those motions, the revised rule introduces a new factor for determining whether a motion must be raised before trial – that the basis for the motion was “then reasonably available.” The motion must also be able to be determined without a trial on the merits. The outdated reference in the current rule to “a trial of the general issue” would be deleted.

Proposed Rule 12(c) specifies the consequences for not timely raising those motions. Judge Tallman said that courts have struggled with the concepts of “waiver” and “forfeiture” and the respective consequences of each. They have also struggled with the tension between the standards of relief under the current Rule 12 and the plain error standard under Rule 52 (harmless and plain error).

Proposed Rule 12(c), he said, would resolve the current confusion and specify the consequences of not making a timely motion. Generally, it provides that untimely motions will be extinguished and not considered on the merits unless the party shows both good cause and prejudice – as the Supreme Court has held in interpreting the “good

cause” standard in the current Rule 12(e) in *Davis v. United States*, 371 U.S. 233, 242 (1973), and *Shotwell Mfg. Co. v. United States*, 371 U.S. 341, 363 (1963).

The rule, however, makes two exceptions for late-filed motions that may be excused more readily. Under proposed Rule 12(c)(2)(B), a party need only show prejudice if the defense or objection is based either on failure of the indictment to state an offense or on double jeopardy.

Judge Tallman said that double jeopardy requires special treatment and a more lenient standard for relief. He noted, for example, that a defendant may raise the issue of double jeopardy even after having entered a guilty plea.

A member warned that some judges may object to the proposed rule change because they believe that double-jeopardy claims are no different from any other defense. Professor Beale said that there is a good deal of case law on the matter. Although the law is not uniform, most cases currently give double-jeopardy claims preferential treatment under Rule 12 and analyze a late-filed claim for “plain error.” Rather than have three different standards in the rule – cause plus prejudice, prejudice only, and plain error – she explained that the advisory committee decided to abandon the “plain error” test and let double-jeopardy claims, like claims of failure to state an offense, be governed by the prejudice-only standard. The change would likely not affect the result of any case.

A member recommended that the rule be published as presented but that the issue of double jeopardy be highlighted for comment in the publication or transmittal letter. Judge Tallman agreed with the suggestion.

Judge Tallman said that the proposed rule will clarify a difficult area of the law, provide guidance to both bench and bar, and lead to more uniform, nationwide application of the rule. Moreover, by specifying that Rule 52 does not apply, the rule will clarify how cases should be handled on appeal. The standards set forth in Rule 12 will apply exclusively, both in the trial courts and on appeal.

A member noted that a district court currently may forgive a matter not timely raised before trial for good cause, and it should continue to have maximum flexibility before trial to forgive any matter not raised in a timely manner. The proposed rule, however, requires a showing of both cause and prejudice at any stage.

Professor Beale responded although the rule itself is strict, it gives the court considerable leeway to be lenient in appropriate circumstances. Rule 12(b)(3) states that motions must be made before trial, but Rule 12(c)(1) and (2) allow the court to set a deadline for making motions and to provide extensions of the deadline. Judge Tallman also pointed to the language in paragraph 12(b)(3) that the basis for the motion must have been “then reasonably available.”

Several members praised the advisory committee for its accomplishment and noted that all their concerns from earlier meetings had been addressed. Some offered suggestions for specific changes in the language of the proposed rule and committee note. Judge Tallman agreed to make further edits before publication.

**The committee without objection by voice vote approved the proposed amendments for publication.**

FED. R. CRIM. P. 34

Judge Tallman noted that the proposed amendment to Rule 34(b) (arresting judgment) conforms to the proposed amendments to FED. R. CRIM. P. 12(b). It would delete language from the current rule that the court “at any time while the case is pending . . . may hear a claim that the indictment or information fails to . . . state an offense.” The revised rule will require that a defect in the indictment or information be raised before trial. He noted that the Standing Committee had previously approved the conforming amendment to Rule 34. Therefore, there was no need to seek further approval.

*Informational Items*

FED. R. CRIM. P. 16

Judge Tallman reported that the advisory committee at its April 2011 meeting had decided not to proceed at this time with any proposed amendments to Rule 16 (discovery and inspection) dealing with the government’s obligation to disclose exculpatory and impeaching information under *Brady v. Maryland*, 373 U.S. 83 (1963). He explained that the committee could not reach a consensus on rule language that would effectively solve the problems that proponents of the amendments had cited regarding the failure of certain prosecutors to turn over needed information. Moreover, the Federal Judicial Center’s recent survey had shown that there is a lack of consensus within the judiciary as to whether an amendment to Rule 16 is needed. The committee also had not been convinced that a rule change would actually prevent or dissuade an unscrupulous prosecutor from knowingly withholding exculpatory or impeaching information.

Judge Tallman thanked the Department of Justice for its comprehensive efforts to address its disclosure obligations through various internal means, including revision of the Department’s manuals, compulsory training programs for prosecutors and staff, district-wide disclosure plans, local points of contact, and appointment of a national disclosure coordinator. Deputy Attorney General Cole added that the Department was further institutionalizing its policies by making the national criminal discovery coordinator a permanent position.

Judge Tallman thanked the Federal Judicial Center for its excellent research efforts, including the massive survey soliciting the views of judges and lawyers on disclosure of exculpatory and impeaching information. He also noted that the advisory committee was working with the Center to improve training for judges regarding disclosure issues, to create a good-practices guide on criminal discovery, and to amend the *Bench Book for U.S. District Court Judges* to provide additional practical advice for judges on how to handle disclosure issues.

### **REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES**

Judge Fitzwater and Professor Capra presented the report of the advisory committee, as set forth in Judge Fitzwater's memorandum and attachments of April 8, 2011 (Agenda Item 8).

Judge Fitzwater reported that the advisory committee had held its April 2011 meeting at the University of Pennsylvania Law School in Philadelphia and had one amendment to present for publication.

#### *Amendment for Publication*

#### FED. R. EVID. 803(10)

He explained that the proposed amendment to Rule 803(10) (hearsay exception for the absence of a public record) responds to the Supreme Court's decision in *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009). In that case, the Court held that certifications reporting the results of forensic tests conducted by analysts are "testimonial" under the Confrontation Clause, as construed in *Crawford v. Washington*, 541 U.S. 36 (2004).

Under *Melendez-Diaz*, admitting a certification in lieu of in-court testimony violates the accused's right of confrontation. Likewise, it would be constitutionally infirm to admit a certification under FED. R. EVID. 803(10) offering to prove the absence of a public record. In both cases, admission would allow the truth of a matter to be proven by a written certification without live testimony.

Judge Fitzwater said that the proposed amendment to Rule 803(10) was based on a notice-and-demand procedure used in Texas and sanctioned in the Supreme Court's decision in *Melendez-Diaz*. The amendments specify that a prosecutor who intends to offer a certification must provide the defendant advance written notice of that intent at least 14 days before trial. The defendant is then given seven days to object in writing to use of the certification, putting the prosecutor on notice to produce the official preparing the certification at trial. If the defendant does not timely object, the certification may be

admitted. Professor Capra added that the advisory committee had worked closely with the Department of Justice and the federal public defenders in preparing the language of the proposal.

**The committee without objection by voice vote approved the proposed amendment for publication.**

### *Informational Items*

#### SYMPOSIUM

Judge Fitzwater reported that the advisory committee will hold a symposium in October 2011 at William and Mary Law School to celebrate the restyled evidence rules – six weeks before the rules take effect. Several members of the Standing Committee will participate as panelists. One panel will look back at the decisions made during the restyling process. Another will explore the evidence issues likely to be considered in the future. The proceedings, he said, will eventually be printed in the *William and Mary Law Review*.

#### FED. R. EVID. 801

Judge Fitzwater said that the advisory committee at its April 2011 meeting had considered a proposed amendment to Rule 801(d)(1)(B) (hearsay exemption for certain prior statements) suggested initially by Judge Frank W. Bullock, Jr., a former member of the Standing Committee. He had proposed that the rule be amended to provide that all prior consistent statements be admissible under the hearsay exemption whenever they would be admissible to rehabilitate the witness's credibility. The amendment would eliminate the distinction between admission of a prior consistent statement solely for impeachment purposes and admission of the statement for its truth.

A member expressed strong support for the change and said that juries never understand the distinction and always use the prior consistent statement for all purposes, even though instructed that it may be used only for impeachment. Judge Fitzwater said that the advisory committee would take up a proposed amendment at its October 2011 meeting and was in the process of soliciting the views of interested parties and researching practices in state courts that have similar rules.

### **RULES COMMITTEE PROCEDURES**

Ms. Kuperman reported that she, the committee reporters, and the rules staff had made additional changes in the draft revisions to *Procedures for the Conduct of Business*

*by the Judicial Conference Committees on Rules of Practice and Procedure.* An earlier draft had been presented to the committee at its January 2011 meeting.

She noted that the recent refinements defined such matters as: the appropriate standard for republishing proposed amendments, which documents comprise the official records of the committees, which records should be posted on the rules website, whether transcripts should be prepared of public hearings, and when hearings may be canceled because of insufficient public interest.

**The committee unanimously by voice vote approved the proposed revisions in the committee procedures for approval by the Judicial Conference.**

## **STRATEGIC PLANNING**

### *Judiciary's Strategic Plan*

Judge Rosenthal reported that Judge Charles R. Breyer, the Judiciary Planning Coordinator, had written to all Judicial Conference committees on May 5, 2011, seeking information on their efforts to implement the Judiciary's *Strategic Plan*. Specifically, he asked them to: (1) verify and update the information they had previously provided regarding the strategic initiatives they are pursuing; and (2) begin to consider how to measure progress in implementing the *Strategic Plan*. He also asked the committees at their June 2011 meetings to identify how they will assess whether each initiative's outcome has been met and the metrics they use to gauge progress.

Judge Rosenthal asked the committee to consider a draft committee response that she had prepared in response to Judge Breyer's requests.

**The committee unanimously by voice vote approved sending the proposed response to the Judicial Conference's Advisory Committee on Judiciary Planning.**

### *Status of the Rules Program*

Judge Rosenthal said that the work of the rules committees was of a uniformly high standard and pointed out that the agenda book currently before the committee was excellent. She emphasized that a great deal of detailed work is needed on an ongoing basis to prepare a dozen committee agenda books each year, an annual package of proposed rule amendments for publication and comment, an annual package of rule amendments and supporting documents for the Supreme Court, and numerous letters and reports to Congress. All the work, moreover, has to be perfect.



She said that each committee has an excellent chair, reporters, and membership. She explained that the chair, with the help of others, makes recommendations to the Chief Justice on a regular basis of individuals who would be outstanding future members. She asked the members to help her and her successor, Judge Kravitz, in identifying people who would be candidates for the committees in the future.

She noted that one of the committees' overarching concerns is guaranteeing productive relations with Congress. She said that the committees currently have very good communications with the Hill and work hard to maintain them. It is essential, she added, that the rules committees continue to be viewed as truly professional and truly nonpartisan. She emphasized that the committees' work is subject to great public scrutiny, and it is becoming more common to receive last-minute calls from Congressional staff motivated by suggestions made by opponents of particular amendments. She predicted that those calls would likely continue, and the committees will have to be prepared to deal with them.

She noted that the committees had succeeded well in explaining the Rules Enabling Act process to Congressional staff and demonstrating how careful and meticulous the committees are in their work. But these educational efforts, she said, are complicated by the regular turnover in Congressional staff, as well as in members of Congress. The work of the rules committees, she said, is very different from the legislative process that Congress is used to. Moreover, unlike the Congressional process, the work of the rules committees, and the positions the committees take, defy partisan lines.

Judge Rosenthal reported that the committees' relations with the Supreme Court are very important. She noted that the Standing Committee chair and reporter meet every year with the chief justice to make sure that he is apprised of pending rules projects and proposed amendments. She added that both Chief Justice Roberts and Justice Alito are alumni of the rules committees. The other members of the Court, though, may not know in detail how the committees operate. She said that she was pursuing the idea of having an informal discussion with the full Court about how the committees do their work and what projects they are working on.

She pointed out that relations with the Department of Justice are also very important and have been very productive. Department officials serve on each of the committees, and Department staff have been extremely cooperative and helpful.

She noted that the committees need to be more effective in their relationships with other Judicial Conference committees and with other parts of the Administrative Office. She emphasized that the rules committees gain a great deal of useful information regarding court practices and procedures as part of their detailed work under the Rules

Enabling Act process. They also have an important interest in implementing the rules and educating judges and lawyers about them.

The committees, she said, need to be more consistent in following up on suggestions made to other committees. She urged closer coordination, in particular, with the Court Administration and Case Management Committee, mentioning the recent collaborative efforts with that committee on the privacy and sealing reports. She pointed out that the committees were also working closely with the Federal Judicial Center on revising the *Bench Book for U.S. District Judges*, suggesting educational programs for judges, and producing guidebooks and other supporting information.

She suggested that the committees' relationship with the academy is not where it needs to be. She noted that several law professors had expressed skepticism about the rules process during the recent debates on the impact of the Supreme Court's decisions in *Twombly* and *Iqbal*. She recommended that the committees meet more often at law schools and invite law professors to observe and participate in what the committees do and how they do it. In addition, it would be beneficial, both for the students and the professors, for committee members to go to law schools and teach classes explaining the rules process. It is also essential to continue inviting law professors to attend the various committee special programs and mini-conferences.

Judge Rosenthal pointed to the close and growing relations between the committees and the American Bar Association and other bar organizations. She said that the committees had encouraged ongoing working relations with the major bar associations, but more work was needed in the area of criminal rules. She noted that a meeting had been held with representatives of the National Association of Criminal Defense Lawyers, and the association had been invited to send a member as liaison to the rules meetings. She added that more outreach could also be done with the bankruptcy community. It is likely, she said, that there will be political opposition in Congress to some of the proposed bankruptcy rules.

She reported that all the rules committees have to deal with the twin issues of the impact of technology and the tension between making all records and proceedings widely available to the public and protecting valid privacy interests. She suggested that the committees need to examine all the rules to consider the impact of technology on the legal process.

Finally, Judge Rosenthal thanked the Administrative Office staff for their excellent work in supporting all the many functions of the rules committees and the Federal Judicial Center for its superb efforts on all the many research projects that the committees have asked it to undertake.

**NEXT MEETING**

The committee will hold its next meeting on Thursday and Friday, January 5 and 6, 2012, in Phoenix, Arizona.

Respectfully submitted,

Peter G. McCabe,  
Secretary



# TAB 4A



## MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: SUGGESTION TO AMEND RULE 3002(a) TO REQUIRE SECURED CREDITORS TO FILE PROOFS OF CLAIM

DATE: AUGUST 26, 2011

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Judge A. Benjamin Goldgar (Bankr. N.D. Ill.) has submitted a suggestion (11-BK-B) to amend the Bankruptcy Rules to require secured creditors to file proofs of claim. Rule 3002(a) currently provides that “[a]n *unsecured* creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed . . . .” (emphasis added). The omission of secured creditors from Rule 3002(a) has led to some confusion, with courts disagreeing on two related questions: whether a secured creditor must file a proof of claim to participate in a Chapter 13 plan, and whether a nongovernmental secured creditor must file a proof of claim within 90 days of the meeting of creditors, as required by Rule 3002(c). Judge Goldgar’s suggestion was referred to the Subcommittee on Consumer Issues, which discussed the matter during its July 26, 2011, conference call. The Subcommittee concluded that the issue deserves further study. Because the omission of secured creditors from Rule 3002(a) has the greatest impact in Chapter 13 cases, the Subcommittee recommends that the Advisory Committee fold the suggestion into the ongoing project to draft a model Chapter 13 plan and related amendments to the Bankruptcy Rules.

This memorandum gives a background of the issue before explaining the Subcommittee’s recommendation. First, the memorandum describes the competing interpretations of secured creditors’ obligations to file proofs of claim to participate in Chapter 13 plans. Second, it lays

out the differing opinions on the related question whether secured creditors must file proofs of claim in accordance with the time limitations of Rule 3002(c). Third, the memorandum discusses the Subcommittee's consideration of the merits of an amendment to the Bankruptcy Rules.

### **Rule 3002(a) and the Treatment of Secured Creditor Claims**

In general, a secured creditor does not have to file a proof of claim during bankruptcy to preserve an interest in collateral, because a lien survives bankruptcy unaffected unless modified by a plan. *See Dewsnup v. Timm*, 502 U.S. 410, 417-18 (1992). In a Chapter 13 case, however, the debtor has the option to keep the collateral, and secured creditors who elect to be provided for by the plan can receive payments for the value of the collateral from the trustee. The Code presupposes that secured claims provided for by a Chapter 13 plan are "allowed." 11 U.S.C. § 1325(a)(5). The debtor may keep property securing a creditor's claim, over the creditor's objection, if the plan provides for payment of the present value of the "allowed amount of the claim." *Id.* § 1325(a)(5)(B)(ii). Moreover, Rule 3021 provides that following plan confirmation, distributions "shall be made to creditors whose claims have been allowed."

The omission of secured creditors from Rule 3002(a) has led to inconsistent interpretations of secured creditors' obligation to file proofs of claim in Chapter 13 cases. Code § 502 deems a claim filed in keeping with § 501 to be an allowed claim, absent objection. Because § 502 does not make an exception for secured claims, two distinct interpretations have arisen of the circumstances under which a secured creditor must file a proof of claim to participate in the Chapter 13 plan process and plan distributions. The first interpretation holds that *all* secured creditors are required to file proofs of claim. In a 2003 decision, Judge Goldgar reached that conclusion. Despite the omission of secured creditors from Rule 3002(a), he reasoned that secured claims could not be deemed "allowed" under § 502 unless they were filed.



*See In re Gonzalez*, 295 B.R. 584, 588 (Bankr. N.D. Ill. 2003) (“[A] secured creditor must have an ‘allowed claim’ and . . . a claim is not ‘allowed’ unless it is filed . . .”). Furthermore, were the secured claims not “allowed,” he concluded they would not be eligible for inclusion in the plan during confirmation under § 1325(a)(5), nor would the secured creditors be eligible for payments under the plan pursuant to Rule 3021.<sup>1</sup> *Id.*; *see also In re Schaffer*, 173 B.R. 393, 395 (Bankr. N.D. Ill. 1994).

The second interpretation of secured creditors’ obligations in Chapter 13 cases holds that secured creditors provided for in the plan must file proofs of claim only if they are not satisfied with the amount the plan proposes to pay them. *See In re Dennis*, 230 B.R. 244, 252 (Bankr. D.N.J. 1999). Under this view, if a secured creditor is satisfied with the amount to be recovered on its secured claim under the plan, the secured creditor may be provided for and receive payments under the plan without filing a proof of claim. *Id.*; *see also In re Miller*, 2007 WL 81052, \*6 (Bankr. W.D. Pa. 2007). Courts adhering to this interpretation find that it flows from the general principle that a secured creditor’s lien survives bankruptcy unless the plan proposes to modify the lien. *See In re Dennis*, 230 B.R. at 252 (citing *Dewsnup*, 502 U.S. at 418). Under that reasoning, if the secured creditor is satisfied with the proposed payment under the plan, then the lien is in essence not being modified. *Id.* If the plan proposes to pay the creditor less than the creditor believes is due, then the plan would in effect modify the lien, and the secured creditor should then object by filing a proof of claim. *Id.* (“If a chapter 13 plan does not propose to modify a secured claim, then *by virtue of Rule 3002(a)* the secured creditor is not required to file a proof of claim . . .”) (emphasis added)).

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<sup>1</sup> Nevertheless, Judge Goldgar invoked the “informal proof of claim” concept to find that the creditor’s objection to the plan in the case should be treated as a proof of claim entitling the creditor to participate in the plan process. *In re Gonzalez*, 295 B.R. 584, 588-89 (N.D. Ill. 2003).

### **Rule 3002(c) and the Timing of Secured Creditor Claims**

Rule 3002(a)'s omission of secured creditors has resulted in an ancillary split over whether secured creditors must abide by the deadline for filing proofs of claim in Rule 3002(c). Rule 3002(c) provides that in cases under Chapters 7, 12, and 13, "a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors . . ." <sup>2</sup> followed by a number of narrow exceptions not relevant to this discussion. All courts agree that Rule 3002(c) applies to unsecured creditors, but courts are split as to whether Rule 3002(c)'s 90-day limitation applies when secured creditors are seeking to participate in the Chapter 13 plan process or receive plan distributions. Mark Glover, *Timely Filing in Chapter 13 Bankruptcy Cases: Does Rule 3002(c)'s Deadline Apply to Secured Creditors?*, 87 Boston U. L. Rev. 1231, 1233 (2007).

Some courts read Rule 3002(c) in combination with Rule 3002(a) and do not apply the 90-day time bar to claims by secured creditors. *See In re Mehl*, 2005 WL 2806676 at \*4 (Bankr. C.D. Ill. Oct. 25, 2005) (acknowledging that proofs of claim are required from all secured creditors seeking Chapter 13 plan distributions, but declining to label secured proofs of claim filed after the Rule 3002(c) deadline as untimely); *see also In re Kreisler* 331 B.R. 364, 384-385 (Bankr. N.D. Ill. 2005); *In re Adams*, 264 B.R. 901, 904 (Bankr. N.D. Ill. 2001).

Other courts, however, do not read Rule 3002(c) in tandem with Rule 3002(a). These courts apply Rule 3002(c)'s 90-day limitation to secured creditor claims because Rule 3002(c), when read alone, does not expressly distinguish between secured and unsecured claims. *See In re Boucek*, 280 B.R. 533, 537 (Bankr. D. Kan. 2002) ("There is no distinction made between secured creditors and unsecured creditors [in Rule 3002(c)]. Nor does subsection (c) refer back

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<sup>2</sup> Governmental creditors are given the option of filing either 180 days after the date of the order of relief or 60 days after the date of the filing of a tax return if the claim results from a tax return filed under § 1308. Fed. R. Bankr. P. 3002(c)(1).

to subsection (a) . . . .”) (time barring untimely filed secured claim in Chapter 12 proceeding). The leading opinion for this camp, *In re Macias*, explains that the 90-day deadline should apply to secured claims as well as unsecured claims to provide the trustee with the certainty necessary for orderly and effective payment distribution. 195 B.R. 659, 662-663 (Bankr. W.D. Tex 1996); *see also In re Mickens*, 2005 Bankr. LEXIS 191, 2005 WL 375661 (Bankr. D.D.C. Feb. 14, 2005); *In re Kelley*, 259 B.R. 580, 584 (Bankr. E.D. Tex. 2001); *In re Michels*, 270 B.R. 737, 741 (Bankr. N.D. Iowa 2001); *In re Dennis*, 230 B.R. at 249.

Both sides of this split have at one time characterized their own as the majority view. *Compare Strong v. U.S. Dep’t of Treasury*, 203 B.R. 105, 112 (Bankr. N.D. Ill. 1996) (“The Court adheres to the majority view . . . that concludes that neither the Bankruptcy Code nor Bankruptcy Rule 3002(a) requires a secured claim holder to file a proof of claim within 90 days of the first date set for the meeting of creditors.”), with *In re Boucek*, 280 B.R. 533, 537 (Bankr. D. Kan. 2002) (“[T]he clear majority of authorities addressing this issue have held that an untimely [secured] claim is disallowed . . . .”). The Eleventh Circuit is the only court of appeals to have ruled on the issue so far. It held that the Rule 3002(c) deadline applies to proofs of claim filed by secured creditors. *See In re Bateman*, 331 F.3d 821, 827 (11th Cir. 2003). Although the Fifth Circuit has not directly taken a position, it has used language suggesting it might apply the 90-day limitation to secured creditors were the issue to arise. *See In re Simmons*, 765 F.2d 547, 553 (5th Cir. 1985) (“We must determine then when a secured claim, *proof of which has been timely filed* in a Chapter 13 case, must be allowed.” (emphasis added)).

One view is emerging as the stronger over time and the split is beginning to close. In 1994, Congress added subsection (9) to § 502(b) of the Code to clarify that failure to timely file a proof of claim is grounds for disallowance of a claim, overruling the controversial *Hausladen*

decision. *In re Hausladen*, 146 B.R. 557, 560 (Bankr. D. Minn. 1992) (holding that untimely filed claim in Chapter 13 case is not disallowed, but may be treated differently in the plan). Since 1994, the majority of courts ruling on the issue have applied the Rule 3002(c) deadline to secured creditor claims. *See e.g., In re Hogan*, 346 B.R. 715, 721 (Bankr. N.D. Tex. 2006) (“Section 502(b)(9) has made clear, for over a decade now, that a proof of claim not timely filed, regardless of whether it is secured or unsecured, should not be allowed . . .”). Some courts have gone so far as to say that the congressional amendments superseded prior cases adopting the view that a secured creditor does not need to file a proof of claim within the 3002(c) deadline. *See In re Mickens*, 2005 WL 375661 at \*1 (“Some older decisions hold that a secured creditor's failure to file a timely proof of claim may not be invoked to bar receipt of distributions in a chapter 13 case, but were rendered obsolete by the amendment of § 502(b)(9).”).

Because there is a strongly emerging modern view in the bankruptcy and district courts as well as a holding in the Eleventh Circuit that Rule 3002(c) applies to proofs of claim filed by secured creditors, the 2005 *In re Mehl* decision and a few decisions from the Northern and Central Districts of Illinois holding that Rule 3002(c) does not apply to secured creditors may be only anomalous holdovers of the pre-§ 502(b)(9) interpretation of Rule 3002. 2005 WL 2806676 at \*4; *In re Kreisler* 331 B.R. at 384-385; *In re Adams*, 264 B.R. at 904.

### **Merits of a Rule Amendment**

An amendment to Rule 3002(a) could reduce the uncertainty in practice for secured creditors as to whether a proof of claim must be filed as well as satellite litigation over when a secured proof of claim must be filed. There are, however, considerations pointing the other way. One is that Rule 3002(a) is principally of concern in Chapter 13 cases, but an amendment that applies the filing requirement to all claims may cause unintended disturbances in cases under other chapters of the Code. An amendment may risk inadvertently misstating secured creditors’

obligations in non-Chapter 13 cases. By amending Rule 3002(a) to state that both secured and unsecured creditors must file proofs of claim in order for their claims to be “allowed,” secured creditors may come under the impression that they *must* always file a proof of claim—even to preserve a lien in non-Chapter 13 cases. The Supreme Court’s decision in *Dewsnup* held to the contrary.

The second consideration weighing against rulemaking is that an amendment might be unnecessary if as a matter of course secured creditors file proofs of claim anyway. Judge Keith Lundin, author of the leading treatise on Chapter 13 practice, advises secured creditors to avoid the risk of having a claim disallowed by “always fil[ing] proof of a secured claim in a Chapter 13 case . . . .” Keith Lundin, Chapter 13 Bankruptcy § 280-1 (Bankruptcy Press, Inc. 3d ed. 2000) (criticizing the Advisory Committee for failure to amend Rule 3002(a)). It could be argued that if secured creditors in practice routinely file proofs of claim, the issue carries little practical significance.

On balance, the Subcommittee sees value in giving Judge Goldgar’s suggestion further study. Concern about generating unintended consequences in non-Chapter 13 cases or about derogating the right of secured creditors to preserve their lien could be met by a Chapter 13-specific amendment. Any amendment could require the filing of a proof of claim by a creditor seeking to participate in the plan process or post-confirmation distribution. Any amendment could also include language reiterating that a secured creditor’s lien ordinarily survives bankruptcy. With respect to the concern that this issue may not be a pressing one, the disagreement among courts suggests a good deal of uncertainty could be answered by a rule amendment. Not all secured creditors follow the advice that they should always file a proof of claim, and if they do, the proof of claim is not always filed within the Rule 3002(c) deadline.

Amending Rule 3002(a) to apply to both secured and unsecured creditors would also eliminate the Rule 3002(c) split.

The Subcommittee's deliberations raised two additional factors for the Advisory Committee's discussion of Judge Goldgar's suggestion. First, the same issue appears to have been the subject of prior discussions by the Advisory Committee in 1992. Any decision to go forward with an amendment to the rule should be preceded by careful consideration of the minutes of those discussions. Second, because the Advisory Committee has decided to explore the creation of a model Chapter 13 plan, which is likely to require ancillary rulemaking, it would make sense to fold further consideration of this suggestion into that project.

**TAB 4B**





MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: SUBCOMMITTEE ON CONSUMER ISSUES  
RE: SUGGESTION FOR AMENDMENT OF RULE 4004(c)(1)(J)  
DATE: AUGUST 20, 2011

Bankruptcy Judge Paul Mannes (D. Md.) submitted a suggestion (10-BK-K) that Rule 4004(c)(1)(J) be amended to delay the entry of a discharge if “a scheduled hearing on a reaffirmation agreement has not concluded.” At the spring 2011 meeting, the Advisory Committee referred the suggestion to this Subcommittee, and it considered it during its conference call on July 26. For the reasons discussed below, **the Subcommittee recommends that no further action be taken on the suggestion.**

The Suggestion

Rule 4004 governs the grant or denial of a discharge. Subdivision (c)(1) provides the general rule that in a chapter 7 case the court “shall forthwith grant the discharge” upon the expiration of the time for objecting to discharge and for moving to dismiss the case for abuse. The provision goes on, however, to list twelve situations in which that command does not apply. Among the listed exceptions is subparagraph (J), which provides for the delay of the discharge if “a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending.”

Judge Mannes suggests amending the provision to permit a delay in entering the discharge when a hearing on a reaffirmation agreement has been scheduled but has not concluded. He briefly explains that the amendment would “avoid needless processing to insure that the hearing takes place before the discharge is entered.”

### The Subcommittee's Consideration of the Suggestion

The Subcommittee noted that Judge Mannes's concern focuses on the situation in which the court conducts a hearing on a reaffirmation agreement. He wants authority for the court to delay entry of the discharge at the time otherwise required by Rule 4004(c)(1) if the hearing has not been concluded. Under § 524, there are two situations in which there must or may be a hearing on a reaffirmation agreement: when an individual debtor was not represented by counsel in the negotiation of the agreement (§ 524(c)(6), (d)), and when a presumption of undue hardship arises because the debtor's income minus expenses is not sufficient to make the reaffirmation agreement payments (and the creditor is not a credit union) (§ 524(m)).

The Subcommittee considered the consequences of a discharge being entered before the conclusion of a hearing in the two situations.

*Unrepresented debtor.* The court must conduct a hearing on the reaffirmation agreement if the debtor was not represented during the course of negotiating the agreement (§ 524(d)); otherwise under § 524(c) the agreement will not be enforceable. But § 524(d) does not require that the hearing take place before the entry of the discharge. It explicitly allows for a hearing after the discharge is entered: "If a discharge *has been granted* and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney during the course of the negotiating such agreement, then the court shall hold a hearing . . . ." (emphasis added). The Subcommittee concluded therefore that this situation did not seem to provide the basis for Judge Mannes's suggestion.

*Presumption of undue hardship in the case of a represented debtor.* The provisions about a hearing in this situation are less straightforward. Other than when the reaffirming creditor is a credit union, § 524(k)(6) requires the debtor to submit a statement in support of the agreement

that sets forth the debtor's monthly income; actual monthly expenses, including payments on other reaffirmed debts; and the balance available to make the payments on this reaffirmed debt. If the difference between income and expenses is less than the amount needed to make the reaffirmation payments, the agreement is presumed to impose an undue hardship on the debtor, and it "must be reviewed by the court." Section 524(m)(1) provides in that circumstance that the presumption of undue hardship exists until 60 days after the agreement is filed with the court and that this "presumption shall be reviewed by the court." The debtor is permitted to rebut the presumption in writing by identifying additional sources to make the reaffirmation payments. But if the presumption is not rebutted to the satisfaction of the court, "the court may disapprove such agreement." It's at this step that a time limitation on a hearing is imposed. Subsection (m)(1) states, "No agreement shall be disapproved without notice and a hearing to the debtor and creditor, and such hearing shall be concluded before the entry of the debtor's discharge."

It appeared to the Subcommittee that the basis for the suggested amendment was this requirement that a hearing to disapprove a reaffirmation agreement based on undue hardship be concluded before the entry of the discharge. Judge Mannes would add explicit language to Rule 4004(c)(1) to permit the entry of the discharge to be delayed until after the conclusion of such a hearing.

The Subcommittee, however, did not see a need for the amendment. Rule 4004(c)(1)(K) already provides for a delay in the entry of a discharge if "a presumption has arisen under § 524(m) that a reaffirmation agreement is an undue hardship." This exception is broader than the one proposed by Judge Mannes, and it encompasses the situation he apparently had in mind. If the court has scheduled a reaffirmation hearing that has to be concluded before the discharge is entered, it would be the situation in which a presumption of undue hardship has arisen. Thus

under Rule 4004(c)(1)(K), the court could delay the entry of the discharge until after the conclusion of the hearing.

In considering Judge Mannes's suggestion, the Subcommittee noted some problems with the current wording of Rule 4004(c)(1). The provision directs the court to enter a discharge at the designated time unless one of the listed circumstances exists. Thus the rule is structured as "You must do X, unless Y." That wording does not prohibit doing X even if Y exists. It just takes away the mandate to do X. The circumstances listed in (c)(1)(A)-(L), however, are ones in which the discharge should not be entered. Thus the provision should prohibit the entry of the discharge under the listed circumstances. In addition, subparagraph (K) applies if a "presumption has arisen under § 524(m)," but it does not have an end point. In other words, as written, the exception in (K) continues to apply even after the presumption has been rebutted or approval of the reaffirmation agreement has been denied.

The Subcommittee believes that courts are interpreting the rule sensibly and that this is not an issue in need of immediate attention. It suggests, however, that the wording of Rule 4004(c)(1) be considered by the Advisory Committee at an appropriate time.

Another issue concerning Rule 4004(c)(1) will likely need to be addressed soon. Subparagraph (H) provides for delay in the entry of the discharge if "the debtor has not filed with the court a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7)." The Committee has proposed an amendment to Rule 1007(b)(7) that would relieve the debtor of the obligation to file that statement of completion if the course provider notifies the court directly that the debtor has completed the course. That proposed amendment has just been published for public comment, along with a related amendment to Rule 5009. The impact of the amendment of Rule 1007(b)(7) on Rule 4004(c)(1)(H), however, was

overlooked. If amended Rule 1007(b)(7) is adopted, Rule 4004(c)(1)(H) will need to be reworded so that it applies when “the debtor has not filed with the court a statement of completion of a course concerning personal financial management ~~as~~ if required by Rule 1007(b)(7).”

At the spring 2012 meeting, the Advisory Committee will be able to review any comments submitted on the proposed amendment to Rule 1007(b)(7). If there does not appear to be substantial opposition to the amendment and the Committee recommends its final approval, the Committee should also consider at that meeting whether to propose an amendment to Rule 4004(c)(1)(H) to conform to the Rule 1007(b)(7) change. Additional amendments to the wording and structure of Rule 4004(c)(1) could be considered at the same time.



# TAB 5





## MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON BUSINESS ISSUES AND CONSUMER ISSUES

RE: SUGGESTION OF A GAP IN RULE 7054 REGARDING REQUESTS FOR ATTORNEY'S FEES

DATE: AUGUST 20, 2011

In March 2011 the Ninth Circuit BAP issued an opinion in which it “suggest[ed] that the Judicial Conference’s Advisory Committee on Bankruptcy Rules may want to address th[e] apparent ‘gap’ in Rule 7054.” *Charlie Y., Inc. v. Carey (In re Carey)*, 446 B.R. 384, 389 n.3 (2011). The gap to which the court referred is the absence of a provision in Rule 7054 concerning the procedure for obtaining an allowance of attorney’s fees in adversary proceedings. Although Rule 7054(a) incorporates Civil Rule 54(a)-(c), it has its own provision – subdivision (b) – governing the recovery of costs by a prevailing party, and it does not have a provision that parallels Rule 54(d)(2), which governs the recovery of attorney’s fees.

The author of the BAP opinion, Judge Randall Dunn (Bankr. D. Ore.), called the opinion to the attention of Judge Wedoff. After discussion, the Advisory Committee at its spring 2011 meeting referred the matter to the Consumer and Business Subcommittees for further consideration. The Consumer Subcommittee discussed the issue during its conference call on July 26 and made a recommendation, which the Business Subcommittee considered and approved during its conference call on August 17. **The two Subcommittees jointly recommend that Rule 7054 be amended to make applicable in adversary proceedings<sup>1</sup> most of the provisions regarding attorney’s fees in Civil Rule 54(d)(2) and that Rule 7008(b),**

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<sup>1</sup> Under Rule 9014(c), Rule 7054 also generally applies in contested matters.

**which requires pleading a claim for attorney’s fees in the complaint or other appropriate pleading, be deleted.**

The *Carey* Opinion

The appeal before the 9<sup>th</sup> Cir. BAP was brought by a creditor that had obtained a determination in the bankruptcy court that its claim against the debtor for breach of a guarantee obligation was excepted from discharge under § 523(a)(2)(B). After a judgment was entered in the creditor’s favor for \$35,000, the creditor moved for an award of attorney’s fees in an amount exceeding \$43,000, based on contractual provisions in the promissory note and guarantee. The bankruptcy court (Judge Chris Klein) denied the motion on the ground that the creditor’s complaint initiating the dischargeability proceeding did not state a claim for attorney’s fees as required by Rule 7008(b).

In an opinion vacating the denial of the motion and remanding the case to the bankruptcy court, the BAP first considered whether the creditor’s appeal was timely. It concluded that it was, because the creditor filed its notice of appeal within 14 days after the bankruptcy court entered its order denying the request for attorney’s fees. The court then determined that the complaint provided adequate notice of the creditor’s attorney’s fees claim to satisfy Rule 7008(b), and it remanded for a determination of the appropriate fee award. (The case is currently on appeal to the Ninth Circuit.)

The court discussed the apparent gap in Rule 7054 in the course of its consideration of the timeliness of the appeal. The debtor had argued that the earlier entry of the judgment in the adversary proceeding triggered the 14-day appeal period, not the denial of the fee motion, because the judgment made no reservation for an award of attorney’s fees. In rejecting this argument, the court noted that “Rule 7054 is silent as to the procedure for requesting allowance

of attorney’s fees in adversary proceedings.” 446 B.R. at 389. In that respect, the court pointed out, Rule 7054 differs from Civil Rule 54, which contains a lengthy provision in subdivision (d)(2) governing claims for attorney’s fees. The court was unable to find an explanation for Rule 7054’s failure to incorporate Rule 54(d), and that led the court to suggest that the Advisory Committee might want to address this apparent gap.

The BAP recognized that Rule 7008(b) requires the pleading of a claim for attorney’s fees, but the court said that the rule “does not shed any light on whether such a claim must be proven at trial or left for determination on application or motion following the trial.” *Id.* The court also noted that there is no local bankruptcy rule in the Eastern District of California that governs the procedure for pursuing an attorney’s fees claim beyond the pleading stage. Accordingly, the court concluded that “no provision of the Rules proscribed the Appellant’s request for an award of attorney’s fees through the Fee Motion following the trial of the Adversary Proceeding.” *Id.* at 390.

#### Histories of Rules 7054 and 7008 and Civil Rule 54

The *Carey* court correctly observed that there are no Committee Notes accompanying Rule 7054 or discussing the attorney’s fees provision of Rule 7008(b). Insofar as this issue is concerned, both rules remain unchanged from the form in which they were originally promulgated in 1983.<sup>2</sup> Unfortunately, the available materials explaining the Advisory Committee’s thinking regarding the 1983 rules are quite limited, and no record of discussions by the Committee about these rules has been uncovered.

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<sup>2</sup> Rule 7054 has not been amended at all, and Rule 7008 was amended in 1987 only to add requirements for pleading whether a proceeding is core or non-core and, if the latter, whether the party consents to entry of judgment by the bankruptcy judge. Rule 7008(b), which requires the pleading of a request for an award of attorney’s fees, has not been amended.

It is possible to discern, however, the basis for the Committee’s original decision to incorporate into Rule 7054 only Rule 54(a)-(c) and not (d). At the time Rule 7054 was promulgated, Rule 54(d) addressed only “costs” in a single paragraph. It provided as follows:

Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; . . . .<sup>3</sup>

Instead of incorporating that part of Rule 54, Rule 7054 was promulgated with its own provision governing costs. Subdivision (b), then as now, provides in relevant part: “The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides.” The decision was therefore made that the award of costs in a bankruptcy adversary proceeding should be discretionary with the court, rather than, as under the civil rule, awarded as a matter of course unless there is reason not to make the award. The presumption favoring the award of costs was therefore eliminated in Rule 7054(b).

One commentator has explained the reason for this decision as follows:

Although much of Federal Rule of Civil Procedure 54 dealing with judgments was incorporated by reference in Federal Rule of Bankruptcy Procedure 7054, 54(d) was not (although bankruptcy courts continue to invoke the rule as if it were applicable). The bankruptcy counterpart of Rule 54(d) omits the precatory language “should be allowed” and instead states that “[t]he court may allow costs to the prevailing party.” Use of the word “may” rather than “should” clearly invites the court to exercise more discretion than it would if it were applying Rule 54(d). . . .

The Advisory Committee Note to Rule 754, the prior version of 7054, suggested that the reason for rejecting the presumption in favor of awarding costs to the prevailing party under Federal Rule of Civil Procedure 54(d) was “[b]ecause of the adverse effect on creditors of imposing costs on a bankruptcy estate and reciprocal equities of those involved in litigation with such an estate.” . . . .

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<sup>3</sup> After restyling, the equivalent portion of Rule 54(d) now reads: “Unless a federal statute, these rules, or a court order provides otherwise, costs . . . should be allowed to the prevailing party.”

Laura B. Bartell, *Award of Costs in Bankruptcy Court*, 17 J. OF BANKR. L. & PRAC. 6 (Sept. 2008) (footnotes omitted). *See also In re Clansy*, 2008 WL 177779 at \* 1 (Bankr. S.D. Tex. 2008) (noting discretionary authority for award of costs under Rule 7054, unlike rebuttable presumption in favor of award under Rule 54(d)).

The reason for the Committee’s original decision not to incorporate Rule 54(d) into Rule 7054 therefore seems clear (whether or not one agrees that there should be a different standard for the award of costs to the prevailing party in bankruptcy). But the next issue is why the Committee chose not to incorporate Rule 54(d)(2) into Rule 7054 after that provision governing the procedure for awarding attorney’s fees was added to the civil rule in 1993.

The 1993 amendment to Rule 54(d) substantially expanded the subdivision to expressly address attorney’s fees as well as costs. The existing provision was renumbered (d)(1) and was re-titled “Costs Other Than Attorney’s Fees.” Paragraph (2), titled “Attorney’s Fees,” was added, and it requires a “claim for attorney’s fees and related nontaxable expenses . . . [to] be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.” Fed. R. Civ. P. 54(d)(2)(A). The rule governs the timing (“no later than 14 days after the entry of judgment”) and content of the motion and the conduct of the proceedings in response to the motion. It authorizes local rules to adopt special procedures for resolving fee issues without extensive evidentiary hearings, and it permits the reference of fee issues to special masters and magistrate judges. The provision is not applicable to fees awarded as sanctions under the rules or under 28 U.S.C. § 1927.

The Advisory Committee Note accompanying this amendment of Civil Rule 54(d) explained that the reason for adding paragraph (2) was

to provide for a frequently recurring form of litigation not initially contemplated by the rules – disputes over the amount of attorneys’ fees to be awarded in the

large number of actions in which prevailing parties may be entitled to such awards or in which the court must determine the fees to be paid from a common fund.

Local rules and case law had developed a variety of procedures for handling attorney's fees requests, and the amendment was intended to "harmonize and clarify" these procedures. The Committee Note said that the new procedures apply to the presentation of claims for attorney's fees, whether or not denominated as "costs," and to requests for reimbursement of expenses that are not taxable as costs but are recoverable under the governing law. With respect to the requirement in (d)(2)(A) for proceeding by motion, the Committee Note explained that this procedure does not "apply to fees recoverable as an element of damages, as when sought under the terms of a contract; such damages typically are to be claimed in a pleading and may involve issues to be resolved by a jury."

The minutes of the Bankruptcy Rules Committee do not reveal if it considered whether Rule 7054 should be amended in response to this addition to Rule 54(d). Interestingly, the minutes of the March 1992 meeting reflect that the Advisory Committee discussed several proposed changes to the civil rules that were published at the same time as the amendment to Rule 54, but there is no indication that Rule 54(d) was discussed.

One can only speculate therefore about why Rule 54(d)(2) or a parallel provision was not added to Rule 7054.<sup>4</sup> It may be that the Committee considered the addition of a provision about attorney's fees to Rule 7054 to be unnecessary because Rule 7008(b) already addressed how a claim for attorney's fees is to be pursued. It is significant that Civil Rule 8 does not have a provision addressing attorney's fees claims. As a result, the Bankruptcy Rules Committee may

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<sup>4</sup> The provision of Rule 54(d)(2)(D) authorizing the reference of fee matters to special masters and magistrate judges could not have been made applicable to bankruptcy proceedings.

have reasoned that Rule 54(d)(2) filled a gap in the civil rules that did not exist in the bankruptcy rules.

### Possible Responses

One possible response to the suggestion of the 9<sup>th</sup> Circuit BAP is to conclude, as suggested above, that there is no gap in the bankruptcy rules regarding attorney's fees. Rule 7008(b) requires the pleading of such a request in a complaint, cross-claim, third-party complaint, answer, or reply. The procedure for pursuing such requests, once pleaded, is left to the court in individual cases or to local rules.

The Subcommittees rejected that response because of their concern about the broad range of approaches that bankruptcy courts follow regarding the handling of attorney's fees awards in adversary proceedings. For example, Local Bankruptcy Rule 7054-1 of the Central District of California provides for the Taxation of Costs and the Award of Attorneys' Fees. It generally requires filing a motion for attorney's fees within 30 days after the entry of judgment or other final order "[i]f not previously determined at trial or other hearing." Thus by local rule that district has adopted a rule similar to Rule 54(d)(2)(A).<sup>5</sup> A recent decision of the Bankruptcy Court for the Southern District of New York, however, discussed the general inapplicability of Rule 54(d)(2) in bankruptcy proceedings with the possible exception of class actions. *In re Partsearch Techs., Inc.*, 2011 WL 2456227 (Bankr. S.D.N.Y. June 21, 2011), at \* 13.<sup>6</sup> Yet another court concluded that an award of attorney's fees in bankruptcy is generally governed by Rule 7008(b), but in that case, because the applicable Virgin Islands law defined attorney's fees

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<sup>5</sup> See also *In re Branford Partners*, 2008 WL 8444795, at \* 4 (9<sup>th</sup> Cir. BAP 2008) ("A post trial motion for costs is the 'preferred method' for seeking attorneys' fees and costs.").

<sup>6</sup> The court noted that Rule 7023 fully incorporates Civil Rule 23 and that Rule 23(h)(1) provides that a claim for an award of attorney's fees must be made by motion under Rule 54(d)(2). The court cited the Collier treatise as stating that "'Rule 54(d)(2) is applicable in bankruptcy, but only with respect to class actions,'" but noted that another commentator questioned whether "'Rule 23(h) can override the procedures set forth in Rule 7008(b).'" 2011 WL 2456227 at \* 13.

as “costs,” Rule 7054(b) applied. *In re Kool, Mann, Coffee & Co.*, 2007 WL 1202888 (Bank. D.V.I. 2007).

#### The Subcommittees’ Recommendation

The Subcommittees concluded that it would be beneficial for Rule 7054 to be amended to include much of the substance of Civil Rule 54(d)(2). Members of the Subcommittees stated that amending the bankruptcy rule in this manner would clarify the procedure for seeking an award of attorney’s fees and provide a nationally uniform procedure for doing so. It would also bring the bankruptcy rules into closer alignment with the civil rules and eliminate a trap for the unwary. An attorney, particularly one familiar with the civil rules, might overlook the Rule 7008(b) requirement to plead a request for attorney’s fees as a claim in the complaint, answer, or other pleading. The consequence of that failure currently depends on whether the local practice – arguably in conflict with the national rules – permits attorney’s fees to be sought exclusively by a post-judgment motion.

The Subcommittees, however, saw no reason to incorporate Civil Rule 54(d)(1)’s presumption in favor of an award of costs, since the longstanding bankruptcy rule has provided the court greater discretion than the civil rule allows regarding whether to award costs to the prevailing party. Therefore they recommend that the language of what is now Rule 7054(b) be retained.

As proposed by the Business and Consumer Subcommittees, Rule 7054 would be amended as follows:



1 **Rule 7054. Judgments; Costs\***

2 (a) JUDGMENTS. Rule 54(a)-(c) F.R. Civ. P. applies in adversary  
3 proceedings.

4 (b) COSTS; ATTORNEY'S FEES

5 (1) Costs Other Than Attorney's Fees. The court may allow costs  
6 to the prevailing party except when a statute of the United States or these rules  
7 otherwise provides. Costs against the United States, its officers and agencies shall  
8 be imposed only to the extent permitted by law. Costs may be taxed by the clerk  
9 on 14 days' notice; on motion served within seven days thereafter, the action of  
10 the clerk may be reviewed by the court.

11 (2) Attorney's Fees.

12 (A) Rule 54(d)(2)(A)-(C) and (E) F.R. Civ. P. applies in  
13 adversary proceedings except for the reference in Rule 54(d)(2)(C) to Rule 78.

14 (B) By local rule, the court may establish special  
15 procedures to resolve fee-related issues without extensive evidentiary hearings.

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\* Incorporates amendments that are due to take effect on December 1, 2012, if approved by the Judicial Conference and the Supreme Court, and if Congress takes no action otherwise.

## COMMITTEE NOTE

Subdivision (b) is amended to prescribe the procedure for seeking an award of attorney's fees and related nontaxable expenses in adversary proceedings. It does so by adding new paragraph (2) that incorporates most of the provisions of Rule 54(d)(2) F.R. Civ. P. The title of subdivision (b) is amended to reflect the new content, and the previously existing provision governing costs is renumbered as paragraph (1) and re-titled.

As provided in Rule 54(d)(2)(A), new subsection (b)(2) does not apply to fees recoverable as an element of damages, as when sought under the terms of a contract providing for the recovery of fees incurred prior to the instant adversary proceeding. Such fees typically are required to be claimed in a pleading.

Rule 54(d)(2)(D) F.R. Civ. P. does not apply in adversary proceedings insofar as it authorizes the referral of fee matters to a master or a magistrate judge. The use of masters is not authorized in bankruptcy cases, *see* Rule 9031, and 28 U.S.C. § 636 does not authorize a magistrate judge to exercise jurisdiction in bankruptcy cases. The remaining provision of Rule 54(d)(2)(D) is expressed in subdivision (b)(2)(B) of this rule.

Rule 54(d)(2)(C) refers to Rule 78 F.R. Civ. P., which is not applicable in adversary proceedings. Accordingly, that reference is not incorporated by this rule.

The Subcommittees further recommend that Rule 7008(b) be deleted. That provision states that a "request for an award of attorney's fees shall be pleaded as a claim in a complaint, cross-claim, third-party complaint, answer, or reply as may be appropriate." With an amendment deleting that provision, the procedure for requesting attorney's fees in an adversary proceeding would be the same as in a civil case. Unless the fees are required to be proved at trial as an element of damages, a claim for attorney's fees would be governed exclusively by Rule 54(d)(2) to the extent that it is made applicable by Rule 7054(b)(2). As amended, Rule 7008 would read as follows:

## **Rule 7008. General Rules of Pleading**

1           ~~(a) APPLICABILITY OF RULE 8 F.R.CIV. P.~~ Rule 8 F.R. Civ. P.  
2 applies in adversary proceedings. The allegation of jurisdiction required by Rule  
3 8(a) shall also contain a reference to the name, number, and chapter of the case  
4 under the Code to which the adversary proceeding relates and to the district and  
5 division where the case under the Code is pending. In an adversary proceeding  
6 before a bankruptcy judge, the complaint, counterclaim, cross-claim, or third-  
7 party complaint shall contain a statement that the proceeding is core or non-core  
8 and, if non-core, that the pleader does or does not consent to entry of final orders  
9 or judgment by the bankruptcy judge.

10           ~~(b) ATTORNEY'S FEES. A request for an award of attorney's fees shall~~  
11 ~~be pleaded as a claim in a complaint, cross claim, third party complaint, answer,~~  
12 ~~or reply as may be appropriate.~~

### **COMMITTEE NOTE**

This rule is amended to delete subdivision (b), which required a request for attorney's fees always to be pleaded as a claim in an allowed pleading. That requirement, which differed from the practice under the Federal Rules of Civil Procedure, had the potential to serve as a trap for the unwary.

The procedures for seeking an award of attorney's fees are now set out in Rule 7054(b)(2), which makes applicable most of the provisions of Rule 54(d)(2) F.R. Civ. P. As specified by Rule 54(d)(2)(A) and (B) F.R. Civ. P., a claim for attorney's fees must be made by a motion filed no later than 14 days after entry of the judgment unless the governing substantive law requires those fees to be proved at trial as an element of damages. When fees are an element of damages, such as when the terms of a contract provide for the recovery of fees incurred prior to the instant adversary proceeding, the general pleading requirements of this rule still apply.



# TAB 6A



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS

RE: OBTAINING FEEDBACK ON MORTGAGE PROOF OF CLAIM  
ATTACHMENT AND POSSIBLE NEED FOR FULL ACCOUNT HISTORY

DATE: AUGUST 25, 2011

In response to comments received following publication of Form 10 (Attachment A) – Mortgage Proof of Claim Attachment – the Advisory Committee discussed at the spring 2011 meeting whether a mortgage claimant should be required to attach a complete loan account history in addition to or in place of some of the information required by Attachment A. Upon the recommendation of these Subcommittees, the Advisory Committee voted to approve the attachment form as published (without a requirement for a full account history), thus allowing it to take effect on December 1, 2011, which is the effective date of the rule it implements. The Committee also accepted the Subcommittees’ recommendation that further consideration be given to whether a loan history should be required. The Subcommittees were given the charge to report at the fall meeting on a plan for obtaining feedback from users of the new attachment form about their experiences with it and whether they believe that attachment of a complete mortgage loan history should be required. The Subcommittees discussed these matters during their joint conference call on July 25.

This memorandum briefly reviews the Committee’s past discussions about the need for a mortgage loan history and then discusses the Subcommittees’ recommendation.

## Past Discussions

At the spring 2011 meeting, the Committee considered comments about the need for a full account history that were submitted in response to publication of proposed Attachment A. The Advisory Committee had considered this issue prior to recommending the proposed form for publication. The decision not to require this information had been based largely on the desire not to impose an undue burden on mortgage claimants or overwhelm debtors with too much detail and on the understanding that, when needed, this information could be obtained through discovery.

At the spring meeting, the Committee discussed various options for allowing further consideration of whether a full loan history should be required. In the end, it concluded that it was important that the proposed rules and forms requiring greater disclosure of information about mortgage claims not be delayed and that they remain on track to take effect together in December 2011. Amending the attachment form to require a loan history would require republication and thus a year's delay in the effective date of the form. The Committee did not support allowing the rules to go into effect without all of the implementing forms.

The Committee agreed, however, with the Subcommittees that it should continue to consider the possibility of requiring a loan history. Testimony and comments supporting such a requirement, particularly from Judges Isgur and Magner, persuasively explained the value that this information might provide. But the Committee noted that only a small number of people had been heard from. Concerns were also expressed about whether creditors of all sizes would be able to comply with a loan-history requirement and whether the costs of implementing automation systems to provide this information routinely were justified by the value of the information to parties and the courts.



The Committee concluded that gathering information about people's experience with the proposed rules and forms after they go into effect could inform a later decision about whether to require a loan history. Several means of gathering this information were discussed, including holding a mini-conference of mortgage lenders and servicers, chapter 13 trustees, consumer debtors' attorneys, and judges; asking the Federal Judicial Center to undertake a survey or study; or having the reporter publish a request for information. The Subcommittees were asked to recommend a plan for obtaining the desired feedback.

### The Subcommittees' Recommendation

The Subcommittees agreed that the two major issues for devising a plan for obtaining feedback are when and how. When should this information be sought, and what method should be used?

*When.* Members of the Subcommittees stated that users of the new attachment form must have time to gain experience and become familiar with it before their input is sought.

Attachment A, if approved by the Judicial Conference, will go into effect on December 1, so the Subcommittees decided that next summer is the earliest that input should be gathered. They concluded that it would probably be preferable to wait until the fall of 2012 in order to ensure sufficient experience with Attachment A and to avoid obtaining comments that reflect merely the frustration of adapting to a new form. Furthermore, seeking comments in a way that suggests the possibility of amending a new form shortly after it goes into effect may itself cause frustration to some respondents.

*How.* **The Subcommittees recommend that a mini-conference be held next fall to obtain feedback on Attachment A and whether there is a desire for a complete loan history.**

A mini-conference has the advantage of allowing the selection of the participants from whom

information is gathered. That would permit the Committee to ensure that all of the relevant interests are heard from, including some smaller creditors and judges or lawyers from districts that have not used an account history in the past. It would also allow the Committee to ensure that the participants are individuals who are knowledgeable about the issues and likely to provide useful information. While this way of obtaining feedback risks omitting someone who may have a useful perspective that is not otherwise voiced at the conference, the Subcommittees noted that any proposal to amend the form will be published for comment by the public.

A mini-conference has the further advantage of providing an opportunity for face-to-face conversation and follow-up questions posed on the spot, unlike a survey instrument. Its main disadvantage is cost. In order to minimize costs, the Subcommittees suggested that the mini-conference could be held in conjunction with a meeting, such as the NCBJ Annual Meeting, at which many of the participants might already be present.

Should funding for a mini-conference not be available, however, the Subcommittees recommend that feedback be obtained by conducting a series of phone conferences with targeted groups of affected interests. This method of obtaining feedback has been used successfully for the Forms Modernization Project. If this option is pursued, the Subcommittees recommend that Molly Johnson and Beth Wiggins of the Federal Judicial Center be asked to moderate these calls.

# TAB 6B



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

LEE H. ROSENTHAL  
CHAIR

PETER G. McCABE  
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CHAIRS OF ADVISORY COMMITTEES

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APPELLATE RULES

EUGENE R. WEDOFF  
BANKRUPTCY RULES

MARK R. KRAVITZ  
CIVIL RULES


RICHARD C. TALLMAN  
CRIMINAL RULES

SIDNEY A. FITZWATER  
EVIDENCE RULES

August 26, 2011

MEMORANDUM

To: Judges, United States Bankruptcy Courts

From: Honorable Eugene R. Wedoff   
Chair, Advisory Committee on Bankruptcy Rules

RE: MODEL 13 PLAN – REQUEST FOR RESPONSE BY SEPTEMBER 15, 2011

The Advisory Committee on Bankruptcy Rules is exploring the adoption of an official bankruptcy form for chapter 13 plans. We have established a subcommittee to develop drafts of a form plan and any rule revisions that might be appropriate.

In doing this work, it would be helpful to the subcommittee if you could provide us with relevant information regarding the model chapter 13 plans, if any, used in your district. We have collected all of the model plans reflected on the websites of the courts, but we have the following questions in mind:

1. Is there any report, instruction sheet, or other document explaining your model plans? If so, could you send us a copy or tell us where to find it?
2. Are there any provisions of your plans that you think are particularly helpful or problematic? If so, could you point them out to us?

3. Are there particular plan provisions that you think would either be essential to any form plan or that ought to be included as options? We are interested in any suggestions you have for the full wording of the particular provisions, rather than just identification of the topic.
4. Are there any rule revisions that you think would improve chapter 13 procedures, particularly those that relate to the chapter 13 plan confirmation process or the impact of a confirmed chapter 13 plan?

Professor Troy McKenzie is the Committee's assistant reporter and is providing the major support to the subcommittee. Please email him your response to this message at [troy.mckenzie@nyu.edu](mailto:troy.mckenzie@nyu.edu). A response by **September 15** would be particularly helpful.

**TAB 6C**





MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS

RE: RECENT AMENDMENT TO CODE § 109(h)(1) REGARDING THE TIMING OF CREDIT COUNSELING FOR DEBTORS

DATE: AUGUST 22, 2011

Section 109(h)(1) of the Bankruptcy Code governs the timing of credit counseling by individual debtors. Before a recent amendment, § 109(h)(1) provided that “an individual may not be a debtor under this title unless such individual has, during the 180-day period *preceding the date of filing* of the petition,” received credit counseling. Effective December 22, 2010, Congress changed that language to require credit counseling “during the 180-day period *ending on the date of filing* of the petition.” David Sime, the Clerk of the Bankruptcy Court for the District of Utah, has questioned whether amended § 109(h)(1) permits a debtor to receive credit counseling before the end of the calendar day the petition is filed, even if the counseling occurs postpetition. If so, then Rule 1007 of the Bankruptcy Rules and Exhibit D to Form B1 (the voluntary petition) are at odds with the statute, because they contemplate that credit counseling must occur prepetition. The issue was referred to the Subcommittee on Consumer Issues and the Subcommittee on Forms for discussion during a joint subcommittee conference call on July 25.

After giving a brief description of the amendment’s background, this memorandum describes the considerations discussed by the Subcommittees. Although the change in statutory language has been noted by commentators, no courts have weighed in on the issue. Accordingly, the Subcommittees do not believe there is a need for immediate action by the Advisory

Committee. Nevertheless, the issue should be monitored for case law developments that warrant further consideration.

### **Prior Case Law on § 109(h)(1)**

The recent amendment to § 109(h)(1) came in response to confusion about the timing of credit counseling under the prior version of the statute. Congress mandated credit counseling in 2005 as part of the Code amendments introduced by BAPCPA. Because BAPCPA required credit counseling during a period “preceding the date of filing,” courts disagreed on the treatment of those individuals who received counseling on the day of, but prior to, filing a voluntary petition. As the Tenth Circuit Bankruptcy Appellate Panel described the conflict, “Plain Language” courts held that counseling had to be received no later than the end of the calendar day preceding the day the petition was filed, while “Bright Line” courts held that counseling could be received prepetition even if it occurred on the same calendar day the petition was filed. *See In re Francisco*, 390 B.R. 700, 702 (10th Cir. BAP 2008) (collecting cases).

The cases essentially diverged on the meaning of the word “date” in the statutory phrase “preceding the date of filing.” The Plain Language courts interpreted “date” to mean “calendar day” and therefore excluded the calendar day on which the petition was filed from the period during which counseling could be received. *See, e.g., In re Cole*, 347 B.R. 70, 74 (Bankr. E.D. Tenn. 2006) (drawing on various dictionary sources). They buttressed that interpretation by reference to the Federal Rules of Bankruptcy Procedure. *See* Rule 9006(a) (“In computing any period of time prescribed or allowed by . . . any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included.”). Because the Bankruptcy Rules exclude the day of the event from which a period of time is counted, Plain Language courts turned to the Rules as further support for rejecting day-of-filing prepetition

credit counseling. *See, e.g., In re Gossett*, 369 B.R. 361, 369 (Bankr. N.D. Ill. 2007). Those courts also suggested that requiring credit counseling no later than the calendar day before the petition was filed would further BAPCPA’s goal (reinforced by the credit counseling requirement itself) of encouraging greater reflection before debtors seek bankruptcy relief. *See In re Cole*, 347 B.R. at 76.

Bright Line courts interpreted the “date” of filing to mean the moment the petition was filed—that is, the year, month, day, hour, and minute marking the boundary between prepetition and postpetition events. Those courts relied principally on the special “bright line” significance in bankruptcy of the moment a petition is filed. *See, e.g., In re Hudson*, 352 B.R. 391, 397 (Bankr. D. Md. 2006) (“The word ‘date’ in the bankruptcy context encompasses the concept of a moment in time.”). Looking to the use of the word “date” elsewhere in the Code, the Bright Line courts rejected a reading of § 109(h)(1) that would disqualify day-of-filing, but prepetition, counseling. *See id.* at 393-94 (considering how the term “date” is used in the Code, including in § 547(b)(4)(A) (avoidance of preferential transfers) and § 348(f)(1)(A) (defining property of the estate on conversion of a Chapter 13 case to another chapter)). A majority of courts adopted the Bright Line approach before Congress amended the statute.

### **The 2010 Amendment to § 109(h)(1)**

It appears that Congress abrogated the Plain Language decisions when it amended the statute. The Bankruptcy Technical Corrections Act of 2010 replaced the word “preceding” with “ending on,” which makes clear that the day of filing is not excluded from the statutory credit counseling period. No legislative history explaining the change accompanied the amendment, however.

As David Sime notes, the amended language could be read to allow postpetition counseling so long as it occurs on the calendar day the petition is filed. If that reading is correct, then the Bankruptcy Rules and forms are out of synch with the statute. Rule 1007(b)(3) provides that an individual debtor must file a statement of compliance with the credit counseling requirement “prepared as prescribed by the appropriate Official Form.”<sup>1</sup> Rule 1007(c) in turn requires that the documents required by Rule 1007(b)(3) “shall be filed with the petition.”<sup>2</sup> The Official Form for a voluntary petition similarly contemplates that credit counseling will be received prepetition. Exhibit D to Form B1 requires the debtor to certify receipt of counseling “before the filing of my bankruptcy case.”<sup>3</sup>

There are two ways to read the amended statute. The first, and probably more natural, approach is to view the amendment as doing no more than permitting a debtor to seek credit counseling before filing a petition even if counseling is sought on the day the petition is filed. Under this reading, Congress overruled the Plain Language cases in favor of the Bright Line cases. Because the point of disagreement between the two lines of authority was whether “date” as used in § 109(h)(1) means the calendar day a petition is filed (the Plain Language view) or instead the moment a petition is filed (the Bright Line view), Congress’s disapproval of the Plain Language cases could be interpreted as a simultaneous embrace of the Bright Line cases. If so, credit counseling received postpetition but on the same calendar day the petition was filed would

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<sup>1</sup> That filing must include either (i) an attached certificate from a credit counseling agency; (ii) a statement that the debtor has received credit counseling but does not have a certificate; (iii) a certification under § 109(h)(3) (waiving the credit counseling requirement for exigent circumstances); or (iv) a request for a determination under § 109(h)(4) (waiving the credit counseling requirement for incapacity, disability, or active military duty).

<sup>2</sup> The only exception is for debtors who have received credit counseling but state that they do not have a certificate, in which case the required documents must be filed within fourteen days unless the court orders otherwise.

<sup>3</sup> In the alternative, the debtor may certify that exigent circumstances merit a “temporary waiver” of the counseling requirement, in which case the debtor must obtain credit counseling within 30 days, or that the counseling requirement does not apply.

not satisfy § 109(h)(1), because the counseling would be received after the period ending on the “date of filing”—that is, the moment the petition was filed. As the amended statute is in harmony under this view with the current version of the Bankruptcy Rules and Official Forms, no action would be required if that is the correct interpretation of amended § 109(h)(1).

On the other hand, the amended statute could be read to abrogate the Plain Language cases without simultaneously embracing the Bright Line interpretation that “date” means the moment the petition is filed. Under this view, the statute could permit postpetition credit counseling, so long as the counseling occurs on the same calendar day that the petition is filed. If that is the better interpretation, then Rule 1007(b) and (c) and Exhibit D to Form B1 would need to be amended to permit a debtor to certify that credit counseling will be received before the end of the calendar day on which the petition is filed.

Two considerations weaken the second interpretation. First, it would be odd for Congress to overrule a line of cases interpreting a statute while simultaneously embracing the central interpretive step used by the courts in those cases. In other words, for the second interpretation to prevail, it must be true that Congress wished to reject the result in the Plain Language cases (and thus permit day-of-filing credit counseling) but also wished to endorse the meaning of “date” (as calendar day) that was adopted by the Plain Language cases. Congress did not expressly clarify which sense of the word “date” it intended to use, so the second interpretation is plausible if genuinely odd.

Second, prepetition credit counseling was a significant part of the shift in congressional bankruptcy policy enacted by BAPCPA, and a technical corrections bill would be unlikely to include a departure from such a key policy. Although the legislative history of BAPCPA does not speak directly to the meaning of the word “date,” it is still instructive. The House Judiciary

Committee’s report on BAPCPA contemplates that credit counseling will occur prepetition, barring special circumstances:

Most importantly, S. 256 requires debtors to participate in credit counseling programs *before filing for bankruptcy relief* (unless special circumstances do not permit such participation). The legislation’s credit counseling provisions are intended to give consumers in financial distress an opportunity to learn about the consequences of bankruptcy—such as the potentially devastating effect it can have on their credit rating—before they decide to file for bankruptcy relief.

H.R. Rep. 109-31(I), at 12 (emphasis added, footnote omitted). Because mandatory credit counseling was intended to impress on debtors the potential consequences of seeking bankruptcy relief before they filed for bankruptcy, permitting postpetition credit counseling, even on the same calendar day as the petition filing, would appear to run counter to that purpose.

Before taking a position on the correct interpretation of amended § 109(h)(1), it may be best for the Advisory Committee to await development of case law on the question. To be sure, commentators have already noted the potential for postpetition day-of-filing credit counseling under the amended language of the statute.<sup>4</sup> But to date no court has considered the import of the new statutory language in a reported case. The issue deserves continued attention, however, and should be monitored for further developments.

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<sup>4</sup> See 2 Collier on Bankruptcy ¶ 109.09[1] (“Under the language of section 109(h), as amended in 2010, it appears that the credit counseling briefing could occur after the petition is filed, as long as it occurs on the same day. However, debtors would be well-advised to obtain the briefing prior to filing the petition if at all possible.”); Jean Braucher & James E. Rogers, *Legislative Highlights—Technical Corrections Have Some Substantive Effects*, Am. Bankr. I.J., Feb. 2011, at 8 (“A new issue has been created in the [amendment] process: whether counseling can be received on the same day but after the time of filing. If ‘date’ refers to ‘day,’ the answer is ‘yes,’ but if it refers to ‘time of day,’ the answer is ‘no.’ The latter approach seems to have more logic behind it, given a legislative purpose, stated in the House report to give debtors a chance to rethink whether to file.” (footnote omitted)).

**TAB 6D-1**





PUBLIC LAW 110-438—OCT. 20, 2008

NATIONAL GUARD AND RESERVISTS DEBT  
RELIEF ACT OF 2008

Public Law 110-438  
110th Congress

An Act

Oct. 20, 2008  
[S. 3197]

National Guard  
and Reservists  
Debt Relief Act  
of 2008.  
Bankruptcy.  
11 USC 101 note.

A bill to amend title 11, United States Code, to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “National Guard and Reservists Debt Relief Act of 2008”.

**SEC. 2. AMENDMENTS.**

Section 707(b)(2)(D) of title 11, United States Code, is amended—

(1) in clauses (i) and (ii)—

(A) by indenting the left margin of such clauses 2 ems to the right, and

(B) by redesignating such clauses as subclauses (I) and (II), respectively,

(2) by striking “testing, if the debtor is a disabled veteran” and inserting the following:

“testing—

“(i) if the debtor is a disabled veteran”,

(3) by striking the period at the end and inserting “; or”,

and

(4) by adding at the end the following:

“(ii) with respect to the debtor, while the debtor is—

“(I) on, and during the 540-day period beginning immediately after the debtor is released from, a period of active duty (as defined in section 101(d)(1) of title 10) of not less than 90 days; or

“(II) performing, and during the 540-day period beginning immediately after the debtor is no longer performing, a homeland defense activity (as defined in section 901(1) of title 32) performed for a period of not less than 90 days;

if after September 11, 2001, the debtor while a member of a reserve component of the Armed Forces or a member of the National Guard, was called to such active duty or performed such homeland defense activity.”.

**SEC. 3. GAO STUDY.**

(a) **COMPTROLLER GENERAL STUDY.**—Not later than 2 years after the effective date of this Act, the Comptroller General shall

Deadline.

complete and transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate, a study of the use and the effects of the provisions of law amended (and as amended) by this Act. Such study shall address, at a minimum—

(1) whether and to what degree members of reserve components of the Armed Forces and members of the National Guard avail themselves of the benefits of such provisions,

(2) whether and to what degree such members are debtors in cases under title 11 of the United States Code that are substantially related to service that qualifies such members for the benefits of such provisions,

(3) whether and to what degree such members are debtors in cases under such title that are materially related to such service, and

(4) the effects that the use by such members of section 707(b)(2)(D) of such title, as amended by this Act, has on the bankruptcy system, creditors, and the debt-incurrence practices of such members.

(b) FACTORS.—For purposes of subsection (a)—

(1) a case shall be considered to be substantially related to the service of a member of a reserve component of the Armed Forces or a member of the National Guard that qualifies such member for the benefits of the provisions of law amended (and as amended) by this Act if more than 33 percent of the aggregate amount of the debts in such case is incurred as a direct or indirect result of such service,

(2) a case shall be considered to be materially related to the service of a member of a reserve component of the Armed Forces or a member of the National Guard that qualifies such member for the benefits of such provisions if more than 10 percent of the aggregate amount of the debts in such case is incurred as a direct or indirect result of such service, and

(3) the term “effects” means—

(A) with respect to the bankruptcy system and creditors—

(i) the number of cases under title 11 of the United States Code in which members of reserve components of the Armed Forces and members of the National Guard avail themselves of the benefits of such provisions,

(ii) the aggregate amount of debt in such cases,

(iii) the aggregate amount of debt of such members discharged in cases under chapter 7 of such title,

(iv) the aggregate amount of debt of such members in cases under chapter 7 of such title as of the time such cases are converted to cases under chapter 13 of such title,

(v) the amount of resources expended by the bankruptcy courts and by the bankruptcy trustees, stated separately, in cases under title 11 of the United States Code in which such members avail themselves of the benefits of such provisions, and

(vi) whether and to what extent there is any indicia of abuse or potential abuse of such provisions, and

(B) with respect to debt-incurrence practices—

(i) any increase in the average levels of debt incurred by such members before, during, or after such service,

(ii) any indicia of changes in debt-incurrence practices adopted by such members in anticipation of benefiting from such provisions in any potential case under such title; and

(iii) any indicia of abuse or potential abuse of such provisions reflected in the debt-incurrence of such members.

11 USC 707 note. **SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) **EFFECTIVE DATE.**—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect 60 days after the date of enactment of this Act.

(b) **APPLICATION OF AMENDMENTS.**—The amendments made by this Act shall apply only with respect to cases commenced under title 11 of the United States Code in the 3-year period beginning on the effective date of this Act.

Approved October 20, 2008.

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**LEGISLATIVE HISTORY—S. 3197 (H.R. 4044):**

**HOUSE REPORTS:** No. 110-726 accompanying H.R. 4044 (Comm. on the Judiciary).

**CONGRESSIONAL RECORD,** Vol. 154 (2008):

Sept. 30, considered and passed Senate.

Oct. 2, 3, considered and passed House.



**TAB 6D-2**



In re \_\_\_\_\_  
Debtor(s)

Case Number: \_\_\_\_\_  
(If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):

- The presumption arises.
- The presumption does not arise.
- The presumption is temporarily inapplicable.

### CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor. If none of the exclusions in Part I applies, joint debtors may complete one statement only. If any of the exclusions in Part I applies, joint debtors should complete separate statements if they believe this is required by § 707(b)(2)(C).

#### Part I. MILITARY AND NON-CONSUMER DEBTORS

1A	<p><b>Disabled Veterans.</b> If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for “The presumption does not arise” at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> <b>Declaration of Disabled Veteran.</b> By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)).</p>
1B	<p><b>Non-consumer Debtors.</b> If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> <b>Declaration of non-consumer debts.</b> By checking this box, I declare that my debts are not primarily consumer debts.</p>
1C	<p><b>Reservists and National Guard Members; active duty or homeland defense activity.</b> Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the “exclusion period”). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for “The presumption is temporarily inapplicable” at the top of this statement, and (3) complete the verification in Part VIII. <b>During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.</b></p> <p><input type="checkbox"/> <b>Declaration of Reservists and National Guard Members.</b> By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard</p> <p style="margin-left: 40px;">a. <input type="checkbox"/> I was called to active duty after September 11, 2001, for a period of at least 90 days and  <input type="checkbox"/> I remain on active duty /or/  <input type="checkbox"/> I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed;</p> <p style="text-align: center;">OR</p> <p style="margin-left: 40px;">b. <input type="checkbox"/> I am performing homeland defense activity for a period of at least 90 days /or/  <input type="checkbox"/> I performed homeland defense activity for a period of at least 90 days, terminating on _____, which is less than 540 days before this bankruptcy case was filed.</p>





TAB 6D-3



**Interim Rule 1007-I.<sup>1</sup> Lists, Schedules, Statements, and Other Documents; Time Limits; Expiration of Temporary Means Testing Exclusion<sup>2</sup>**

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\* \* \* \* \*

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

\* \* \* \* \*

(4) Unless either: (A) § 707(b)(2)(D)(i) applies, or (B) § 707(b)(2)(D)(ii) applies and the exclusion from means testing granted therein extends beyond the period specified by Rule 1017(e), an individual debtor in a chapter 7 case shall file a statement of current monthly income prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, the information, including calculations, required by § 707(b), prepared as prescribed by the appropriate Official Form.

\* \* \* \* \*

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<sup>1</sup>Interim Rule 1007-I was adopted by the bankruptcy courts to implement the National Guard and Reservists Debt Relief Act of 2008, Public Law No: 110-438. The Act, which provides a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces, applies to bankruptcy cases commenced in the three-year period beginning December 19, 2008.

<sup>2</sup> Incorporates time amendments to Rule 1007 which took effect on December 1, 2009.

15           (c) TIME LIMITS. In a voluntary case, the schedules,  
16 statements, and other documents required by subdivision (b)(1), (4),  
17 (5), and (6) shall be filed with the petition or within 14 days  
18 thereafter, except as otherwise provided in subdivisions (d), (e), (f),  
19 (h), and (n) of this rule. In an involuntary case, the list in subdivision  
20 (a)(2), and the schedules, statements, and other documents required  
21 by subdivision (b)(1) shall be filed by the debtor within 14 days of  
22 the entry of the order for relief. In a voluntary case, the documents  
23 required by paragraphs (A), (C), and (D) of subdivision (b)(3) shall  
24 be filed with the petition. Unless the court orders otherwise, a debtor  
25 who has filed a statement under subdivision (b)(3)(B), shall file the  
26 documents required by subdivision (b)(3)(A) within 14 days of the  
27 order for relief. In a chapter 7 case, the debtor shall file the statement  
28 required by subdivision (b)(7) within 45 days after the first date set  
29 for the meeting of creditors under § 341 of the Code, and in a chapter  
30 11 or 13 case no later than the date when the last payment was made  
31 by the debtor as required by the plan or the filing of a motion for a  
32 discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court  
33 may, at any time and in its discretion, enlarge the time to file the  
34 statement required by subdivision (b)(7). The debtor shall file the  
35 statement required by subdivision (b)(8) no earlier than the date of  
36 the last payment made under the plan or the date of the filing of a

37 motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b)  
38 of the Code. Lists, schedules, statements, and other documents filed  
39 prior to the conversion of a case to another chapter shall be deemed  
40 filed in the converted case unless the court directs otherwise. Except  
41 as provided in § 1116(3), any extension of time to file schedules,  
42 statements, and other documents required under this rule may be  
43 granted only on motion for cause shown and on notice to the United  
44 States trustee, any committee elected under § 705 or appointed under  
45 § 1102 of the Code, trustee, examiner, or other party as the court may  
46 direct. Notice of an extension shall be given to the United States  
47 trustee and to any committee, trustee, or other party as the court may  
48 direct.

49 \* \* \* \* \*

50 (n) TIME LIMITS FOR, AND NOTICE TO, DEBTORS  
51 TEMPORARILY EXCLUDED FROM MEANS TESTING.

52 (1) An individual debtor who is temporarily excluded from  
53 means testing pursuant to § 707(b)(2)(D)(ii) of the Code shall file any  
54 statement and calculations required by subdivision (b)(4) no later  
55 than 14 days after the expiration of the temporary exclusion if the  
56 expiration occurs within the time specified by Rule 1017(e) for filing  
57 a motion pursuant to § 707(b)(2).

58                   (2) If the temporary exclusion from means testing under §  
59                   707(b)(2)(D)(ii) terminates due to the circumstances specified in  
60                   subdivision (n)(1), and if the debtor has not previously filed a  
61                   statement and calculations required by subdivision (b)(4), the clerk  
62                   shall promptly notify the debtor that the required statement and  
63                   calculations must be filed within the time specified in subdivision  
64                   (n)(1).

#### COMMITTEE NOTE

This rule is amended to take account of the enactment of the National Guard and Reservists Debt Relief Act of 2008, which amended § 707(b)(2)(D) of the Code to provide a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces. This exclusion applies to qualifying debtors while they remain on active duty or are performing a homeland defense activity, and for a period of 540 days thereafter. For some debtors initially covered by the exclusion, the protection from means testing will expire while their chapter 7 cases are pending, and at a point when a timely motion to dismiss under § 707(b)(2) can still be filed. Under the amended rule, these debtors are required to file the statement and calculations required by subdivision (b)(4) no later than 14 days after the expiration of their exclusion.

Subdivisions (b)(4) and (c) are amended to relieve debtors qualifying for an exclusion under § 707(b)(2)(D)(ii) from the obligation to file a statement of current monthly income and required calculations within the time period specified in subdivision (c).

Subdivision (n)(1) is added to specify the time for filing of the information required by subdivision (b)(4) by a debtor who initially qualifies for the means test exclusion under § 707(b)(2)(D)(ii), but whose exclusion expires during the time that a motion to dismiss under § 707(b)(2) may still be made under Rule 1017(e). If, upon the expiration of the temporary exclusion, a debtor has not already filed the required statement and

calculations, subdivision (n)(2) directs the clerk to provide prompt notice to the debtor of the time for filing as set forth in subdivision (n)(1).





**TAB 6D-4**



In re \_\_\_\_\_  
Debtor(s)

Case Number: \_\_\_\_\_  
(If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):

- The presumption arises.
- The presumption does not arise.
- ~~The presumption is temporarily inapplicable.~~

**▼ CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION**

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor. If none of the exclusions in Part I applies, joint debtors may complete one statement only. If any of the exclusions in Part I applies, joint debtors should complete separate statements if they believe this is required by § 707(b)(2)(C).

**Part I. MILITARY AND NON-CONSUMER DEBTORS**

1A

**Disabled Veterans.** If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for “The presumption does not arise” at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.

**Declaration of Disabled Veteran.** By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)). ~~If you are or were a reservist or National Guard member, called to active duty or homeland defense activity,~~

1B

**Non-consumer Debtors.** If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.

**Declaration of non-consumer debts.** By checking this box, I declare that my debts are not primarily consumer debts.

1C

~~**Reservists and National Guard Members; active duty or homeland defense activity.** Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the “exclusion period”). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for “The presumption is temporarily inapplicable” at the top of this statement, and (3) complete the verification in Part VIII. **During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.**~~

~~**Declaration of Reservists and National Guard Members.** By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard~~

~~a.  I was called to active duty after September 11, 2001, for a period of at least 90 days and~~  
 ~~I remain on active duty /or/~~  
 ~~I was released from active duty on \_\_\_\_\_, which is less than 540 days before this bankruptcy case was filed;~~

~~OR~~

~~b.  I am performing homeland defense activity for a period of at least 90 days /or/~~  
 ~~I performed homeland defense activity for a period of at least 90 days, terminating on \_\_\_\_\_, which is less than 540 days before this bankruptcy case was filed.~~

and if you filed this case before December 19, 2011, see the National Guard and Reservists Debt Relief Act of 2008, Public Law No. 110-438.



# TAB 7



## MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: DRAFT OF INITIAL MODERNIZED FORMS FOR INDIVIDUALS  
FORMS MODERNIZATION PROJECT

DATE: AUGUST 30, 2011

A. Background of the Bankruptcy Official Forms Modernization Project (FMP)

The FMP began its work in 2008. The project is being carried out by an ad hoc group composed of members of the Advisory Committee's Subcommittee on Forms working in liaison with representatives of other relevant Judicial Conference committees.

The dual goals of the project are to improve the official bankruptcy forms and to improve the interface between the forms and available technology. To accomplish those goals the project team identified the following criteria for the modernized forms:

- Clarify the forms and instructions to improve the collection of necessary information;
- Increase the completeness and accuracy of responses;
- Reduce errors;
- Streamline the look and feel of the forms, making them inviting and easier to read;
- Coordinate with "the next generation" of CM/ECF (Next Gen);
- Provide new and better analytical resources to use information from the forms.

These goals and criteria were established through discussions of the FMP working group and surveys of both court and external user groups. A preliminary decision was made that the forms

for individuals and entities other than individuals should be separated, because separate areas of inquiry apply to each group. There is a greater need for the forms submitted by individuals to be less technical, because more individuals are unsophisticated compared to other entities and individuals may not have the assistance of counsel. The work of the FMP has largely been done by two working subgroups, the “Analytical” group and the “Technology” group.

B. Analytical Group and the Initial Drafts

During the first year of the project, the Analytical group identified all the data collected by the current forms, had outreach sessions with judges, and met with several forms experts, including representatives of the U.S. Census Bureau and the Bureau of Labor Statistics. The meetings were designed to learn more about how forms can be crafted and tested to increase ease of use, understanding of the questions asked and data sought, and increase accuracy of the completed forms. As a result of what was learned during those meetings, Center for Clear Communication, Inc., a consultant with expertise in creating forms, was retained to assist in revising the language and format of the forms to improve the ease of use of the forms, reduce the most common errors made by debtors in using the existing forms, and increase the reliability of data collected by the judiciary in connection with the fulfillment of its statutory reporting responsibilities. Carolyn Boccella Bagin, the principal of the Center for Clear Communication, Inc., began work on the project in late April 2009. As the FMP began its work on the forms used by individual debtors, it sought input about the existing forms, including how the resulting information was used. The FJC surveyed bankruptcy judges, bankruptcy clerks of court, career law clerks, U.S. trustees, chapter 7 trustees, chapter 13 trustees, consumer bankruptcy attorneys, bankruptcy law professors, and PACER users.



Using what had been learned about forms, the FMP adopted the following guiding principles for drafting the revised forms.

- Give people a context for the process and for the questions being asked;
- Use conversational language;
- Define technical terms if they must be used;
- Give people information they need where they need it;
- Simplify the task of giving information;
- Tell people specifically what information is sought.

After an intensive two years of work, drafts of the initial official bankruptcy forms filed by individuals have been prepared and are attached for consideration by this Committee over the next two committee meetings.<sup>1</sup> The revised forms have been placed in a sequence that more accurately reflects the order in which they must be filed. As a result, they have been renumbered, using a three-digit designation to distinguish them from the prior forms.

The drafts have been tested by Dr. Beth Wiggins and Dr. Molly Johnson from the Federal Judicial Center with three groups of people having varying levels of sophistication regarding bankruptcy forms: 1) career bankruptcy law clerks; 2) law students and college students who have been trained to assist low-income debtors in completing bankruptcy forms, under the supervision of an experienced attorney; and 3) laypeople who would be similar to both pro se and represented debtors. The forms were revised again. In addition, there have been discussions with software vendors, and there will soon be discussions with representatives of several

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<sup>1</sup> All of the individual debtor forms the FMP has completed are in the agenda materials. Because of the length of forms, the FMP recommends that committee members focus on half the forms for this meeting (Forms

bankruptcy professional groups, including the National Association of Chapter 13 Trustees, the National Association of Bankruptcy Trustees, the National Association of Consumer Bankruptcy Attorneys, and United States Trustees.

Although a number of changes were made to the drafts as a result of the helpful input provided, there are certain recurring comments that the Subcommittee on Forms would like to identify and explain. There have been a number of comments about the length of the forms relative to the length of the current forms. The revised forms provide many new instructions and checklists, most of which will not be filed, but which add to the length of the forms package. Thus, although the forms attached to this memorandum look much longer than the current forms, the separate instructions and checklists need to be disregarded in comparing the old and the new forms that are filed. Certain new forms are significantly longer than the old forms, e.g. the petition and the schedule of property. This is caused in part by the fact that the new forms sometimes combine multiple current forms. The draft petition incorporates a number of documents that are currently exhibits to the petition. The schedule of property combines what is currently Schedule A (Real Property) and Schedule B (Personal Property). In comparing the current forms to the draft forms, one must keep in mind that the current forms in many instances give instructions about what information to provide and then leave the remainder of the page largely blank. The revised forms ask specific questions about individual assets and liabilities, provide check boxes and spaces for answers, and otherwise prompt for a complete answer. The specific prompting will reduce the amount of omitted information, but it does make the forms longer.

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B101 through B106-Declaration), and the remaining forms during the spring 2012 meeting.

Length seems to primarily be a problem if forms must be printed or searched as static images. It is contemplated that these forms will be implemented in conjunction with Next Gen, which will include the capacity to produce customized reports for end-users and enhanced “Google” type search capabilities. As discussed in the Technology group report below, it may be possible to reduce the requirement to print and retain printed copies if a national standard for electronic signatures can be established.

Another recurring comment is whether the forms will encourage debtors to file bankruptcy pro se rather than employ a lawyer. We have incorporated language in several places in the filing package to discourage debtors from proceeding pro se. By organizing the forms as a bankruptcy filing package we have communicated at the outset the difficulty and complexity of a bankruptcy case. We believe the benefits of clarity for represented debtors, attorneys who are not bankruptcy experts, and pro se debtors alike outweighs the risk of increased pro se filings.

Some people, particularly software vendors, questioned the need for the substantial revision to the “look and feel” of the current forms. They indicated that, if the information has to be filed on forms identical to the draft paper forms, it will be a lot of work for them to recreate the forms. The substantial revisions are the result of an effort to make the forms more understandable by those who must sign them and to make the forms easier to complete accurately. The concerns about the effort that it will take to recreate the new look and feel of the revised forms will need to be addressed before the forms are issued. The first concern, however, is to make the forms easier to use and more likely to provide accurate, complete information.

The Subcommittee is presenting the draft individual forms to the Committee at this time to ensure ample time for Committee review. At the next meeting, **the Subcommittee on Forms will request that this Committee recommend to the Standing Committee that all the draft individual forms be published for comment in August 2012.** The publication report should note that it is not expected that the forms will be implemented until such time as Next Gen becomes operational. This delay will assure that the courts have the required technology to prepare the customized reports using information from forms for end users. It will also allow required lead time for software vendors and outside users.

C. Technology Group

The Technology group gathered information regarding the technological options for use with future forms that could be helpful in achieving the mission of the FMP. As a result of the work of the Technology group, at the fall 2009 meeting, this Committee voted to join with the Next Gen project in seeking relevant Judicial Conference policy approvals to have the modernized forms facilitate the following, so long as appropriate safeguards are in place to restrict access to the extracted information:

- a. Reduce the need for the bankruptcy clerk to manually extract data from forms filed by pro se and other parties not using electronic case upload.
- b. Allow judiciary users (*e.g.* courts, AO, FJC) to easily prepare customized reports for internal purposes, extracting some information from multiple forms.

- c. Increase ease of search for and retrieval of information contained in multiple forms.
- d. Allow flexibility for expansion of the types and quantity of data collected.
- e. Include in Next Gen a system that is capable of creating different levels of access to the information from the forms. For example, to the extent that the system allows accessing selected data or reconfiguring the data into custom reports, the system would be capable of limiting who could have such access or reconfiguration capacity, both within the judiciary and as to outside users.

The recommendations regarding increased data collection raised policy questions that the Bankruptcy Project Steering Group for Next Gen referred to the Committee on Court Administration and Case Management (CACM). CACM:

endorsed the concept of collecting statistical information in the form of "data elements" in the new system. The Committee agreed that collecting data from bankruptcy petitions and forms through electronic data fields in the forms - rather than requiring the collection of the information from static forms - could provide enhanced operational efficiencies within the judiciary. The Committee approved the development of a data collection process that would collect and store only information associated with the business practices of bankruptcy (e.g., information currently listed on the voluntary petition, schedules and statements, reaffirmation agreements, and claim forms).

*Summary of the Report of Judicial Conference Committee on Court Administration and Case Management*, March 2010. In addition, the Technology group has provided feedback to Next Gen about several of the draft system requirements.

The Technology group has explored ways to use technology to reduce errors on forms. For example, the interface for completing the forms would include technology that would

automatically calculate totals after data is entered; technology would automatically prepare summary documents so that there is consistency in the schedules; technology would automatically populate a field if information has previously been provided by the person completing the form either in the same form or in an earlier form; technology would provide prompts and warnings when necessary information is not provided, and would provide links to instructions and pertinent rules and statutes, as appropriate. A separate initiative by Next Gen, the Pro Se Pathfinder project, is currently developing forms that incorporate these and other features.

One technological issue that the FMP has discussed is the question of when, and under what conditions, bankruptcy courts could accept documents where the debtor or other party signing the document did so only electronically or where only an electronic version of a signed document is retained. There is significant variation among courts with respect to the requirements of a “wet signature,” whether the original document with the signature must be retained, and who retains the document. This is an important issue for which a national rule would provide consistency.

Although resolution of this issue in a way that would eliminate any requirement that lawyers and/or courts retain documents with “wet signatures” would be helpful in addressing the length issue identified above, this issue is one that exists today and could be acted upon with our current forms. **The Subcommittee on Forms recommends that this Committee refer to the Subcommittee on Technology and Cross Border Insolvency the question of whether an amendment to the rules would be appropriate to establish standards regarding signatures by parties in the electronic context in which all courts currently operate.**

D. Conclusion

The FMP has finished drafting the initial group of modernized official bankruptcy forms and the Subcommittee on Forms will ask that this Committee to consider the forms at this meeting and its spring 2012 meeting and recommend to the Standing Committee that the draft forms be published for comment in August 2012. The Subcommittee on Forms also asks that the question of establishing standards for truly electronic signatures by parties other than attorneys be referred to the Subcommittee on Technology and Cross Border Insolvency.

Now that the initial draft of the case-commencement individual forms has been completed, the FMP will move forward with the preliminary work and will begin drafting the comparable forms for entities other than individuals.









## Numbering Sequence for Individual Cases

New number	New title	From our previous drafts		From original forms	
		No.	Draft title	No.	Original title
B101	Voluntary Petition for Individuals Filing for Bankruptcy	1	Voluntary Petition for Individuals Filing for Bankruptcy	1	Voluntary Petition Including Exhibits A, C, D
B102	Your Statement About Your Social Security Numbers	21	Your Statement About Your Social Security Numbers	21	Statement of Social Security Number
B103A	Application for Individuals to Pay the Filing Fee in Installments	3A	Application for Individuals to Pay the Filing Fee in Installments	3A	Application and Order to Pay Filing Fee in Installments
B103B	Application to Have the Chapter 7 Filing Fee Waived	3B	Application to Have the Chapter 7 Filing Fee Waived	3B	Application for Waiver of Chapter 7 Filing Fee
B104	List in Individual Chapter 11 Cases of Creditors Who Have the 20 Largest Unsecured Claims Against You	B4	List in Individual Chapter 11 Cases of Creditors Who Have the 20 Largest Unsecured Claims Against You	B4	List in Creditors Holding 20 Largest Unsecured Claims
B105	Your Statement About an Eviction Judgment Against You – Parts A and B	X	Your Statement About an Eviction Judgment Against You—Parts 1 and 2	1	from the Voluntary Petition (previously incorporated into petition)
B106 -- Summary	A Summary of Your Assets and Liabilities and Certain Statistical Information	6-Summary	A Summary of Your Assets and Liabilities and Certain Statistical Information	6	Summary of Schedules Statistical Summary of Certain Liabilities and Related Data
B106A	Schedule A: Your Property (Official Form 106A)	6A	Schedule A: Property	6A	Schedule A: Real Property
				6B	Schedule B: Personal Property
B106B	Schedule B: Creditors Who Hold Claims Secured By Property (Official Form 106B)	6B	Schedule B: Creditors Who Have Claims Secured by Your Property	6D	Schedule D: Creditors Holding Secured Claims
B106C	Schedule C: Creditors Who Have Unsecured Claims (Official Form 106C)	6E	Schedule E: Creditors Who Have Unsecured Claims	6E	Schedule E: Creditors Holding Unsecured Priority Claims
				6F	Schedule F: Creditors Holding Unsecured Nonpriority Claims
B106D	Schedule D: The Property You Claim as Exempt (Official Form 106D)	6C	Schedule C: The Property You Claim as Exempt	6C	Schedule C: The Property You Claim as Exempt
B106E	Schedule E: Executory Contracts and Unexpired Leases (Official Form 106E)	6G	Schedule G: Executory Contracts and Unexpired Leases	6G	Schedule G: Executory Contracts and Unexpired Leases
B106F	Schedule F: Your Codebtors (Official Form 106F)	6H	Schedule H: Your Codebtors	6H	Schedule H: Codebtors
B106G	Schedule G: Your Income (Official Form 106G)	6I	Schedule I: Your Income	6I	Schedule I: Current Income of Individual Debtor(s)
B106H	Schedule H: Your Expenses (Official Form 106H)	6J	Schedule J: Your Expenses	6J	Schedule J: Current Expenditures of Individual Debtor(s)

B106 -- Declaration	Declaration About an Individual Debtor's Schedules	6-- Declaration	Declaration About an Individual Debtor's Schedules	6-- Declar ation	Declaration Concerning Debtor's Schedules
B107	Your Statement of Financial Affairs for Individuals Filing for Bankruptcy	B7	Your Statement of Financial Affairs for Individuals Filing for Bankruptcy	B7	Statement of Financial Affairs
B108-1	Chapter 7 Statement of Your Current Monthly Income and Means-Test Calculation	B22A-1	Chapter 7 Statement of Your Current Monthly Income	B22 A	Statement of Current Monthly Income and Means Test Calculation
B108-2	Chapter 7 Means Test Calculation	B22A-2	Chapter 7 Means Test Calculation		
B109	Chapter 11 Statement of Your Current Monthly Income	B22B	Chapter 11 Statement of Your Current Monthly Income	B22 B	Statement of Current Monthly Income (Chapter 11)
B110-1	Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period	B22C-1	Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period	B22 C	Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Chapter 13)
B110-2	Chapter 13 Calculation of Your Disposable Income	B22C-2	Chapter 13 Calculation of Your Disposable Income		
B111	Attorney's Disclosure of Compensation	203	Attorney's Disclosure of Compensation	203	Disclosure of Compensation of Attorney for Debtor
B112	Statement of Intention for Individuals Filing Under Chapter 7	B8	Statement of Intention for Individuals Filing Under Chapter 7	B8	Chapter 7 Individual Debtor's Statement of Intention
B113	Bankruptcy Petition Preparer's Notice, Declaration and Signature	19	Bankruptcy Petition Preparer's Notice, Declaration, and Signature	19	Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer
B 301A	Notice to Consumer Debtors Under § 342(b) of the Bankruptcy Code	B 201A	Notice to Consumer Debtors Under § 342(b) of the Bankruptcy Code	B 201 A	Notice to Consumer Debtors Under § 342(b) of the Bankruptcy Code

# Instructions for Individuals Filing for Bankruptcy

United States Bankruptcy Court

2011

## About Your Bankruptcy Filing Package

Use this package of forms to file for bankruptcy if you are an individual and are filing by yourself or with your spouse. This package will help you gather the information that the court needs for your bankruptcy. Read the instructions carefully and keep them with your records.

When you file this package, the U.S. Bankruptcy Court opens your case and reviews your information. Since filing for bankruptcy is a serious action, it is important that you give complete and accurate answers so that your case proceeds smoothly. If you give false information, you could be charged with a federal crime or you could lose all the benefits of filing for bankruptcy.

You are strongly encouraged to hire a qualified attorney to work with you to file this information. Only an attorney can give you legal advice. Even if you cannot afford to pay an attorney, you may qualify for free legal services. You may contact your state or local bar for assistance in obtaining free legal services or in hiring an attorney.

### Read This Important Warning

**Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. An attorney can explain to you what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help protect you, your family, your home, and your possessions.**

**Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it extremely difficult to represent themselves successfully. The rules are very technical, and a misstep or inaction may affect your rights. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.**

**Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. If you make a false statement, you could be fined up to \$250,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.**

Although bankruptcy petition preparers can help you type the bankruptcy filing package, they cannot file the documents for you and cannot give you legal advice. Court employees cannot give you legal advice either.

Please understand that filing a bankruptcy case is not private. Anyone has a right to see your bankruptcy filing package after you file it. However, in some circumstances, if another court has issued a protective order to keep your address, telephone number, or other information from being disclosed to the public, it may be possible to protect your information under Fed. R. Bankr. P. 9037. Contact the bankruptcy court clerk's office about any local procedures in this regard.

## Before you file your bankruptcy filing package with the court...

Before you file for bankruptcy, you must do several things:

- Receive counseling about credit from an approved agency** within 180 days before you file. (If you and your spouse are filing together, each of you must receive counseling before you file. Failure to do so may result in the dismissal of your case.) You may have the credit counseling one-on-one or in a group, by telephone, or by internet.

After you finish the counseling, you will receive a certificate that you will need later in the process. For a list of approved providers, go to: <http://www.uscourts.gov>.

In Alabama and North Carolina, go to:  
<http://www.uscourts.gov>

- Find out in which bankruptcy court you must file your bankruptcy filing package.** It is important that you file in the correct district within your state. To find out which district you are in, go to:

<http://www.uscourts.gov/courtlinks>.

- Check the court's local website** for any specific local requirements that you might have to meet. Go to:

<http://www.uscourts.gov/courtlinks>.

- Find out which chapters of the Bankruptcy Code you are eligible for.** For descriptions of each chapter, see notice B 301A: *Notice to Consumer Debtors Under § 342(b) of the Bankruptcy Code*. Go to:

<http://www.uscourts.gov/FormsAndFees>:

**Chapter 7** — *Liquidation.* Fee: **\$299**

**Chapter 11** — *Reorganization.* Fee: **\$1,039**

**Chapter 12** — *Repayment plan for family farmers or fishermen.* Fee: **\$239**

**Chapter 13** — *Repayment plan for individuals with regular income.* Fee: **\$274**

## When you file this bankruptcy filing package with the court...

To file for bankruptcy, you must give the court several forms from this bankruptcy filing package and the following items (The list continues on the next page.):

- Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).
- Your Statement About Your Social Security Numbers* (Official Form 102) to give the court your full Social Security number or federal Individual Taxpayer Identification number. To protect your privacy, the court will make only the last four digits of your number known to the general public. However, the court will make your full number available to your creditors, U.S. trustee or bankruptcy administrator, and the trustee assigned to your case.
- Your filing fee. If you cannot pay the entire filing fee, you must also include:
  - Application for Individuals to Pay the Filing Fee in Installments* (Official Form B103A), or
  - Application to Have the Chapter 7 Filing Fee Waived* (Official Form B103B) but only if you are filing under Chapter 7 and you meet the criteria to have the Chapter 7 filing fee waived.

- A list of names and addresses of all of your creditors, formatted as a mailing list according to instructions from the bankruptcy court in which you file. (Your court may call this a *creditor or mailing matrix*.)
- Your credit counseling certificate from an approved credit counseling agency. (See *Before you file your bankruptcy filing package with the court*, above). If you have not yet received the certificate, file it when you receive it. If you have not already received credit counseling and believe you are entitled to a temporary waiver from receiving counseling or that you are not required to receive credit counseling, see line 15 of the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).
- List in Individual Chapter 11 Cases of Creditors Who Have the 20 Largest Unsecured Claims Against You* (Official Form 104) if you file under Chapter 11.
- Your Statement About an Eviction Judgment Against You—Parts A and B* (Official Form 105) if your landlord has an eviction judgment against you and you want to stay in your residence after you file your bankruptcy filing package.
- Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 113) if a bankruptcy petition preparer helped you fill out your forms.

## When you file your bankruptcy filing package or within 14 days after you file the first part of your bankruptcy filing package with the court...

You must file the forms listed below either when you file your bankruptcy filing package or within 14 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). If you do not do so, your case may be dismissed. Although you can open your case by submitting only the parts of the bankruptcy filing package that are listed on page 2, you should file the entire package at one time to help your case proceed smoothly.

Although some forms may ask you similar questions, you must fill out all of the forms completely to protect your legal rights.

The list below shows the forms that all individuals must file as well as the forms that are specific to each chapter. For copies of the official forms listed here, go to <http://www.uscourts.gov>.

### All individuals who file for bankruptcy must file these forms and the forms for the specific chapter:

- Schedules of Assets and Liabilities* (Official Form 106) which includes these forms:
  - Schedule A: Property* (Official Form 106A)
  - Schedule B: Creditors Who Have Claims Secured by Your Property* (Official Form 106B)
  - Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C)
  - Schedule D: The Property You Claim as Exempt* (Official Form 106D)
  - Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106G)
  - Schedule F: Your Codebtors* (Official Form 106F)
  - Schedule G: Your Income* (Official Form 106G)
  - Schedule H: Your Expenses* (Official Form 106H)
  - A Summary of Your Schedules for Individuals Filing for Bankruptcy* (Official Form 106–Summary) to give an overview of the totals on the schedules in your package
- Your Statement of Financial Affairs for Individuals Filing for Bankruptcy* (Official Form 107)

- Declaration About an Individual Debtor’s Schedules* (Official Form 106–Declaration)
- Attorney’s Disclosure of Compensation* (Form B111)
- Notice to Consumer Debtors Under § 342(b) of the Bankruptcy Code* (Notice B301A)
- Credit counseling certificate that you received from an approved credit counseling agency
- Copies of all payment advices (pay stubs) or other evidence of payment that you received within 60 days before you filed your bankruptcy petition package. However, not all courts require that you file these documents with the court and may require that you file them with the U.S. Trustee, bankruptcy court administrator, or trustee assigned to your case. Check the court’s local website for specific local requirements. Go to <http://www.uscourts.gov/courtlinks>.

If an involuntary bankruptcy case is filed against you and the court enters an order for relief, you must fill out and file the forms listed above within 7 days after you receive the order for relief.

### If you file under Chapter 7, you must also file:

- Statement of Intention for Individuals Filing Under Chapter 7* (Official Form 112)
- Chapter 7 Statement of Your Current Monthly Income* (Official Form 108-1)
- Chapter 7 Means-Test Calculation* (Official Form 108-2)

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**If you file under Chapter 11, you must also file:**

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- Chapter 11 Statement of Your Current Monthly Income* (Official Form 109)

If you file under Chapter 11 and are a small business debtor (that is, if you are self employed and your debts are less than \$2,343,300), within 7 days after you file your bankruptcy petition package, you must also file your most recent:

- Balance sheet
- Statement of operations
- Cash-flow statement
- Federal income tax return

If you do not have these documents, you must file a statement made under penalty of perjury that you have not prepared either a balance sheet, statement of operations, or cash-flow statement or you have not filed a federal tax return.

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**If you file under Chapter 12, you must also file:**

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- Chapter 12 Plan (within 90 days after you file your bankruptcy filing package)

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**If you file under Chapter 13, you must also file:**

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- Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110-1)
- Chapter 13 Calculation of Your Disposable Income* (Official Form 110-2)
- Chapter 13 Plan (Many bankruptcy courts have a local form plan. Check the court's local website for any specific form that you might have to use. Go to <http://www.uscourts.gov/courtlinks>.)

**Be sure to keep a copy of your bankruptcy filing package and all attachments for your records.**

**Do not file these instructions with your bankruptcy filing package.**



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

United States Bankruptcy Court for the:

\_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number (if known): \_\_\_\_\_ Chapter you are filing under:

- Chapter 7
- Chapter 11
- Chapter 12
- Chapter 13

**Official Form 101**

**Voluntary Petition for Individuals Filing for Bankruptcy**

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Identify Yourself**

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
<p><b>1. Your full name</b></p> <p>Write the name that is on your government-issued picture identification (for example, your driver's license or passport).</p> <p>Bring your picture identification to your meeting with the trustee.</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p>
<p><b>2. All other names you have used in the last 8 years</b></p> <p>Include your married or maiden names.</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p> <p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p>	<p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p> <p>_____</p> <p>First name</p> <p>_____</p> <p>Middle name</p> <p>_____</p> <p>Last name</p>
<p><b>3. Last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)</b></p> <p>Bring proof of your Social Security number or federal ITIN to your meeting with the trustee.</p>	<p>XXX - XX - _____</p> <p>OR</p> <p><b>9</b> XX - XX - _____</p> <p>Fill out and submit <i>Your Statement About Your Social Security Numbers</i> (Official Form 102) to the court.</p> <p>To protect your privacy, the court will make only the last four digits of your full Social Security number or federal Individual Taxpayer Identification number known to the public. But, the full numbers will be available to your creditors, the U.S. trustee or bankruptcy administrator, and the trustee assigned to your case.</p>	<p>XXX - XX - _____</p> <p>OR</p> <p><b>9</b> XX - XX - _____</p> <p>Fill out and submit <i>Your Statement About Your Social Security Numbers</i> (Official Form 102) to the court.</p> <p>To protect your privacy, the court will make only the last four digits of your full Social Security number or federal Individual Taxpayer Identification number known to the public. But, the full numbers will be available to your creditors, the U.S. trustee or bankruptcy administrator, and the trustee assigned to your case.</p>

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
<p><b>4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years</b></p> <p>Include trade names and <i>doing business as</i> names</p>	<p><input type="checkbox"/> You have not used any business names or EINs.</p> <p>_____ Business name</p> <p>_____ Business name</p> <p>EIN ____ - ____ - ____ - ____ - ____</p> <p>EIN ____ - ____ - ____ - ____ - ____</p>	<p><input type="checkbox"/> You have not used any business names or EINs.</p> <p>_____ Business name</p> <p>_____ Business name</p> <p>EIN ____ - ____ - ____ - ____ - ____</p> <p>EIN ____ - ____ - ____ - ____ - ____</p>
<p><b>5. Where you live</b></p>	<p>_____ Number Street</p> <p>_____ City State ZIP Code</p> <p>_____ County</p> <p><b>If your mailing address is different from the one above, fill it in here.</b> Note that the court will send any notices to you at this mailing address.</p> <p>_____ Number Street</p> <p>_____ P.O. Box</p> <p>_____ City State ZIP Code</p>	<p><b>If Debtor 2 lives at a different address:</b></p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p> <p>_____ County</p> <p><b>If Debtor 2's mailing address is different from yours, fill it in here.</b> Note that the court will send any notices to this mailing address.</p> <p>_____ Number Street</p> <p>_____ P.O. Box</p> <p>_____ City State ZIP Code</p>
<p><b>6. Why you are choosing this district to file for bankruptcy</b></p>	<p><i>Check one:</i></p> <p><input type="checkbox"/> Over the last 180 days before filing this bankruptcy filing package, I have lived in this district longer than in any other district.</p> <p><input type="checkbox"/> I have another reason. Explain. (See 28 U.S.C. § 1408.)</p> <p>_____</p> <p>_____</p>	<p><i>Check one:</i></p> <p><input type="checkbox"/> Over the last 180 days before filing this bankruptcy filing package, I have lived in this district longer than in any other district.</p> <p><input type="checkbox"/> I have another reason. Explain. (See 28 U.S.C. § 1408.)</p> <p>_____</p> <p>_____</p>

**Part 2: Tell the Court About Your Bankruptcy Case**

**7. The Chapter of the Bankruptcy Code you are choosing to file under**

Check one. (For a brief description of each, see *If You Are an Individual Filing for Bankruptcy* or read notice B 201: Notice to Consumer Debtors Under § 342(b) of the Bankruptcy Code.) Also, go to the top of page 1 and check the appropriate box.

- Chapter 7
- Chapter 11
- Chapter 12
- Chapter 13

**8. How you will pay the fee**

If you file under Chapter ...	Your total fee is...
7	\$299
11	\$1,039
12	\$239
13	\$274

**You will pay the entire fee when you file your petition.** Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.

**You need to pay the fee in installments.** If you choose this option, sign and attach the *Application to Pay Your Filing Fee in Installments* (Official Form 103A).

**You request that your fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may waive your fee only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have Your Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your bankruptcy filing package.

**9. Have you filed for bankruptcy within the last 8 years?**

- No
- Yes. District \_\_\_\_\_ When    /   /    Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When    /   /    Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When    /   /    Case number \_\_\_\_\_  
MM / DD / YYYY

**10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, a business partner, or an affiliate?**

- No
- Yes. Debtor \_\_\_\_\_ Relationship to you \_\_\_\_\_  
 District \_\_\_\_\_ When    /   /    Case number, if known \_\_\_\_\_  
MM / DD / YYYY
- Debtor \_\_\_\_\_ Relationship to you \_\_\_\_\_  
 District \_\_\_\_\_ When    /   /    Case number, if known \_\_\_\_\_  
MM / DD / YYYY

**11. Do you rent your residence?**

- No
- Yes. If your landlord has obtained an eviction judgment against you and you want to stay in your rented residence, fill out *Your Statement About an Eviction Judgment Against You—Part A* (Form 105-A) and file it with this bankruptcy petition.

**Part 3: Report About Any Businesses You Own as a Sole Proprietor**

**12. Are you a sole proprietor of any full- or part-time business?**

A sole proprietorship is a business you own as an individual, rather than a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this package.

- No. Go to Part 4.
- Yes. Name and location of business

\_\_\_\_\_  
Name of business, if any

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

For statistical purposes, check the appropriate box to describe your business:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- None of the above

**13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a small business debtor?**

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).

*If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines.*

- No. You are not filing under Chapter 11.
- No. You are filing under Chapter 11, but you are NOT a small business debtor according to the definition in the Bankruptcy Code.
- Yes. You are filing under Chapter 11 and you are a small business debtor according to the definition in the Bankruptcy Code.

**Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention**

**14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?**

*For example, do you own perishable goods or livestock that must be fed?*

- No
- Yes. What is the hazard? \_\_\_\_\_  
\_\_\_\_\_

If immediate attention is needed, why is it needed? \_\_\_\_\_  
\_\_\_\_\_

Where is the property? \_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

Part 5: Explain Your Efforts to Receive Credit Counseling

15. Tell the court whether you have received credit counseling.

The law requires that you receive credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

I received counseling from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

I received counseling from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and the following circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the credit counseling and why you were unable to obtain it before filed for bankruptcy.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving credit counseling before you file this bankruptcy filing package.

If the court is satisfied with your reasons, you must still receive credit counseling within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

I am not required to receive credit counseling because of:

Incapacity. I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

Disability. My physical disability causes me to be unable to participate in credit counseling in person, by phone, or through the internet, even after I reasonably tried to do so.

Active duty. I am currently on active military duty in a military combat zone.

If you believe you are not required to receive credit counseling, you must file a motion for waiver of credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):

You must check one:

I received counseling from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

I received counseling from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and the following circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the credit counseling and why you were unable to obtain it before filed for bankruptcy.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving credit counseling before you file this bankruptcy filing package.

If the court is satisfied with your reasons, you must still receive credit counseling within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

I am not required to receive credit counseling because of:

Incapacity. I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

Disability. My physical disability causes me to be unable to participate in credit counseling in person, by phone, or through the internet, even after I reasonably tried to do so.

Active duty. I am currently on active military duty in a military combat zone.

If you believe you are not required to receive credit counseling, you must file a motion for waiver of credit counseling with the court.

**Part 6: Answer These Questions for Reporting Purposes**

**16. What kind of debt do you have?**

**Your debts are primarily consumer debts.** *Consumer debts* are defined in 11 U.S.C. § 101(8) as “incurred by an individual primarily for a personal, family, or household purpose.”

**Your debts are primarily business debts.** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

**Your debts are primarily neither business debts nor consumer debts.** One example of a debt that is neither a business nor consumer debt is a debt arising from an auto accident that you may be obligated to pay.

**17. Are you filing under Chapter 7?**

No. You are not filing under Chapter 7. Go to line 18.

Yes. You are filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?

No

Yes

**Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?**

**18. How many creditors do you estimate that you owe?**

<input type="checkbox"/> 1-49	<input type="checkbox"/> 5,001-10,000
<input type="checkbox"/> 50-99	<input type="checkbox"/> 10,001-25,000
<input type="checkbox"/> 100-199	<input type="checkbox"/> 25,001-50,000
<input type="checkbox"/> 200-999	<input type="checkbox"/> 50,001-100,000
<input type="checkbox"/> 1,000-5,000	<input type="checkbox"/> More than 100,000

**19. How much do you estimate your assets to be worth?**

<input type="checkbox"/> \$0-\$50,000	<input type="checkbox"/> \$50,000,001-\$100 million
<input type="checkbox"/> \$50,001-\$100,000	<input type="checkbox"/> \$100,000,001-\$500 million
<input type="checkbox"/> \$100,001-\$500,000	<input type="checkbox"/> \$500,000,001-\$1 billion
<input type="checkbox"/> \$500,001-\$1 million	<input type="checkbox"/> \$1,000,000,001-\$10 billion
<input type="checkbox"/> \$1,000,001-\$10 million	<input type="checkbox"/> \$10,000,000,001-\$50 billion
<input type="checkbox"/> \$10,000,001-\$50 million	<input type="checkbox"/> More than \$50 billion

**20. How much do you estimate your liabilities to be?**

<input type="checkbox"/> \$0-\$50,000	<input type="checkbox"/> \$50,000,001-\$100 million
<input type="checkbox"/> \$50,001-\$100,000	<input type="checkbox"/> \$100,000,001-\$500 million
<input type="checkbox"/> \$100,001-\$500,000	<input type="checkbox"/> \$500,000,001-\$1 billion
<input type="checkbox"/> \$500,001-\$1 million	<input type="checkbox"/> \$1,000,000,001-\$10 billion
<input type="checkbox"/> \$1,000,001-\$10 million	<input type="checkbox"/> \$10,000,000,001-\$50 billion
<input type="checkbox"/> \$10,000,001-\$50 million	<input type="checkbox"/> More than \$50 billion

**Part 7: Sign Here**

**For you**

I declare under penalty of perjury that the information provided in this petition is true and correct. I understand that if I make a false statement, I could be fined up to \$250,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

If I have chosen to file under Chapter 7, I am aware that I may proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

**X** \_\_\_\_\_ **X** \_\_\_\_\_  
 Signature of Debtor 1 Signature of Debtor 2

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

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

Case number (if known) \_\_\_\_\_

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

**For your attorney, if you are represented by one**

**If you are not represented by an attorney, you do not need to file this page.**

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

**X** \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Attorney for Debtor MM / DD / YYYY

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Firm name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

Contact phone (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Email address \_\_\_\_\_

\_\_\_\_\_  
Bar number State

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

Case number (if known) \_\_\_\_\_

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

**For you if you are filing this bankruptcy filing package without an attorney**

**If you are represented by an attorney, you do not need to file this page.**

As an individual, the law allows you to represent yourself in bankruptcy court, but **you should understand that many people find it extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, you are strongly urged to hire a qualified attorney.**

To be successful, you must correctly file and handle your bankruptcy case. The rules are very technical, and a misstep or inaction may affect your rights. For example, your case may be dismissed because you did not file a required document, pay a fee on time, attend a meeting or hearing, or cooperate with the court, case trustee, U.S. trustee, bankruptcy administrator, or audit firm if your case is selected for audit. If that happens, you could lose your right to file another case, or you may lose protections, including the benefit of the automatic stay.

You must list all your property and debts in the schedules that you are required to file with the court. Even if you plan to pay a particular debt outside of your bankruptcy, you must list that debt in your schedules. If you do not list a debt, the debt may not be discharged. If you do not list property or properly claim it as exempt, you may not be able to keep the property. The judge can also deny you a discharge of all your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Individual bankruptcy cases are randomly audited to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined and imprisoned.**

If you decide to file without an attorney, the court expects you to follow the rules as if you had hired an attorney. The court will not treat you differently because you are filing for yourself. To be successful, you must be familiar with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of the court in which your case is filed. You must also be familiar with any state exemption laws that apply.

Are you aware that filing for bankruptcy is a serious action with long-term financial and legal consequences?

- No
- Yes

Are you aware that bankruptcy fraud is a serious crime and that if your bankruptcy filing package is inaccurate or incomplete, you could be fined or imprisoned?

- No
- Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out this bankruptcy filing package?

- No
- Yes. Name of Person \_\_\_\_\_

Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 113).

By signing here, I acknowledge that I understand the risks involved in filing without an attorney. I have read and understood this notice, and I am aware that filing a bankruptcy case without an attorney may cause me to lose my rights or property if I do not properly handle the case.

**x** \_\_\_\_\_  
Signature of Debtor 1

**x** \_\_\_\_\_  
Signature of Debtor 2

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

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

Contact phone (\_\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_

Contact phone (\_\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_

Cell phone (\_\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_

Cell phone (\_\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_

Email address \_\_\_\_\_

Email address \_\_\_\_\_



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

United States Bankruptcy Court for the:

\_\_\_\_\_ District of \_\_\_\_\_  
State

Case number (if known): \_\_\_\_\_

Sample August 16, 2011

**Official Form 102**

**Your Statement About Your Social Security Numbers**

2011

Use this form to tell the court about any Social Security or federal Individual Taxpayer Identification numbers you have used. To protect your privacy, the court will not make this form available to the public. The court will make only the last four digits of your numbers known to the public. However, the full numbers will be available to your creditors, the U.S. Trustee or bankruptcy administrator, and the trustee assigned to your case.

If you do not tell the truth on this form, you may be fined up to \$250,000, you may be imprisoned for up to 5 years, or both.

**Part 1: Tell the court about yourself and your spouse if your spouse is filing with you**

	For Debtor 1:	For Debtor 2 (Only If Spouse Is Filing):
<b>1. Your name</b>	_____ First name _____ Middle name _____ Last name	_____ First name _____ Middle name _____ Last name

**Part 2: Tell the court about all of your Social Security or federal Individual Taxpayer Identification numbers**

<b>2. All Social Security numbers you have used</b>	____ - ____ - ____ - ____ ____ - ____ - ____ - ____ <input type="checkbox"/> You do not have a Social Security number.	____ - ____ - ____ - ____ ____ - ____ - ____ - ____ <input type="checkbox"/> You do not have a Social Security number.
<b>3. All federal Individual Taxpayer Identification numbers (ITIN) you have used</b>	9 ____ - ____ - ____ - ____ 9 ____ - ____ - ____ - ____ <input type="checkbox"/> You do not have an ITIN.	9 ____ - ____ - ____ - ____ 9 ____ - ____ - ____ - ____ <input type="checkbox"/> You do not have an ITIN.

**Part 3: Sign here**

Under penalty of perjury, I declare that the information I have provided in this form is true and correct.  <b>X</b> _____ Signature of Debtor 1  Date ____/____/____ MM / DD / YYYY	Under penalty of perjury, I declare that the information I have provided in this form is true and correct.  <b>X</b> _____ Signature of Debtor 2  Date ____/____/____ MM / DD / YYYY
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## Official Form 103A

### About the Application for Individuals to Pay the Filing Fee in Installments

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United States Bankruptcy Court

2011

If you cannot afford to pay the full filing fee when you first file for bankruptcy, you may pay the fee in installments. However, in most cases, you must pay the entire fee within 120 days after you file, and the court must approve your payment timetable. Your debts will not be discharged until you pay your entire fee.

Do not file this form if you can afford to pay your full fee when you file.

If you are filing under Chapter 7 and cannot afford to pay the full filing fee at all, you may be qualified to ask the court to waive your filing fee. See *Application to Have Your Chapter 7 Filing Fee Waived* (Official Form 103B).

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out the *Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer* (Official Form 113); include a copy of it in this package.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**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)

**Official Form 103A**

**Application for Individuals to Pay the Filing Fee in Installments**

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information.

**Part 1: Specify Your Proposed Payment Timetable**

1. Which chapter of the Bankruptcy Code are you choosing to file under?

- Chapter 7 ..... Fee: **\$299**
- Chapter 11 ..... Fee: **\$1,039**
- Chapter 12 ..... Fee: **\$239**
- Chapter 13 ..... Fee: **\$274**

2. You may apply to pay the filing fee in up to four installments. Fill in the amounts you propose to pay and the dates you plan to pay them. Be sure all dates are business days. Then add the payments you propose to pay.

**You propose to pay...**

\$ \_\_\_\_\_  With the filing of the petition

\$ \_\_\_\_\_  On or before this date..... MM / DD / YYYY

\$ \_\_\_\_\_ On or before this date ..... MM / DD / YYYY

\$ \_\_\_\_\_ On or before this date ..... MM / DD / YYYY

+ \$ \_\_\_\_\_ On or before this date ..... MM / DD / YYYY

**Total**

\$ \_\_\_\_\_

◀ Your total must equal the entire fee for the chapter you checked in line 1.

**Part 2: Sign Here**

**By signing here, you state that you are unable to pay the full filing fee at once, that you want to pay the fee in installments, and that you understand that:**

- You must pay your entire filing fee before you make any more payments or transfer any more property to an attorney, bankruptcy petition preparer, or anyone else in connection with your bankruptcy case.
- You must pay the entire fee no later than 120 days after you first file for bankruptcy, unless the court extends your deadline to 180 days. Your debts will not be discharged until your entire fee is paid.
- If you do not make any payment when it is due, your bankruptcy case may be dismissed, and your rights in other bankruptcy proceedings may be affected.

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

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

**X** \_\_\_\_\_  
 Your attorney's name and signature, if you used one

Date MM / DD / YYYY

Date MM / DD / YYYY

Date MM / DD / YYYY

**Fill in this information to identify the 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): \_\_\_\_\_ Chapter filing under:  
 Chapter 7  
 Chapter 11  
 Chapter 12  
 Chapter 13

## Order Approving Payment of Filing Fee in Installments

After considering the *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 103A), the court orders that:

- The debtor(s) may pay the filing fee in installments on the terms proposed in the application.
- The debtor(s) must pay the filing fee according to the following terms:

You must pay...	On or before this date...
\$ _____.	_____/_____/_____ Month / day / year
\$ _____.	_____/_____/_____ Month / day / year
\$ _____.	_____/_____/_____ Month / day / year
+ \$ _____.	_____/_____/_____ Month / day / year
<b>Total</b>	<input type="text"/>

- Until the filing fee is paid in full, the debtor(s) must not make any additional payment or transfer any additional property to an attorney or to anyone else for services in connection with this case.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month / day / year

**By the court:** \_\_\_\_\_  
United States Bankruptcy Judge

**Official Form 103B****About the Application to Have the Chapter 7 Filing Fee Waived**

United States Bankruptcy Court

2011

**Understand the terms used in the form**

The *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**How to fill out the Application**

The fee for filing a bankruptcy case under Chapter 7 is \$299. If you cannot afford to pay the entire fee now in full or in installments within 120 days, use this form. If you can afford to pay your filing fee in installments, see *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 103A).

If you file this form, you are asking the court to waive your fee. After reviewing your application, the court may waive your fee, set a hearing for further investigation, or require you to pay the fee in installments or in full.

**For your fee to be waived, all of these statements must be true:**

- You are filing for bankruptcy under Chapter 7.
- You are an individual.
- The total combined monthly income for your family is less than 150% of the official poverty guideline last published by the U.S. Department of Health and Human Services (DHHS). (For more information about the guidelines, go to <http://www—insert web link to poverty guidelines here.>)
- You cannot afford to pay the fee in installments.

*Your family* includes you, your spouse, and any dependents listed on *Schedule G*. Your family may be different from your *household*, referenced on *Schedules G* and *H*. Your household may include your unmarried partner and others who live with you and with whom you may share income and expenses.

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out *Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer* (Official Form 113); include a copy of it in this package.

If you have already completed the following forms, the information on them may help you when you fill out this application:

- *Schedule A: Property* (Official Form 106A)
- *Schedule G: Your Income* (Official Form 106G)
- *Schedule H: Your Expenses* (Official Form H)

**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)

Sample August 16, 2011

**Official Form 103B**

**Application to Have the Chapter 7 Filing Fee Waived**

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, this form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Tell the Court About Your Family and Your Family's Income**

**1. What is the size of your family?**  
 Your family includes you, your spouse, and any dependents listed on *Schedule G: Your Income* (Official Form 106G).

Number of people \_\_\_\_\_

*Check all that apply.*

You  
 Your spouse  
 Your dependents \_\_\_\_\_  
How many dependents?

**2. Fill in your family's average monthly income.**  
 Include your spouse's income if your spouse is living with you, even if your spouse is not filing.  
 Do not include your spouse's income if you are separated and your spouse is not filing with you.

Person in your family	That person's average monthly net income (take-home pay)
You	\$ _____
Your spouse	+ \$ _____
<b>Total</b>	\$ _____

Add your income and your spouse's income or copy line 10 of *Schedule G: Your Income*, if you have already filled it out.

**Your family's average monthly net income**

**3. Do you expect your family's average monthly net income to increase or decrease by more than 10% during the next 6 months?**

No  
 Yes. Explain. ....

**4. Tell the court why you are unable to pay the filing fee in installments within 120 days.**

**Part 2: Tell the Court About Your Monthly Expenses**

**5. Estimate your average monthly expenses.**

\$ \_\_\_\_\_

You may use *Schedule H: Your Expenses* to determine your estimation. If you have already filled out *Schedule H*, copy line 19.

**6. Do these expenses cover anyone who is not included in your family as reported in line 1?**

No  
 Yes. Identify who....

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

Case number (if known) \_\_\_\_\_

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

7. Does anyone other than you regularly pay any of these expenses?

- No  
 Yes. Identify who ....

\_\_\_\_\_

How much does this person regularly pay? \$ \_\_\_\_\_ monthly

List any contributions to expenses you have or will list in line 11 of *Schedule I: Your Income*.

8. Do you expect your average monthly expenses to increase or decrease by more than 10% during the next 6 months?

- No  
 Yes. Explain .....

\_\_\_\_\_

**Part 3: Tell the Court About Your Property**

If you have already filled out *Schedule A: Property*, attach a copy to this application and go to Part 4.

9. How much cash do you have?

*Examples:* Money you have in your wallet, in your home, and on hand when you file this application

Cash: \$ \_\_\_\_\_

10. Bank accounts and other deposits of money?

*Examples:* Checking, savings, money market, or other financial accounts; certificates of deposit; shares in banks, credit unions, brokerage houses, and other similar institutions. If you have more than one account with the same institution, list each. Do not include 401(k) and IRA accounts.

Institution name:

Amount:

Checking account: \_\_\_\_\_ \$ \_\_\_\_\_

Savings account: \_\_\_\_\_ \$ \_\_\_\_\_

Other financial accounts: \_\_\_\_\_ \$ \_\_\_\_\_

Other financial accounts: \_\_\_\_\_ \$ \_\_\_\_\_

11. Your home? (if you own it outright or are purchasing it)

*Examples:* House, condominium, manufactured home, or mobile home

Number Street Current value: \$ \_\_\_\_\_

City State ZIP Code Amount you owe on mortgage and liens: \$ \_\_\_\_\_

12. Other real estate?

Number Street Current value: \$ \_\_\_\_\_

City State ZIP Code Amount you owe on mortgage and liens: \$ \_\_\_\_\_

13. The vehicles you own?

*Examples:* Cars, vans, trucks, sports utility vehicles, motorcycles, tractors, boats

Make: \_\_\_\_\_ Current value: \$ \_\_\_\_\_

Model: \_\_\_\_\_

Year: \_\_\_\_\_ Amount you owe on liens: \$ \_\_\_\_\_

Mileage: \_\_\_\_\_

Make: \_\_\_\_\_ Current value: \$ \_\_\_\_\_

Model: \_\_\_\_\_

Year: \_\_\_\_\_ Amount you owe on liens: \$ \_\_\_\_\_

Mileage: \_\_\_\_\_

14. Other assets?

Do not include household items and clothing.

Describe the other assets:

Current value: \$ \_\_\_\_\_

Amount you owe on liens: \$ \_\_\_\_\_

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

Case number (if known) \_\_\_\_\_

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

**15. Money or property due you?**

*Examples:* Tax refunds, past due or lump sum alimony, spousal support, child support, maintenance, divorce or property settlements, Social Security benefits, Workers' compensation, personal injury recovery

**Who owes you the money or property?**

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

**How much is owed?**

\$ \_\_\_\_\_  
\$ \_\_\_\_\_

Do you believe you will likely receive payment in the next 3 or 4 months?

- No  
 Yes. Explain:

**Part 4: Answer These Additional Questions**

**16. Have you paid anyone for services for this case, including filling out this application, the bankruptcy filing package, or the schedules?**

- No  
 Yes. **Whom did you pay?**  
 An attorney  
 A bankruptcy petition preparer, paralegal, or typing service  
 Someone else \_\_\_\_\_

**How much did you pay?**

\$ \_\_\_\_\_

**17. Have you promised to pay or do you expect to pay someone for services for your bankruptcy case?**

- No  
 Yes. **Whom do you expect to pay?**  
 An attorney  
 A bankruptcy petition preparer, paralegal, or typing service  
 Someone else \_\_\_\_\_

**How much do you expect to pay?**

\$ \_\_\_\_\_

**18. Has anyone paid someone on your behalf for services for this case?**

- No  
 Yes. **Who was paid on your behalf?**  
 An attorney  
 A bankruptcy petition preparer, paralegal, or typing service  
 Someone else \_\_\_\_\_
- Who paid?**  
 Parent  
 Brother or sister  
 Friend  
 Pastor or clergy  
 Someone else \_\_\_\_\_

**How much did someone else pay?**

\$ \_\_\_\_\_

**19. Have you, your spouse, or both of you filed for bankruptcy within the last 8 years?**

- No  
 Yes. District \_\_\_\_\_ When \_\_\_/\_\_\_/\_\_\_ Case number \_\_\_\_\_  
District \_\_\_\_\_ When \_\_\_/\_\_\_/\_\_\_ Case number \_\_\_\_\_  
District \_\_\_\_\_ When \_\_\_/\_\_\_/\_\_\_ Case number \_\_\_\_\_

**Part 5: Sign Here**

By signing here under penalty of perjury, you declare that you cannot afford to pay the filing fee either in full or in installments. You also declare that the information you provided in this application is true and correct.

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

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

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

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



**Fill in this information to identify the 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)

## Order on the Application to Have the Chapter 7 Filing Fee Waived

After considering the debtor's *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B), the court orders that the application is:

- Granted.** However, the court may order the debtor to pay the fee in the future if developments in administering the bankruptcy case show that the waiver was unwarranted.
- Denied.** The debtor must pay the \$299 filing fee according to the following terms:

You must pay...	On or before this date...
\$ _____.	____/____/____ Month / day / year
\$ _____.	____/____/____ Month / day / year
\$ _____.	____/____/____ Month / day / year
+ \$ _____.	____/____/____ Month / day / year
<b>Total</b>	<b>\$ 299.00</b>

If the debtor would like to propose a different payment timetable, the debtor must file a motion promptly with a payment proposal. The debtor may use *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 103A) for this purpose. The court will consider it.

The debtor must pay the entire filing fee before making any more payments or transferring any more property to an attorney, bankruptcy petition preparer, or anyone else in connection with the bankruptcy case. If the debtor does not make any payment when it is due, the bankruptcy case may be dismissed and the debtor's rights in future bankruptcy cases may be affected.

**Scheduled for hearing.**

A hearing to consider the debtor's application will be held

on \_\_\_\_/\_\_\_\_/\_\_\_\_ at \_\_\_\_:\_\_\_\_ AM/PM at \_\_\_\_\_.  
Month / day / year Address of courthouse

If the debtor does not appear at this hearing, the court may deny the application by default.

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Month / day / year

**By the court:** \_\_\_\_\_  
United States Bankruptcy Judge

## Official Form 104

# About the List in Individual Chapter 11 Cases of Creditors Who Have the 20 Largest Unsecured Claims Against You

United States Bankruptcy Court

2011

**If you are filing under Chapter 7, 12, or 13, do not fill out this form.**

The *List in Individual Chapter 11 Cases of Creditors Who Have the 20 Largest Unsecured Claims Against You* (Official Form 104) uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses you to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).

### How to fill out this form

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. If you are an individual filing for bankruptcy under Chapter 11, you must fill out the *List in Individual Chapter 11 Cases of Creditors Who Have the 20 Largest Unsecured Claims Against You* (Official Form 104).

Creditors may have different types of claims:

- Secured claims, or
- Unsecured claims.

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. If a creditor has security in your property, but the value of the security available to pay the creditor is less than the amount you owe the creditor, the creditor has both a secured and unsecured claim against you. The amount of the unsecured claim is the total claim minus the value of the security that is available to pay the creditor.

Creditors with unsecured claims do not have rights against specific property, or the specific property in which the creditor has rights is not worth enough to pay the creditor in full. For example, if you owe a creditor \$30,000 for your car and the creditor has a security interest in your car but the car is worth only \$20,000, the creditor has a \$20,000 secured claim and a \$10,000 unsecured claim.

\$30,000	Total amount you owe creditor
– \$20,000	Amount your car is worth (amount of secured claim)
\$10,000	Amount of unsecured claim

Many claims have a specific value, and you clearly owe them. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must include such claims when listing your 20 largest unsecured claims on this list.

### Claims may be contingent, unliquidated, or disputed.

The form asks you to identify claims that are:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the amount has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you do not agree that you owe the debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

A single claim can have one, more than one, or none of these characteristics.

**On this form, list the creditors with the 20 largest unsecured claims who are not insiders**

You must file this form when you file your Chapter 11 bankruptcy filing package with the court.

If an involuntary Chapter 11 bankruptcy case is filed against you and the court enters an order for relief, you must fill out and file this form within 2 days after you receive the order for relief from the court.

When you list the 20 largest unsecured creditors, include all unsecured creditors, except for the following two types of creditors, even if you plan to pay them. Do not include:

- Anyone who is an *insider*. *Insiders* include relatives; general partners of you or your relatives; corporations of which you are an officer, director, or person in control; and any managing agent. 11 U.S.C. § 101.
- Secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Make sure that all of the creditors listed on this form are also listed on *Schedule C: Creditors Who Have Unsecured Claims*, (Official Form 106C).

On the form, you will fill in what the claim is for. Examples include trade debts, bank loans, professional services, and government contracts.

**Do not list the full name of minor children**

Do not list a minor child's full name. Instead, fill in only the child's initials and the full name and address of the child's parent or guardian. For example, write A.B., a minor child (*John Doe, parent, 123 Main St., City, State*). 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m) and 9037.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**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)

**Official Form 104**

**List in Individual Chapter 11 Cases of Creditors Who Have the 20 Largest Unsecured Claims Against You**

2011

If you are an individual filing for bankruptcy under Chapter 11, you must fill out this form. If you are filing under Chapter 7 or Chapter 13, do not fill out this form. Do not include claims by anyone who is an *insider*. Insiders include relatives; general partners of you or your relatives; corporations of which you are an officer, director, or person in control; and any managing agent. 11 U.S.C. § 101. Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information.

List the 20 Unsecured Claims in Order from Largest to Smallest. Do not include claims by insiders.

		Unsecured claim
<b>1</b>	<p>What is the nature of the claim? _____</p> <p>Creditor's Name _____</p> <p>Number Street _____</p> <p>City State ZIP Code _____</p> <p>Contact (_____) _____                      Contact phone _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent  <input type="checkbox"/> Unliquidated  <input type="checkbox"/> Disputed  <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No  <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____                      Value of security: - \$ _____                      Unsecured claim \$ _____</p>	\$ _____
<b>2</b>	<p>What is the nature of the claim? _____</p> <p>Creditor's Name _____</p> <p>Number Street _____</p> <p>City State ZIP Code _____</p> <p>Contact (_____) _____                      Contact phone _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent  <input type="checkbox"/> Unliquidated  <input type="checkbox"/> Disputed  <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No  <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____                      Value of security: - \$ _____                      Unsecured claim \$ _____</p>	\$ _____
<b>3</b>	<p>What is the nature of the claim? _____</p> <p>Creditor's Name _____</p> <p>Number Street _____</p> <p>City State ZIP Code _____</p> <p>Contact (_____) _____                      Contact phone _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent  <input type="checkbox"/> Unliquidated  <input type="checkbox"/> Disputed  <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No  <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____                      Value of security: - \$ _____                      Unsecured claim \$ _____</p>	\$ _____

		Unsecured claim
<b>4</b>	<p><b>What is the nature of the claim?</b> _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____</p> <p style="margin-left: 40px;">Value of security: - \$ _____</p> <p style="margin-left: 40px;">Unsecured claim \$ _____</p>	
<b>5</b>	<p><b>What is the nature of the claim?</b> _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____</p> <p style="margin-left: 40px;">Value of security: - \$ _____</p> <p style="margin-left: 40px;">Unsecured claim \$ _____</p>	
<b>6</b>	<p><b>What is the nature of the claim?</b> _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____</p> <p style="margin-left: 40px;">Value of security: - \$ _____</p> <p style="margin-left: 40px;">Unsecured claim \$ _____</p>	
<b>7</b>	<p><b>What is the nature of the claim?</b> _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____</p> <p style="margin-left: 40px;">Value of security: - \$ _____</p> <p style="margin-left: 40px;">Unsecured claim \$ _____</p>	
<b>8</b>	<p><b>What is the nature of the claim?</b> _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____</p> <p style="margin-left: 40px;">Value of security: - \$ _____</p> <p style="margin-left: 40px;">Unsecured claim \$ _____</p>	

		Unsecured claim
<b>9</b>	<p>Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact _____ (_____) _____ - _____ Contact phone _____</p>	<p>What is the nature of the claim? _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>
<b>10</b>	<p>Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact _____ (_____) _____ - _____ Contact phone _____</p>	<p>What is the nature of the claim? _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>
<b>11</b>	<p>Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact _____ (_____) _____ - _____ Contact phone _____</p>	<p>What is the nature of the claim? _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>
<b>12</b>	<p>Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact _____ (_____) _____ - _____ Contact phone _____</p>	<p>What is the nature of the claim? _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>
<b>13</b>	<p>Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact _____ (_____) _____ - _____ Contact phone _____</p>	<p>What is the nature of the claim? _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>

		Unsecured claim
<b>14</b>	<p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p>Contact _____ (_____) _____ Contact phone _____</p>	<p>What is the nature of the claim? _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>
	<b>15</b>	<p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p>Contact _____ (_____) _____ Contact phone _____</p>
<b>16</b>	<p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p>Contact _____ (_____) _____ Contact phone _____</p>	<p>What is the nature of the claim? _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>
<b>17</b>	<p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p>Contact _____ (_____) _____ Contact phone _____</p>	<p>What is the nature of the claim? _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>
<b>18</b>	<p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p>Contact _____ (_____) _____ Contact phone _____</p>	<p>What is the nature of the claim? _____ \$ _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>

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

Case number (if known) \_\_\_\_\_

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

		Unsecured claim
<b>19</b>	<p>What is the nature of the claim? _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>	\$ _____
	<p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p>Contact _____ (_____) _____ - _____ Contact phone _____</p>	
<b>20</b>	<p>What is the nature of the claim? _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Does the creditor have a security interest in your property?</b></p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____</p>	\$ _____
	<p>Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p>Contact _____ (_____) _____ - _____ Contact phone _____</p>	



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)

Sample August 16, 2011

Official Form B105-A

Your Statement About an Eviction Judgment Against You—Part A 2011

Fill out this form only if:

- you rent your residence; and
- your landlord has obtained a judgment for possession in an eviction, unlawful detainer action, or similar proceeding (called *eviction judgment*) against you to possess your residence; and
- you want to stay in your rented residence after you file your case for bankruptcy.

Your Statement About an Eviction Judgment Against You has two parts that you must file at different times:

- File Part A with the court when you first file your bankruptcy filing package. Serve a copy on your landlord.
- File Part B within 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). Also, serve a copy on your landlord.

You must serve your landlord with a copy of this form. Check the Bankruptcy Rules ([www.uscourts.gov/rules](http://www.uscourts.gov/rules)) and the court's local website (go to [www.uscourts.gov/courtlinks](http://www.uscourts.gov/courtlinks) to find your court's website) for any specific requirements that you might have to meet to serve this statement.

File this part when you file your bankruptcy filing package

Fill this out if your landlord has an eviction judgment against you AND you wish to stay in your residence for 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101) with the court.

11 U.S.C. §§ 362(b)(22) and 362(l)

If your landlord DOES NOT have an eviction judgment, you do not need to fill out this form.

Has your landlord obtained an eviction judgment against you to possess your residence?

No. You do not need to fill out this form.

Yes. Landlord's name \_\_\_\_\_

Landlord's address \_\_\_\_\_  
Number Street

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

If you answered Yes, check all that apply:

You certify under penalty of perjury that:

- Under the state or other nonbankruptcy law that applies to the judgment for possession (*eviction judgment*), you have the right to stay in your residence by paying your landlord the entire amount you owe.
- You have given the bankruptcy court clerk a deposit for the rent that would be due during the 30 days after you file the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).

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

Date    /   /     
MM / DD / YYYY

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

Date    /   /     
MM / DD / YYYY

If you checked both boxes above, signed the form to certify that both apply, and served your landlord a copy of this statement, the automatic stay under 11 U.S.C. § 362(a)(3) will apply to the continuation of the eviction against you for 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).

If you wish to stay in your residence after that 30-day period and continue to receive the protection of the automatic stay under 11 U.S.C. § 362(a)(3), you must pay the entire amount you owe to your landlord as stated in the eviction judgment before the 30-day period ends. You must also fill out Part B of this form, file it with the bankruptcy court, and serve your landlord a copy of it before the 30-day period ends.

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)

Sample August 16, 2011

Official Form 105-B

Your Statement About an Eviction Judgment Against You—Part B 2011

Fill out Part B of this form only if:

- you filed Part A of this form; and
- you served a copy of Part A on your landlord; and
- you want to stay in your rented residence for more than 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).

File Part B within 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). Also, serve a copy on your landlord.

File Part B within 30 days after you file your bankruptcy filing package

If your landlord has an eviction judgment against you, do you wish to stay in your residence for MORE than 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101) with the court?

11 U.S.C. §§ 362(b)(22) and 362(l).

If your landlord DOES NOT have an eviction judgment, you do not need to fill out this form.

No. You do not need to fill out this form.

Yes. You certify under penalty of perjury that (Check all that apply):

- Under the state or other nonbankruptcy law that applies to the judgment for possession (*eviction judgment*), you have the right to stay in your residence by paying your landlord the entire amount you owe.
- Within 30 days after you filed your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101), you have paid your landlord the entire amount you owe as stated in the judgment for possession (*eviction judgment*).

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

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

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

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

You must serve your landlord with a copy of this form.

Check the Bankruptcy Rules (www.uscourts.gov/rules) and the court's local website (go to www.uscourts.gov/courtlinks to find your court's website) for any specific requirements that you might have to meet to serve this statement.

## Official Form 106A

## About Schedule A: Property

United States Bankruptcy Court

2011

**How to fill out Schedule A**

*Schedule A: Property* (Official Form 6A) lists property interests that are involved in a bankruptcy case. All individuals filing for bankruptcy must honestly list everything they own or have a legal or equitable interest in. *Legal or equitable interest* is a broad term and includes all kinds of property interests in both tangible and intangible property, whether or not anyone else has an interest in that property.

You must verify under penalty of perjury that the information you provide is complete and accurate. If you fail to list any property, you may lose the property anyway, lose your bankruptcy discharge, be fined up to \$250,000, and be imprisoned for up to 5 years. 11 U.S.C. §§ 554, 727; 18 U.S.C. §§ 152, 157, 3559, 3571, and 3581.

**Understand the terms used in the form**

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

In this form, report the *current value* of the property that you own in each category. *Current value* is sometimes called *fair market value* and generally is the fair market value as of the date of the filing of the petition. *Current value* is how much the property is worth now, which may be more or less than when you acquired it. *Property you own* includes property you have purchased, even if you owe money on it, such as a home with a mortgage or an automobile with a lien.

**Report the current value of the portion you own**

For each question, report the current value of the portion of the property that you own. To do this, you would usually

determine the current value of the entire item of property and the percentage of the property you own. For example:

- If you own a house by yourself, you own 100% of that house. Report the entire current value of the house.
- If you and a sister own the house equally, report 50% of the value of the house (or half of the value of the house).

Multiply the current value of the house by the percentage that you own. Report the result where the form asks for *Current value of the portion you own*.

In certain categories, current value may be difficult to figure out. When you cannot find the value from a reputable source (such as a pricing guide for your car), estimate the value and be prepared to explain how you determined it.

The information in this form is grouped by category and includes several examples for many items. Note that those examples are meant to give you an idea of what to include in the categories. They are not intended to be complete lists of everything within that category. Make sure you list everything you own or have an interest in.

**List items once**

List items only once; do not list them in more than one category. Be specific when you describe your items. If you have items that you think could fit in more than one category, select the most suitable category and list the items there. In each category, list valuable items separately. In categories where you list similar items of minimal value (such as children’s clothes), add the value of the items and report a total.

**List all real estate in Part 1 and other property in the other parts.****Match the values to the other schedules**

Make sure that the values you report on this form match the values you report on *Schedule B: Creditors Who Hold Claims Secured by Your Property* (Official Form 106B) and *Schedule D: The Property You Claim as Exempt* (Official Form 106D).

On this form, do not list any interests you may have in executory contracts (for example, an unexpired lease for your apartment, a contract for improvements or repairs for your home, a real estate listing agreement, or a lease for your car). List those contracts or leases on *Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106E).

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**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)

# Official Form 106A

## Schedule A: Property

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest in**

**1. Do you own or have any legal or equitable interest in any residence, building, land, or similar property?**

- No
- Yes. Where is it?

\_\_\_\_\_

Street address, if available, or other description

\_\_\_\_\_

\_\_\_\_\_

City State ZIP Code

\_\_\_\_\_

County

**What is it?** Check all that apply.

- Single, detached home
- Duplex or multi-family
- Townhouse
- Condominium or cooperative
- Manufactured home
- Mobile home
- Farmland (See Part 6)
- Land
- Investment property
- Time share
- Other \_\_\_\_\_

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another

\_\_\_\_\_  
 Name of other owner

\_\_\_\_\_  
 Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

**Other information you wish to add about this item:**

If you own or have more than one, list here:

\_\_\_\_\_

Street address, if available, or other description

\_\_\_\_\_

\_\_\_\_\_

City State ZIP Code

\_\_\_\_\_

County

**What is it?** Check all that apply.

- Single, detached home
- Duplex or multi-family
- Townhouse
- Condominium or cooperative
- Manufactured home
- Mobile home
- Farmland (See Part 6)
- Land
- Investment property
- Time share
- Other \_\_\_\_\_

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another

\_\_\_\_\_  
 Name of other owner

\_\_\_\_\_  
 Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

**Other information you wish to add about this item:**

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

Case number (if known) \_\_\_\_\_

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

Street address, if available, or other description

City State ZIP Code

County

**What is it?** Check all that apply.

- Single, detached home
- Duplex or multi-family
- Townhouse
- Condominium or cooperative
- Manufactured home
- Mobile home
- Farmland (See Part 6)
- Land
- Investment property
- Time share
- Other \_\_\_\_\_

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another

\_\_\_\_\_  
Name of other owner

\_\_\_\_\_  
Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

**Other information you wish to add about this item:**

2. Add the dollar value of all of your entries from Part 1, including any entries for pages you have attached for Part 1. Write that number here. \_\_\_\_\_ →

\$ \_\_\_\_\_

**Part 2: Describe Your Vehicles**

**Do you own or have legal or equitable interest in any vehicles, whether they are registered or not?** Include any vehicles you own that someone else drives. Do not report leased vehicles here. If you lease a vehicle, fill out *Schedule G: Executory Contracts and Unexpired Leases*.

3. **Cars, vans, trucks, tractors, sport utility vehicles, motorcycles**

- No
- Yes

Make: \_\_\_\_\_  
Model: \_\_\_\_\_  
Year: \_\_\_\_\_  
Mileage: \_\_\_\_\_  
Other information:

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another

\_\_\_\_\_  
Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

If you own or have more than one, describe here:

Make: \_\_\_\_\_  
Model: \_\_\_\_\_  
Year: \_\_\_\_\_  
Mileage: \_\_\_\_\_  
Other information:

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another

\_\_\_\_\_  
Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

Make: \_\_\_\_\_  
Model: \_\_\_\_\_  
Year: \_\_\_\_\_  
Mileage: \_\_\_\_\_  
Other information:

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another

\_\_\_\_\_  
Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

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

Case number (if known) \_\_\_\_\_

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

Make: \_\_\_\_\_  
Model: \_\_\_\_\_  
Year: \_\_\_\_\_  
Mileage: \_\_\_\_\_  
Other information: \_\_\_\_\_

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another \_\_\_\_\_

Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

**4. Watercraft**

*Examples:* Boats, boat trailers, powerboats, motors, canoes, kayaks, rowboats, sailboats, personal watercraft, yachts, ships, fishing vessels, accessories

- No
- Yes

Make: \_\_\_\_\_  
Model: \_\_\_\_\_  
Year: \_\_\_\_\_  
Mileage: \_\_\_\_\_  
Other information: \_\_\_\_\_

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another \_\_\_\_\_

Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

If you own or have more than one, list here:

Make: \_\_\_\_\_  
Model: \_\_\_\_\_  
Year: \_\_\_\_\_  
Mileage: \_\_\_\_\_  
Other information: \_\_\_\_\_

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another \_\_\_\_\_

Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

**5. Aircraft and accessories**

- No
- Yes

Make: \_\_\_\_\_  
Model: \_\_\_\_\_  
Year: \_\_\_\_\_  
Mileage: \_\_\_\_\_  
Other information: \_\_\_\_\_

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another \_\_\_\_\_

Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

**6. Motor homes and recreational vehicles**

- No
- Yes

Make: \_\_\_\_\_  
Model: \_\_\_\_\_  
Year: \_\_\_\_\_  
Mileage: \_\_\_\_\_  
Other information: \_\_\_\_\_

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another \_\_\_\_\_

Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

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

Case number (if known) \_\_\_\_\_

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

**7. Other vehicles**

- No
- Yes

Make: \_\_\_\_\_

Model: \_\_\_\_\_

Year: \_\_\_\_\_

Mileage: \_\_\_\_\_

Other information: \_\_\_\_\_

**Who owns it?**

- Debtor 1
- Debtor 2
- Both Debtor 1 and Debtor 2
- Marital community property
- Ownership with another \_\_\_\_\_

Name of other owner

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Your Property*.

\$ \_\_\_\_\_

**8. Add the dollar value of all of your entries from Part 2, including any entries for pages you have attached for Part 2. Write that number here** .....

\$ \_\_\_\_\_

**Part 3: Describe Your Personal and Household Items**

**Do you own or have any legal or equitable interest in any of the following items?**

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions.

**9. Household goods and furnishings**

*Examples:* Major appliances, furniture, linens, china, kitchenware

- No
- Yes. Describe.....

\$ \_\_\_\_\_

**10. Electronics**

*Examples:* Televisions and radios; audio, video, stereo, and digital equipment; computers, printers, scanners; music collections; electronic devices including cell phones, cameras, media players, games

- No
- Yes. Describe.....

\$ \_\_\_\_\_

**11. Collectibles of value**

*Examples:* Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; stamp, coin, or baseball card collections; china and crystal; other collections, memorabilia, collectibles

- No
- Yes. Describe.....

\$ \_\_\_\_\_

**12. Equipment for sports and hobbies**

*Examples:* Sports, photographic, exercise, and other hobby equipment; bicycles, pool tables, golf clubs, skis; carpentry tools; musical instruments

- No
- Yes. Describe.....

\$ \_\_\_\_\_

**13. Firearms**

*Examples:* Pistols, rifles, shot guns, ammunition, and related equipment

- No
- Yes. Describe.....

\$ \_\_\_\_\_

**14. Clothes**

*Examples:* Everyday clothes, furs, leather coats, designer wear, shoes, accessories

- No
- Yes. Describe.....

\$ \_\_\_\_\_

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

Case number (if known) \_\_\_\_\_

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

**15. Jewelry**

Examples: Everyday jewelry, costume jewelry, engagement rings, wedding rings, heirloom jewelry, watches, gems, gold, silver

- No
- Yes. Describe.....

\$ \_\_\_\_\_

**16. Non-farm animals**

Examples: Dogs, cats, birds, horses

- No
- Yes. Describe.....

\$ \_\_\_\_\_

**17. Any other personal and household items you did not already list, including any health aides you did not list**

- No
- Yes. Give specific information. ....

\$ \_\_\_\_\_

**18. Add the dollar value of all of your entries from Part 3, including any entries for pages you have attached for Part 3. Write that number here** →

\$ \_\_\_\_\_

**Part 4: Describe Your Financial Assets**

**Do you own or have any legal or equitable interest in any of the following?**

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions.

**19. Cash**

Examples: Money you have in your wallet, in your home, in a safe deposit box, and on hand when you file your petition

- No
- Yes.....

Cash: \$ \_\_\_\_\_

**20. Deposits of money**

Examples: Checking, savings, money market, or other financial accounts; certificates of deposit; shares in credit unions, brokerage houses, and other similar institutions. If you have multiple accounts with the same institution, list each.

- No
- Yes.....

Institution name:

Checking account:	_____	\$ _____
Checking account:	_____	\$ _____
Savings account:	_____	\$ _____
Savings account:	_____	\$ _____
Certificates of deposit:	_____	\$ _____
Other financial account:	_____	\$ _____
Other financial account:	_____	\$ _____
Other financial account:	_____	\$ _____
Other financial account:	_____	\$ _____



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

Case number (if known) \_\_\_\_\_

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

**21. Bonds, mutual funds, or publicly traded stocks**

*Examples:* Bond funds, investment accounts with brokerage firms, money market accounts

No

Yes..... Institution name:

_____	\$ _____
_____	\$ _____
_____	\$ _____

**22. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture**

No

Yes. Give specific information about them.....

Name of entity:	% of ownership:	
_____	_____ %	\$ _____
_____	_____ %	\$ _____
_____	_____ %	\$ _____

**23. Government and corporate bonds and other negotiable and non-negotiable instruments**

*Negotiable instruments* include personal checks, cashiers' checks, promissory notes, and money orders. *Non-negotiable instruments* are those you cannot transfer to someone by signing or delivering them.

No

Yes. Give specific information about them.....

Issuer name:	
_____	\$ _____
_____	\$ _____
_____	\$ _____

**24. Retirement or pension accounts**

*Examples:* Interests in IRA, ERISA, Keogh, 401(k), 403(b), thrift savings accounts, or other pension or profit-sharing plans

No

Yes. List each account separately

Institution name:	
401(k) or similar plan: _____	\$ _____
Pension plan: _____	\$ _____
IRA: _____	\$ _____
Retirement account: _____	\$ _____
Keogh: _____	\$ _____
Additional account: _____	\$ _____
Additional account: _____	\$ _____

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

Case number (if known) \_\_\_\_\_

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

**25. Security deposits and pre-payments**

Your share of all unused deposits you have made so that you may continue service or use from a company

*Examples: Agreements with landlords, prepaid rent, public utilities (electric, gas, water), telecommunications companies, or others*

No

Yes .....

Institution name or individual:

Electric:	_____	\$ _____
Gas:	_____	\$ _____
Heating oil:	_____	\$ _____
Security deposit on rental unit:	_____	\$ _____
Prepaid rent:	_____	\$ _____
Telephone:	_____	\$ _____
Water:	_____	\$ _____
Rented furniture:	_____	\$ _____
Other:	_____	\$ _____

**26. Annuities** (A periodic payment of money, either for life or for a number of years)

No

Yes .....

Issuer name and description:

_____	\$ _____
_____	\$ _____
_____	\$ _____

**27. Interests in an education IRA** as defined in 26 U.S.C. § 530(b)(1) or under a qualified state tuition plan as defined in 26 U.S.C. § 529(b)(1).

No

Yes .....

Institution name and description. Separately file the records of any interests. 11 U.S.C. § 521(c):

_____	\$ _____
_____	\$ _____
_____	\$ _____

**28. Trusts, equitable or future interests in property (other than anything listed in line 1), and rights or powers exercisable for your benefit**

No

Yes. Give specific information about them. ..

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

**29. Patents, copyrights, trademarks, trade secrets, and other intellectual property**

*Examples: Internet domain names, websites, proceeds from royalties and licensing agreements*

No

Yes. Give specific information about them. ..

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

**30. Licenses, franchises, and other general intangibles**

*Examples: Building permits, exclusive licenses, cooperative association holdings, liquor licenses, professional licenses*

No

Yes. Give specific information about them. ..

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

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

Case number (if known) \_\_\_\_\_

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

**Money or property owed to you?**

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions.

**31. Tax refunds owed to you**

- No
- Yes. Give specific information about them, including whether you already filed the returns and the tax years.....

\_\_\_\_\_

Federal: \$ \_\_\_\_\_  
State: \$ \_\_\_\_\_  
Local: \$ \_\_\_\_\_

**32. Family support**

*Examples:* Past due or lump sum alimony, spousal support, child support, maintenance, divorce settlement, property settlement

- No
- Yes. Give specific information. ....

\_\_\_\_\_

Alimony: \$ \_\_\_\_\_  
Maintenance: \$ \_\_\_\_\_  
Support: \$ \_\_\_\_\_  
Divorce settlement: \$ \_\_\_\_\_  
Property settlement: \$ \_\_\_\_\_

**33. Other amounts someone owes you**

*Examples:* Amounts earned and unpaid from wages, disability insurance payments, disability benefits, sick pay, vacation pay, workers' compensation, Social Security benefits

- No
- Yes. Give specific information. ....

\_\_\_\_\_

\$ \_\_\_\_\_

**34. Interests in insurance policies**

*Examples:* Health, disability, or life insurance; health savings account (HSA); credit, homeowner's, or renter's insurance

- No
- Yes. Name the insurance company of each policy and list its value. ....

Company name:	Beneficiary:	Surrender or refund value:
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

**35. Any interest in property that is due you from someone who has died**

If you are the beneficiary of a living trust, expect proceeds from a life insurance policy, have inherited something from an existing estate

- No
- Yes. Give specific information. ....

\_\_\_\_\_

\$ \_\_\_\_\_

**36. Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment**

*Examples:* Accidents, employment disputes, insurance claims, or rights to sue

- No
- Yes. Describe each claim. ....

\_\_\_\_\_

\$ \_\_\_\_\_

**37. Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims**

- No
- Yes. Describe each claim. ....

\_\_\_\_\_

\$ \_\_\_\_\_

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

Case number (if known) \_\_\_\_\_

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

**38. Any financial assets you did not already list**

No

Yes. Give specific information.....

\$ \_\_\_\_\_

**39. Add the dollar value of all of your entries from Part 4, including any entries for pages you have attached for Part 4. Write that number here** .....



\$ \_\_\_\_\_

**Part 5: Describe Any Business-Related Property You Own or Have an Interest in. List any real estate in Part 1.**

**40. Do you own or have any legal or equitable interest in any business-related property?**

No. Go to Part 6.

Yes. Go to line 41.

**Current value?**

State the value of the portion that you own. Do not deduct secured claims or exemptions.

**41. Accounts receivable or commissions you already earned**

No

Yes. Describe .....

\$ \_\_\_\_\_

**42. Office equipment, furnishings, and supplies**

*Examples:* Business-related computers, software, modems, printers, copiers, fax machines, rugs, telephones, desks, chairs, electronic devices

No

Yes. Describe .....

\$ \_\_\_\_\_

**43. Machinery, fixtures, equipment, supplies you use in business, and tools of your trade**

No

Yes. Describe .....

\$ \_\_\_\_\_

**44. Inventory**

No

Yes. Describe .....

\$ \_\_\_\_\_

**45. Interests in partnerships or joint ventures**

No

Yes. Describe .....

Name of entity:

% of ownership:

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

\_\_\_\_\_%  
\_\_\_\_\_%  
\_\_\_\_\_%

\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

**46. Customer lists, mailing lists, or other compilations**

No

Yes. Do your lists include personally identifiable information (as defined in 11 U.S.C. § 101(41A))?

No

Yes. Describe.....

\$ \_\_\_\_\_

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

Case number (if known) \_\_\_\_\_

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

**47. Any business-related property you did not already list**

No

Yes. Give specific information .....

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

**48. Add the dollar value of all of your entries from Part 5, including any entries for pages you have attached for Part 5. Write that number here** ..... → \$ \_\_\_\_\_

**Part 6: Describe Any Farm- and Commercial Fishing-Related Property You Own or Have an Interest in**  
**If you own or have an interest in farmland, fill out question 1.**

**49. Do you own or have any legal or equitable interest in any farm- or commercial fishing-related property?**

- No. Go to Part 7.
- Yes. Go to line 50.

**Current value?**  
State the value of the portion that you own. Do not deduct secured claims or exemptions

**50. Farm animals**

*Examples:* Livestock, poultry, farm-raised fish

No

Yes .....

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

**51. Crops—either growing or harvested**

No

Yes. Give specific information .....

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

**52. Farm and fishing equipment and implements**

No

Yes .....

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

**53. Farm and fishing supplies, chemicals, and feed**

No

Yes .....

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

**54. Any farm- and commercial fishing-related property you did not already list**

No

Yes. Give specific information .....

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

**55. Add the dollar value of all of your entries from Part 6, including any entries for pages you have attached for Part 6. Write that number here** ..... → \$ \_\_\_\_\_

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

Case number (if known) \_\_\_\_\_

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

**Part 7: Describe All Property You Own or Have an Interest in That You Did Not List Above**

56. Do you have other property of any kind you did not already list?

Examples: Season tickets, country club membership

- No
- Yes. Give specific information. ....

\_\_\_\_\_

\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

57. Add the dollar value of all of your entries from Part 7. Write that number here ..... →

\$ \_\_\_\_\_

**Part 8: List the Totals of Each Part of this Form**

58. Part 1: Total real estate, line 2 ..... →

\$ \_\_\_\_\_

59. Part 2: Total vehicles, line 8

\$ \_\_\_\_\_

60. Part 3: Total personal and household items, line 18

\$ \_\_\_\_\_

61. Part 4: Total financial assets, line 39

\$ \_\_\_\_\_

62. Part 5: Total business-related property, line 48

\$ \_\_\_\_\_

63. Part 6: Total farm- and fishing-related property, line 55

\$ \_\_\_\_\_

64. Part 7: Total other property not listed, line 57

+\$ \_\_\_\_\_

65. Total personal property. Add lines 59 through 64.....

\$ \_\_\_\_\_

Copy personal property total →

+\$ \_\_\_\_\_

66. Total of all property on Schedule A. Add line 58 + line 65.....

\$ \_\_\_\_\_

## Official Forms 106B and 106C

### About Schedules B and C and Creditors Who Hold Claims Against You

United States Bankruptcy Court

2011

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. When you file for bankruptcy, the court needs to know who all your creditors are and what types of claims they have against you.

Typically in bankruptcy cases, there are more debts than assets to pay those debts. The court must know as much as possible about your creditors to make sure that their claims are properly treated according to the rules.

Creditors may have different types of claims:

- Secured claims. Report these on *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B).
- Unsecured claims. Report these on *Schedule 6C: Creditors Who Have Unsecured Claims* (Official Form 106C).

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. That property is sometimes called *collateral* for your debt and could include items such as your house, your car, or your furniture. Creditors with unsecured claims do not have rights against specific property.

Many claims have a specific value, and you clearly owe them. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must list all claims in your schedules, even if the claims are contingent, unliquidated, or disputed.

#### Claims may be contingent, unliquidated, or disputed

Claims may be:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you disagree about whether you owe the debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

A single claim can have one, more than one, or none of these characteristics.

## Official Form 106B

### About Schedule B: Creditors Who Hold Claims Secured by Property

United States Bankruptcy Court

2011

Understand the terms used in the form

*Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B) uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do any creditors hold claims secured by your property?” the answer would be *yes* if any creditor holds a claim secured by property owned by either debtor individually or both debtors jointly. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

How to fill out Schedule B

On this form, list all creditors who have a claim that is secured by your property.

#### Do not leave out any creditors

In alphabetical order, list anyone who has judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests against your property. When listing creditors who hold secured claims, be sure to include all of them, even relatives or friends. For example, include the following:

- Car dealers, stores, credit unions, and others who made loans to enable you to finance the purchase of property and who have a lien against that property;
- Anyone who holds a mortgage or deed of trust on real estate that you own;

- Contractors or mechanics who have liens on property you own because they did work on the property and were not paid;
- Someone who won a lawsuit against you and has a judgment lien;
- Another parent or a government agency that has a lien for unpaid child support;
- Doctors or attorneys who have liens on the outcome of a lawsuit;
- Federal, state, or local government agencies such as the IRS that have tax liens against property for unpaid taxes; and
- Anyone who is trying to collect a secured debt from you, such as collection agencies and attorneys.

List the debt in Part 1 only once and list any others that should be notified about that debt in Part 2. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the person to whom you owe the debt in Part 1, and list the collection agency in Part 2. If you are not sure who the creditor is, list the person you are paying in Part 1 and list anyone else who has contacted you about this debt in Part 2.

If a creditor’s full claim is more than the value of your property securing that claim—for instance, a car loan in an amount greater than the value of the car—the creditor’s claim may be partly secured and partly unsecured. In that situation, list the claim only once on *Schedule B: Creditors Who Hold Claims Secured by Property*. Do not repeat it on *Schedule E: Creditors Who Hold Unsecured Claims*. List a creditor in *Schedule B* even if it appears that there is no property value to support that creditor’s secured claim.

#### Valuing secured claims

To determine the value of a secured claim, compare the amount of the claim to the value of the property that supports the claim. If the value of the property is greater than the amount of the claim, then the entire amount of the claim is secured. But if the value of the property is less than the amount of the claim, the difference is an *unsecured portion*. For example, if the outstanding balance of a car loan is \$10,000 and the car is worth \$8,000, the car loan has a \$2,000 unsecured portion.



If there is more than one secured claim against the same property, the claim that is entitled to be paid first must be subtracted from the property value to determine how much value remains for the next claim. For example, if a home worth \$300,000 has a first mortgage of \$200,000 and a second mortgage of \$150,000, the first mortgage would be fully secured, and there would be \$100,000 of property value for the second mortgage, which would have an unsecured portion of \$50,000.

- \$300,000 value of a home
- \$200,000 first mortgage
- \$100,000 remaining property value

- \$150,000 second mortgage
- \$100,000 remaining property value
- \$ 50,000 unsecured portion of second mortgage

**Do not list the full name of minor children**

Do not list a minor child's full name. Instead, fill in only the child's initials and the full name and address of the child's parent or guardian. For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*.  
11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m) and 9037.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**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)

**Official Form 106B**

**Schedule B: Creditors Who Hold Claims Secured by Property**

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do any creditors hold claims secured by your property?” the answer would be *yes* if any creditor holds a claim secured by property owned by either debtor individually or both debtors jointly. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, copy the Additional Page, fill it out, number the entries, and attach it to this form. On the top of any additional pages, write your name and case number (if known).

**1. Do any creditors hold claims secured by your property?**

- No. Check this box and submit this form to the court with your other schedules. You have nothing else to report on this form.
- Yes. Fill in all of the information below.

**Part 1: List Your Creditors Who Hold Secured Claims**

**2. List all of your creditors who hold secured claims in alphabetical order.** If a creditor has more than one secured claim, list the creditor separately for each claim.

Amount of claim Do not deduct the value of collateral.	Value of collateral that supports this claim	Unsecured portion If any
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<b>1</b>	Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Who owes the debt? Check all that apply. <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Both Debtor 1 and Debtor 2 <input type="checkbox"/> Marital community debt <input type="checkbox"/> Debt owed with another _____ Name _____ Describe the property that is collateral: _____ Last 4 digits of account number _____ Date debt was incurred _____ As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply Nature of lien. Check all that apply. <input type="checkbox"/> Mortgage, home equity, or home improvement lien <input type="checkbox"/> Lien on car or other vehicle <input type="checkbox"/> Lien on furniture, appliances, or other household items <input type="checkbox"/> Judgment lien <input type="checkbox"/> Tax lien <input type="checkbox"/> Lien for child or other domestic support <input type="checkbox"/> Mechanics' or materialman's lien <input type="checkbox"/> Other _____ <input type="checkbox"/> Don't know	\$ _____	\$ _____	\$ _____
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<b>2</b>	Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Who owes the debt? Check all that apply. <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Both Debtor 1 and Debtor 2 <input type="checkbox"/> Marital community debt <input type="checkbox"/> Debt owed with another _____ Name _____ Describe the property that is collateral: _____ Last 4 digits of account number _____ Date debt was incurred _____ As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply Nature of lien. Check all that apply. <input type="checkbox"/> Mortgage, home equity, or home improvement lien <input type="checkbox"/> Lien on car or other vehicle <input type="checkbox"/> Lien on furniture, appliances, or other household items <input type="checkbox"/> Judgment lien <input type="checkbox"/> Tax lien <input type="checkbox"/> Lien for child or other domestic support <input type="checkbox"/> Mechanics' or materialmen's lien <input type="checkbox"/> Other _____ <input type="checkbox"/> Don't know	\$ _____	\$ _____	\$ _____
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Add the dollar value of your entries on this page. Write that number here:

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

Case number (if known) \_\_\_\_\_

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

Part 1: Additional Page

Amount of claim Do not deduct the value of collateral.	Value of collateral that supports this claim	Unsecured portion If any
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<input type="checkbox"/>	<p>_____ Creditor's Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p> <p><b>Who owes the debt?</b> Check all that apply.</p> <p><input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Both Debtor 1 and Debtor 2 <input type="checkbox"/> Marital community debt <input type="checkbox"/> Debt owed with another _____ Name</p> <p><b>Describe the property that is collateral:</b> _____</p>	<p><b>Last 4 digits of account number</b> ____ _</p> <p><b>Date debt was incurred</b> _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Nature of lien.</b> Check all that apply.</p> <p><input type="checkbox"/> Mortgage, home equity, or home improvement lien <input type="checkbox"/> Lien on car or other vehicle <input type="checkbox"/> Lien on furniture, appliances, or other household items <input type="checkbox"/> Judgment lien <input type="checkbox"/> Tax lien <input type="checkbox"/> Lien for child or other domestic support <input type="checkbox"/> Mechanics' or materialmen's lien <input type="checkbox"/> Other _____ <input type="checkbox"/> Don't know</p>	\$ _____	\$ _____	\$ _____
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<input type="checkbox"/>	<p>_____ Creditor's Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p> <p><b>Who owes the debt?</b> Check all that apply.</p> <p><input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Both Debtor 1 and Debtor 2 <input type="checkbox"/> Marital community debt <input type="checkbox"/> Debt owed with another _____ Name</p> <p><b>Describe the property that is collateral:</b> _____</p>	<p><b>Last 4 digits of account number</b> ____ _</p> <p><b>Date debt was incurred</b> _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Nature of lien.</b> Check all that apply.</p> <p><input type="checkbox"/> Mortgage, home equity, or home improvement lien <input type="checkbox"/> Lien on car or other vehicle <input type="checkbox"/> Lien on furniture, appliances, or other household items <input type="checkbox"/> Judgment lien <input type="checkbox"/> Tax lien <input type="checkbox"/> Lien for child or other domestic support <input type="checkbox"/> Mechanics' or materialmen's lien <input type="checkbox"/> Other _____ <input type="checkbox"/> Don't know</p>	\$ _____	\$ _____	\$ _____
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<input type="checkbox"/>	<p>_____ Creditor's Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p> <p><b>Who owes the debt?</b> Check all that apply.</p> <p><input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Both Debtor 1 and Debtor 2 <input type="checkbox"/> Marital community debt <input type="checkbox"/> Debt owed with another _____ Name</p> <p><b>Describe the property that is collateral:</b> _____</p>	<p><b>Last 4 digits of account number</b> ____ _</p> <p><b>Date debt was incurred</b> _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</p> <p><b>Nature of lien</b></p> <p><input type="checkbox"/> Mortgage, home equity, or home improvement lien <input type="checkbox"/> Lien on car or other vehicle <input type="checkbox"/> Lien on furniture, appliances, or other household items <input type="checkbox"/> Tax lien <input type="checkbox"/> Lien for child or other domestic support <input type="checkbox"/> Mechanics' or materialmen's lien <input type="checkbox"/> Other _____ <input type="checkbox"/> Don't know</p>	\$ _____	\$ _____	\$ _____
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**Add the dollar value of your entries on this page. Write that number here:** \$ \_\_\_\_\_

**If this is the last page of your form, add the dollar value from all pages. Write that number here:** \$ \_\_\_\_\_

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

Case number (if known) \_\_\_\_\_

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

**Part 2: List Others to Be Notified for a Debt That You Already Listed**

Use this page only if you have others to be notified for a debt that you already listed in Part 1. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the creditor in Part 1, then list the collection agency here. If you do not have more than one creditor for the same debt, do not fill out or submit this page.

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Number Street  
\_\_\_\_\_  
\_\_\_\_\_  
City State ZIP Code

On which line in Part 1 did you enter the creditor? \_\_\_\_  
Last 4 digits of account number \_\_\_\_ \_

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Number Street  
\_\_\_\_\_  
\_\_\_\_\_  
City State ZIP Code

On which line in Part 1 did you enter the creditor? \_\_\_\_  
Last 4 digits of account number \_\_\_\_ \_

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Number Street  
\_\_\_\_\_  
\_\_\_\_\_  
City State ZIP Code

On which line in Part 1 did you enter the creditor? \_\_\_\_  
Last 4 digits of account number \_\_\_\_ \_

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Number Street  
\_\_\_\_\_  
\_\_\_\_\_  
City State ZIP Code

On which line in Part 1 did you enter the creditor? \_\_\_\_  
Last 4 digits of account number \_\_\_\_ \_

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Number Street  
\_\_\_\_\_  
\_\_\_\_\_  
City State ZIP Code

On which line in Part 1 did you enter the creditor? \_\_\_\_  
Last 4 digits of account number \_\_\_\_ \_

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Number Street  
\_\_\_\_\_  
\_\_\_\_\_  
City State ZIP Code

On which line in Part 1 did you enter the creditor? \_\_\_\_  
Last 4 digits of account number \_\_\_\_ \_

**Official Form 106C****About Schedule C: Creditors Who Have Unsecured Claims**

United States Bankruptcy Court

2011

**How to Fill Out Schedule C**

*Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C) uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses you to ask for information from both debtors. For example, if the form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, this form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Creditors with unsecured claims do not have liens on or other security interests in your property. Secured creditors have a right to take property if you do not pay them. Common examples are lenders for your car, your home, or your furniture.

Use this form to identify everyone who holds an unsecured claim against you when you file your bankruptcy petition, unless you have already listed them on *Schedule B: Creditors Who Hold Claims Secured by Your Property* (Official Form 106B).

**Do not leave out any creditors**

Be sure to include all creditors. Even if you plan to pay a creditor, you must list that creditor. For instance, include the following:

- Your relatives or friends to whom you owe money;
- Your ex-spouse, if you are still obligated under a divorce decree or settlement agreement to pay joint debts;

- A credit card company, even if you intend to fully pay your credit card bill;
- A lender, even if the loan is cosigned;
- Anyone who holds a loan or promissory note that you cosigned for someone else;
- Anyone who has sued or may sue you because of an accident, dispute, or similar event that has occurred; or
- Anyone who is trying to collect a debt from you such as a bill collector or attorney.

**Unsecured claims could be priority or nonpriority claims****What are priority unsecured claims?**

In bankruptcy cases, priority unsecured claims are those debts that the Bankruptcy Code requires to be paid before most other unsecured claims are paid. The most common priority unsecured claims are certain income tax debts and past due alimony or child support. Priority unsecured claims include those you owe for:

- **Domestic support obligations**—If you owe domestic support to a spouse or former spouse; a child or the parent, legal guardian, or responsible relative of a child; or a governmental unit to whom such a domestic support claim has been assigned.  
11 U.S.C. § 507(a)(1).
- **Taxes and certain other debts you owe the government**—If you owe certain federal, state, or local government taxes, customs duties, or penalties.  
11 U.S.C. § 507(a)(8).
- **Claims for death or personal injury while you were intoxicated**—If you have a claim against you for death or personal injury that resulted from your unlawfully operating a motor vehicle or vessel while you were unlawfully intoxicated from alcohol, drugs, or another substance. This priority does not apply to claims for property damage. 11 U.S.C. § 507(a)(10).

■ **Other:**

- ❑ **Deposits by individuals**—If you took money from someone who planned to purchase, lease, or rent your property or use your services but you never delivered or performed. For the debt to have priority, the property or services must have been intended for personal, family, or household use (only the first \$2,425 per person is a priority debt). 11 U.S.C. § 507(a)(7).
- ❑ **Wages, salaries, and commissions**—If you owe wages, salaries, and commissions, including vacation, severance, and sick leave pay and those amounts were earned within 180 days before you file your bankruptcy petition package or ceased business. In either instance, only the first \$10,950 per claim is a priority debt. 11 U.S.C. § 507(a)(4).
- ❑ **Contributions to employee benefit plans**—If you owe contributions to an employee benefit plan for services an employee rendered within 180 days before you file your bankruptcy petition, or within 180 days before your business ends. 11 U.S.C. § 507(a)(5).
- ❑ **Certain claims of farmers and fishermen**—If you own or operate a grain storage facility or you operate a fish produce storage or processing facility, certain claims against you of farmers or fishermen, respectively (only the first \$5,400 per farmer or fisherman is a priority debt). 11 U.S.C. § 507(a)(6).

**What are nonpriority unsecured claims?**

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Nonpriority unsecured claims are those debts that generally will be paid after priority unsecured claims are paid. The most common examples of nonpriority unsecured claims are credit card bills, medical bills, and educational loans.

**What if a claim has both priority and nonpriority amounts?**

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If a claim has both priority and nonpriority amounts, list that claim in Part 2 and show both priority and nonpriority amounts. Do not list it again in Part 3.

In Part 3, list all of the creditors you have not listed before. You must list every creditor that you owe, regardless of the amount you owe and even if you plan to pay a particular debt. If you do not list a debt, it may not be discharged.

**What is needed for statistical purposes?**

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For statistical reasons, the court must collect information about some specific categories of unsecured claims.

The categories for priority unsecured claims are:

- **Domestic support obligations**
- **Taxes and certain other debts you owe the government**
- **Claims for death or personal injury while you were intoxicated**

The categories for nonpriority unsecured claims are:

- **Student loans**—If you owe money for any loans that you used to pay for your education;
- **Obligations arising out of a separation agreement or divorce that you did not report as priority claims**—If you owe debts for separation or divorce agreements or for domestic support and you did not report those debts in Part 2; and
- **Debts to pension or profit-sharing plans and other similar debts**—If you owe money to a pension or profit-sharing plan.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**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)

**Official Form 106C**

**Schedule C: Creditors Who Have Unsecured Claims**

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do you own a car?” the answer would be yes if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms. If two married people are filing together, both are equally responsible for supplying correct information.

Be as complete and accurate as possible. Use Part 2 for creditors with PRIORITY claims and Part 3 for creditors with NONPRIORITY claims. If more space is needed to list creditors, copy the Part you need, fill it out, number the entries, and attach it to this page. If you have no information to report in a Part, do not file that Part with your form. On the top of any additional pages, write your name and case number (if known).

**Part 1: Tell the Court About Your Unsecured Claims**

**1. Do any creditors have unsecured claims against you?**

- No. You have nothing to report on this form. Submit this form to the court with your other schedules.
- Yes.

**Part 2: List All of Your Creditors with PRIORITY Unsecured Claims**

**2. List in alphabetical order all of your creditors with priority unsecured claims and identify what kind of priority claim it is. Number the entries after you list them.** (For an explanation of each type of claim, see *How to Fill Out Schedule E.*) If you have more than two creditors with priority unsecured claims, fill out the Continuation Page of Part 2.

		Total claim	Priority amount	Nonpriority amount
1	Priority Creditor's Name _____  Number _____ Street _____  City _____ State _____ ZIP Code _____  <b>Who incurred the debt?</b> <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2 <input type="checkbox"/> Both Debtor 1 and Debtor 2 <input type="checkbox"/> Marital community debt <input type="checkbox"/> Debt owed with another _____	Last 4 digits of account number _____ \$ _____	When was the debt incurred? _____ As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply	Type of PRIORITY unsecured claim: <input type="checkbox"/> Domestic support obligations <input type="checkbox"/> Taxes and certain other debts you owe the government <input type="checkbox"/> Claims for death or personal injury while you were intoxicated <input type="checkbox"/> Other. Specify _____
2	Priority Creditor's Name _____  Number _____ Street _____  City _____ State _____ ZIP Code _____  <b>Who incurred the debt?</b> <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2 <input type="checkbox"/> Both Debtor 1 and Debtor 2 <input type="checkbox"/> Marital community debt <input type="checkbox"/> Debt owed with another _____	Last 4 digits of account number _____ \$ _____	When was the debt incurred? _____ As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply	Type of PRIORITY unsecured claim: <input type="checkbox"/> Domestic support obligations <input type="checkbox"/> Taxes and certain other debts you owe the government <input type="checkbox"/> Claims for death or personal injury while you were intoxicated <input type="checkbox"/> Other. Specify _____

**Part 2: Your Creditors with PRIORITY Unsecured Claims – Continuation Page**

Number the Part 2 entries after you list them.

		Total claim	Priority amount	Nonpriority amount
1	<p>Priority Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p><b>Last 4 digits of account number</b> _____</p> <p><b>When was the debt incurred?</b> _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Who incurred the debt?</b></p> <p><input type="checkbox"/> Debtor 1</p> <p><input type="checkbox"/> Debtor 2</p> <p><input type="checkbox"/> Both Debtor 1 and Debtor 2</p> <p><input type="checkbox"/> Marital community debt</p> <p><input type="checkbox"/> Debt owed with another</p> <p><b>Type of PRIORITY unsecured claim:</b></p> <p><input type="checkbox"/> Domestic support obligations</p> <p><input type="checkbox"/> Taxes and certain other debts you owe the government</p> <p><input type="checkbox"/> Claims for death or personal injury while you were intoxicated</p> <p><input type="checkbox"/> Other. Specify _____</p>	\$ _____	\$ _____	\$ _____
2	<p>Priority Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p><b>Last 4 digits of account number</b> _____</p> <p><b>When was the debt incurred?</b> _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Who incurred the debt?</b></p> <p><input type="checkbox"/> Debtor 1</p> <p><input type="checkbox"/> Debtor 2</p> <p><input type="checkbox"/> Both Debtor 1 and Debtor 2</p> <p><input type="checkbox"/> Marital community debt</p> <p><input type="checkbox"/> Debt owed with another</p> <p><b>Type of PRIORITY unsecured claim:</b></p> <p><input type="checkbox"/> Domestic support obligations</p> <p><input type="checkbox"/> Taxes and certain other debts you owe the government</p> <p><input type="checkbox"/> Claims for death or personal injury while you were intoxicated</p> <p><input type="checkbox"/> Other. Specify _____</p>	\$ _____	\$ _____	\$ _____
3	<p>Priority Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p><b>Last 4 digits of account number</b> _____</p> <p><b>When was the debt incurred?</b> _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Who incurred the debt?</b></p> <p><input type="checkbox"/> Debtor 1</p> <p><input type="checkbox"/> Debtor 2</p> <p><input type="checkbox"/> Both Debtor 1 and Debtor 2</p> <p><input type="checkbox"/> Marital community debt</p> <p><input type="checkbox"/> Debt owed with another</p> <p><b>Type of PRIORITY unsecured claim:</b></p> <p><input type="checkbox"/> Domestic support obligations</p> <p><input type="checkbox"/> Taxes and certain other debts you owe the government</p> <p><input type="checkbox"/> Claims for death or personal injury while you were intoxicated</p> <p><input type="checkbox"/> Other. Specify _____</p>	\$ _____	\$ _____	\$ _____
4	<p>Priority Creditor's Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p><b>Last 4 digits of account number</b> _____</p> <p><b>When was the debt incurred?</b> _____</p> <p><b>As of the date you file, the claim is:</b> Check all that apply.</p> <p><input type="checkbox"/> Contingent</p> <p><input type="checkbox"/> Unliquidated</p> <p><input type="checkbox"/> Disputed</p> <p><input type="checkbox"/> None of the above apply</p> <p><b>Who incurred the debt?</b></p> <p><input type="checkbox"/> Debtor 1</p> <p><input type="checkbox"/> Debtor 2</p> <p><input type="checkbox"/> Both Debtor 1 and Debtor 2</p> <p><input type="checkbox"/> Marital community debt</p> <p><input type="checkbox"/> Debt owed with another</p> <p><b>Type of PRIORITY unsecured claim:</b></p> <p><input type="checkbox"/> Domestic support obligations</p> <p><input type="checkbox"/> Taxes and certain other debts you owe the government</p> <p><input type="checkbox"/> Claims for death or personal injury while you were intoxicated</p> <p><input type="checkbox"/> Other. Specify _____</p>	\$ _____	\$ _____	\$ _____



**Part 3: List All of Your Creditors with NONPRIORITY Unsecured Claims**

3. List in alphabetical order all of your creditors with nonpriority unsecured claims and identify what kind of nonpriority claim it is. Number the Part 3 entries after you list them. If you have more than four creditors with nonpriority unsecured claims, attach additional copies of Part 3.

			Total claim
1	Nonpriority Creditor's Name _____  Number _____ Street _____  City _____ State _____ ZIP Code _____	Last 4 digits of account number _____  When was the debt incurred? _____  <b>As of the date you file, the claim is:</b> Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply  <b>Type of NONPRIORITY unsecured claim:</b> <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input type="checkbox"/> Other. Specify _____	\$ _____
2	Nonpriority Creditor's Name _____  Number _____ Street _____  City _____ State _____ ZIP Code _____	Last 4 digits of account number _____  When was the debt incurred? _____  <b>As of the date you file, the claim is:</b> Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply  <b>Type of NONPRIORITY unsecured claim:</b> <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input type="checkbox"/> Other. Specify _____	\$ _____
3	Nonpriority Creditor's Name _____  Number _____ Street _____  City _____ State _____ ZIP Code _____	Last 4 digits of account number _____  When was the debt incurred? _____  <b>As of the date you file, the claim is:</b> Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply  <b>Type of NONPRIORITY unsecured claim:</b> <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input type="checkbox"/> Other. Specify _____	\$ _____
4	Nonpriority Creditor's Name _____  Number _____ Street _____  City _____ State _____ ZIP Code _____	Last 4 digits of account number _____  When was the debt incurred? _____  <b>As of the date you file, the claim is:</b> Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply  <b>Type of NONPRIORITY unsecured claim:</b> <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input type="checkbox"/> Other. Specify _____	\$ _____

**Part 4: List Others to Be Notified for a Debt That You Already Listed**

**4. Use this page only if you have other creditors for a debt that you already listed in Parts 2 or 3. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the original creditor in Part 2, then list the collection agency here. If you do not have more than one creditor for the same debt, do not fill out or submit this page.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**On which line in Part 2 or Part 3 did you enter the original creditor?**

Line \_\_\_\_ of (Check one):  Part 1  
 Part 2

**Last 4 digits of account number** \_ \_ \_ \_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**On which line in Part 2 or Part 3 did you enter the original creditor?**

Line \_\_\_\_ of (Check one):  Part 1  
 Part 2

**Last 4 digits of account number** \_ \_ \_ \_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**On which line in Part 2 or Part 3 did you enter the original creditor?**

Line \_\_\_\_ of (Check one):  Part 1  
 Part 2

**Last 4 digits of account number** \_ \_ \_ \_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**On which line in Part 2 or Part 3 did you enter the original creditor?**

Line \_\_\_\_ of (Check one):  Part 1  
 Part 2

**Last 4 digits of account number** \_ \_ \_ \_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**On which line in Part 2 or Part 3 did you enter the original creditor?**

Line \_\_\_\_ of (Check one):  Part 1  
 Part 2

**Last 4 digits of account number** \_ \_ \_ \_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**On which line in Part 2 or Part 3 did you enter the original creditor?**

Line \_\_\_\_ of (Check one):  Part 1  
 Part 2

**Last 4 digits of account number** \_ \_ \_ \_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

**On which line in Part 2 or Part 3 did you enter the original creditor?**

Line \_\_\_\_ of (Check one):  Part 1  
 Part 2

**Part 5: Add the Amounts for Each Type of Unsecured Claim**

**5. Total the amounts of certain types of unsecured claims for statistical reporting purposes. For reporting purposes, add the amounts for each type of unsecured claim.**

		Total claim
<b>Total claims from Part 2</b>	5a. Domestic support obligations	5a. \$ _____
	5b. Taxes and certain other debts you owe the government	5b. \$ _____
	5c. Claims for death or personal injury while you were intoxicated	5c. \$ _____
	5d. Other. Add all other priority unsecured claims. Write that amount here.	5d. + \$ _____
	5e. Total. Add lines 5a through 5d.	5e. \$ _____

		Total claim
<b>Total claims from Part 3</b>	5f. Student loans	\$ _____
	5g. Obligations arising out of a separation agreement or divorce that you did not report as priority claims	5g. \$ _____
	5h. Debts to pension or profit-sharing plans, and other similar debts	5h. \$ _____
	5i. Other. Add all other nonpriority unsecured claims. Write that amount here.	5i. + \$ _____
	5j. Total. Add lines 5f through 5i.	5j. \$ _____

## Official Form 106D

# About Schedule D: The Property You Claim as Exempt

United States Bankruptcy Court

2011

### Understand the terms used in the form

*Schedule D: The Property You Claim as Exempt* (Official Form 106D) uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).

### How exemptions work

If you are an individual filing for bankruptcy, the law may allow you to keep some property, or it may entitle you to part of the proceeds if the property is sold after your case is filed. Property that you may keep and the right to part of the proceeds from property that is sold are called *exempt* property. For example, exemptions may enable you to keep your home, a car, clothing, and household items.

Exemptions are not automatic. To be considered exempt, you must list the property on *Schedule D: The Property You Claim as Exempt*. If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

**You may unnecessarily lose property if you do not claim exemptions to which you are entitled. You are strongly encouraged to hire a qualified attorney to advise you.**

### Determine which set of exemptions you will use

Before you fill out this form, you must learn which set of exemptions you can use. In general, exemptions are determined on a state-by-state basis.

You are entitled to the exemptions in federal law other than the Bankruptcy Code. You may choose the additional exemptions in the law of the state where you had your legal home for 730 days before you file for bankruptcy. Special rules may apply if you did not have the same home state for 730 days before you file. Under some state laws, you may choose exemptions in the Bankruptcy Code instead of state law exemptions.

You may lose property if you do not use the best set of exemptions for your situation.

If your spouse is filing with you and you are filing in a state in which you may choose between state and federal sets of bankruptcy exemptions, you both must use the same set of exemptions.

### Claiming exemptions

Using the property and values that you listed on *Schedule A: Your Property* (Official Form 106A) as your source, list on this form the property that you claim as exempt.

### Listing the amount of each exemption

For each item of property you claim as exempt, you must claim either the dollar value of the exemptions or, if the law allows you to do so, the full fair market value of the property. *Full fair market value* means all of the value of your interest in the property, even if this is more than the current value you have listed.

If you believe the exemption laws enable you to exempt the full fair market value of the property, regardless of the property's actual value, you may check the box next to *full fair market value of your interest*.

### Listing which laws apply

In the last column of the form, you must identify the laws that allow you to claim the property as exempt. If you have questions about exemptions, consult a qualified attorney.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**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)

**Official Form 106D**

**Schedule D: The Property You Claim as Exempt**

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

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: Property (Official Form 106A)* 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).

**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 non-bankruptcy 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* that you claim as exempt, fill in the information below.

Brief description of the property and line on <i>Schedule A</i> that lists this property		Current value of the portion you own <small>Copy the value from <i>Schedule A</i></small>	Amount of the exemption you claim <small>Check one only</small>	Specific laws that allow exemption
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from <i>Schedule A</i> :	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from <i>Schedule A</i> :	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from <i>Schedule A</i> :	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from <i>Schedule A</i> :	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from <i>Schedule A</i> :	_____			

3. Are you claiming a homestead exemption more than \$146,450? (Subject to adjustment on 4/01/13 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

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

Case number (if known) \_\_\_\_\_

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

**Part 2: Additional Page**

Brief description of the property and line on Schedule A that lists this property		Current value of the portion you own Copy the value from Schedule A	Amount of the exemption you claim Check one only	Specific laws that allow exemption
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from Schedule A:	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from Schedule A:	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from Schedule A:	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from Schedule A:	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from Schedule A:	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from Schedule A:	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from Schedule A:	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from Schedule A:	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from Schedule A:	_____			
Brief description:		\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> Full fair market value of the property	_____ _____ _____
Line from Schedule A:	_____			

## Official Form 106E

### About Schedule E: Executory Contracts and Unexpired Leases

United States Bankruptcy Court

2011

Understand the terms used in the form

*Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106E) uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses you to ask for information from both debtors. For example, if the form asks, “Do you have any executory contracts or unexpired leases?” the answer would be *yes* if either debtor individually or both debtors jointly have any executory contracts or unexpired leases. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

#### How to Fill Out Schedule E

Use this form to identify your ongoing leases and certain contracts. List all of your executory contracts and unexpired leases.

*Executory contracts* are contracts between you and someone else in which neither you nor the other party has performed all of the requirements by the time you file for bankruptcy. *Unexpired leases* are leases that are still in effect; the lease period has not yet ended.

You must list all agreements that may be executory contracts or unexpired leases, including the following:

- Residential leases (for example, a rental agreement for a place where you live or vacation, even if it is only a verbal or month-to-month arrangement);

- Service provider agreements (for example, contracts for cell phones and personal electronic devices);
- Internet and cable contracts;
- Vehicle leases;
- Supplier or service contracts (for example, contracts for lawn care or home alarm or security systems);
- Timeshare contracts or leases that you did not list on *Schedule A: Your Property* (Official Form 106A);
- Rent-to-own contracts;
- Employment contracts;
- Realtor listing agreements;
- Contracts to sell a residence, building, land, or other real property;
- Equipment leases;
- Leases for business or investment property;
- Supplier and service contracts for your business;
- Copyright and patent license agreements; and
- Development contracts.

#### Do not list the full name of minor children

Do not list a minor child’s full name. Instead, fill in only the child’s initials and the full name and address of the child’s parent or guardian. For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*. 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m) and 9037.

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

Debtor \_\_\_\_\_  
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)

**Official Form 106E**

**Schedule E: Executory Contracts and Unexpired Leases**

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, “Do you have any executory contracts or unexpired leases?” the answer would be *yes* if either debtor individually or both debtors jointly have any executory contracts or unexpired leases. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms. Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, copy the additional page, fill it out, number the entries, and attach it to this page. On the top of any additional pages, write your name and case number (if known).

**1. Do you have any executory contracts or unexpired leases?**

- No. Check this box and file this form with the court with your other schedules. You have nothing else to report on this form.
- Yes. Fill in all of the information below.

**2. List separately each person or company with whom you have the contract or lease. Then state what each contract or lease is for (for example, rent, vehicle lease, cell phone).** See the instructions for more examples of executory contracts and unexpired leases.

Other party to the contract or lease	State what the contract or lease is for
<div style="background-color: black; color: white; padding: 2px; font-weight: bold; margin-bottom: 5px;">1</div> <p>Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p>	
<div style="background-color: black; color: white; padding: 2px; font-weight: bold; margin-bottom: 5px;">2</div> <p>Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p>	
<div style="background-color: black; color: white; padding: 2px; font-weight: bold; margin-bottom: 5px;">3</div> <p>Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p>	
<div style="background-color: black; color: white; padding: 2px; font-weight: bold; margin-bottom: 5px;">4</div> <p>Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p>	
<div style="background-color: black; color: white; padding: 2px; font-weight: bold; margin-bottom: 5px;">5</div> <p>Name _____</p> <p>Number _____ Street _____</p> <p>City _____ State _____ ZIP Code _____</p>	



Your name \_\_\_\_\_  
First Name Middle Name Last Name

Case number (if known) \_\_\_\_\_

Spouse's name \_\_\_\_\_  
(If filing with you) First Name Middle Name Last Name

**Additional Page if You Have More Contracts or Leases**

Other party to the contract or lease	What the contract or lease is for
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	

## Official Form 106F

### About Schedule F: Your Codebtors

United States Bankruptcy Court

2011

#### Understand the terms used in the form

*Schedule F: Your Codebtors* (Official Form 106F) uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

#### How to Fill Out Schedule F

If you have any debts that someone else may also be responsible for paying, these people or entities are called *codebtors*. Use this form to list any codebtors who are responsible for any debts you have listed on the other schedules in your bankruptcy filing package.

If your spouse is filing this case with you, do not list your spouse as a codebtor.

To help fill out this form, use both *Schedule B: Creditors Who Hold Claims Secured by Your Property* (Official Form 106B) or *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C).

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

List all of your codebtors and the creditors to whom you owe the debt. For example, if someone co-signed for the car loan that you owe, you must list that person on this form.

Other codebtors could include the following:

- Co-signer;
- Guarantor;
- Former spouse;
- Unmarried partner;
- Joint contractor; or
- Nonfiling spouse—even if not a co-signer—because the debt is for necessities (such as food or medical care).

#### Do not list the full name of minor children

Do not list a minor child's full name. Instead, fill in only the child's initials and the full name and address of the child's parent or guardian. For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*. 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m) and 9037.

**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)

# Official Form 106F

## Schedule F: Your Codebtors

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, copy the Additional Page, fill it out, number the entries, and attach it to this page. On the top of any additional pages, write your name and case number (if known). Answer every question.

- Do you have any codebtors? (If your spouse is filing this case with you, do not list your spouse as a codebtor.)
  - No. Check this box and file this form with the court with your other schedules. You have nothing else to report on this form.
  - Yes. Fill in all of the information below.
- Have you ever lived in a community property state or territory? (*Community property states and territories* include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.)
  - No. Go to line 3.
  - Yes. Did a spouse or legal equivalent live with you at the time?
    - No
    - Yes. Fill in the information below about your spouse. Fill in this person's name in line 3 only if that person is a guarantor or co-signer.

Name of your spouse \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

- In Column 1, list as codebtors all of the people or entities who are also liable for any debts you may have. Include all guarantors and co-signers; do not include your spouse as a codebtor if your spouse is filing with you. Make sure you have listed the creditor on Schedule B or Schedule C. Use Schedule B or Schedule C to fill out Column 2.

Column 1: Your codebtor	Column 2: The creditor to whom you owe the debt
<b>1</b> _____ Name _____ _____ Number _____ Street _____ _____ City _____ State _____ ZIP Code _____	Line from Schedule B: _____r OR Line from Schedule C: _____
<b>2</b> _____ Name _____ _____ Number _____ Street _____ _____ City _____ State _____ ZIP Code _____	Line from Schedule B: _____r OR Line from Schedule C: _____
<b>3</b> _____ Name _____ _____ Number _____ Street _____ _____ City _____ State _____ ZIP Code _____	Line from Schedule B: _____r OR Line from Schedule C: _____

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

Case number (if known) \_\_\_\_\_

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

**Additional Page to List More Codebtors**

Column 1: Your codebtor	Column 2: The creditor to whom you owe the debt
<input type="checkbox"/> _____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____r OR Line from <i>Schedule C</i> : _____
<input type="checkbox"/> _____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____r OR Line from <i>Schedule C</i> : _____
<input type="checkbox"/> _____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____r OR Line from <i>Schedule C</i> : _____
<input type="checkbox"/> _____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____r OR Line from <i>Schedule C</i> : _____
<input type="checkbox"/> _____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____r OR Line from <i>Schedule C</i> : _____
<input type="checkbox"/> _____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____r OR Line from <i>Schedule C</i> : _____
<input type="checkbox"/> _____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____r OR Line from <i>Schedule C</i> : _____
<input type="checkbox"/> _____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____r OR Line from <i>Schedule C</i> : _____

**Official Form 6G****About Schedule G: Your Income**

United States Bankruptcy Court

2011

**How to fill out Schedule G**

In *Schedule G: Your Income* (Official Form 106G), you will give the details about your employment and monthly income as of the date you file this form. If you are married and your spouse is living with you, include information about your spouse even if your spouse is not filing with you. If you are separated and your spouse is not filing with you, do not include information about your spouse.

**Understand the terms used in the form**

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**How to report employment and income**

If you have nothing to report for a line, write \$0.

In Part 1, line 1, you will fill in employment information for you and your spouse and, if appropriate, for your non-filing spouse. If either person has more than one employer, attach a separate page with information about the additional employment.

In Part 2, you will give details about the monthly income you currently expect to receive. Show all totals as monthly payments, even if you do not receive your income in monthly payments.

If you receive your income in another time period, such as daily, weekly, quarterly, annually, or irregularly, calculate how much your income would be by month, as described below.

If either you or your spouse has more than one employer, calculate the monthly amount for each employer separately, and then combine the income information for all employers for that person on lines 2-7.

One easy way to calculate how much your income would be per month is to total the payments you would earn in a year, then divide by 12 to get a monthly figure. For example, if you are paid annually, you would simply divide your annual salary by 12 to get the monthly amount.

Below are other examples of how to calculate monthly amount.

**Example for quarterly payments:**

If you are paid \$15,000 every quarter, figure your monthly income in this way:

$$\begin{array}{r} \$15,000 \text{ income every quarter} \\ \times \quad 4 \text{ pay periods in the year} \\ \hline \$60,000 \text{ total income for the year} \\ \\ \$60,000 \text{ (income for year)} \\ \hline 12 \text{ (number of months in year)} \end{array} = \$5,000 \text{ monthly income}$$

**Example for bi-weekly payments:**

If you are paid \$2,500 every other week, figure your monthly income in this way:

$$\begin{array}{r} \$2,500 \text{ income every other week} \\ \times \quad 26 \text{ number of pay periods in the year} \\ \hline \$65,000 \text{ total income for the year} \\ \\ \$65,000 \text{ (income for year)} \\ \hline 12 \text{ (number of months in year)} \end{array} = \$5,417 \text{ monthly income}$$

---

**Example for weekly payment:**

If you are paid \$1,000 every week, figure your monthly income in this way:

$$\begin{array}{l} \$1,000 \text{ income every week} \\ \times \quad 52 \text{ number of pay periods in the year} \\ \hline \$52,000 \text{ total income for the year} \\ \\ \$52,000 \text{ (income for year)} \\ \hline 12 \text{ (number of months in year)} \end{array} = \$4,333 \text{ monthly income}$$

---

**Example for irregular payments:**

If you are paid \$4,000 8 times a year, figure your monthly income in this way:

$$\begin{array}{l} \$4,000 \text{ income a payment} \\ \times \quad 8 \text{ payments a year} \\ \hline \$32,000 \text{ income for the year} \\ \\ \$32,000 \text{ (income for year)} \\ \hline 12 \text{ (number of months in year)} \end{array} = \$2,667 \text{ monthly income}$$

---

**Example for daily payments:**

If you are paid \$75 a day and you work about 8 days a month, figure your monthly income in this way:

$$\begin{array}{l} \$75 \text{ income a day} \\ \times \quad 96 \text{ days a year} \\ \hline \$7,200 \text{ total income for the year} \\ \\ \$7,200 \text{ (income for year)} \\ \hline 12 \text{ (number of months in year)} \end{array} = \$600 \text{ monthly income}$$

**or this way:**

$$\begin{array}{l} \$75 \text{ income a day} \\ \times \quad 8 \text{ payments a month} \\ \hline \$600 \text{ income for the month} \end{array}$$

In Part 2, line 11, you will fill in amounts that other people provide to pay the expenses you list on *Schedule H: Your Expenses*. For example, if you and a person to whom you are not married deposit the income from both of your jobs into a single bank account and pay all household expenses and you list all your joint household expenses on *Schedule H*, you must list the amounts that person contributes monthly to pay the household expenses on line 11. If you have a roommate and you divide the rent and utilities, do not list the amounts your roommate pays on line 11 if you have listed only your share of those expenses on *Schedule H*. However, if you have listed the cost of the rent and utilities for your entire house or apartment on *Schedule H*, you must list your roommate's contribution to those expenses on *Schedule G*, line 14. Do not list line 11 contributions that you already disclosed on line 5.

Note that the income you report on *Schedule G* may be different from the income you report on other bankruptcy forms. For example, the *Chapter 7 Statement of Your Current Monthly Income* (Official Form 108-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 109), and the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110) all use a different definition of income and apply that definition to a different period of time. *Schedule G* asks about the income that you are now receiving, while the other forms ask about income you received in the applicable time period before filing. So the amount of income reported in any of those forms may be different from the amount reported here.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**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)

**Official Form 106G**  
**Schedule G: Your Income**

2011

The form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Describe Your Employment**

**1. Fill in your employment information.**

If you have more than one job, attach a separate page with information about additional employers.

Include employment information about Debtor 2 or non-filing spouse. Do not include information about your non-filing spouse if you are separated.

Include part-time, seasonal, or self-employed work.

Occupation should include student or homemaker, if it applies.

	Debtor 1	Debtor 2 or non-filing spouse
<b>Employment status</b>	<input type="checkbox"/> Employed <input type="checkbox"/> Not employed	<input type="checkbox"/> Employed <input type="checkbox"/> Not employed
<b>Occupation</b>	_____	_____
<b>Employer's name</b>	_____	_____
<b>How long employed there</b>	_____	_____
<b>Employer's address</b>	Number Street	Number Street
	_____	_____
	_____	_____
	City State ZIP Code	City State ZIP Code

**Part 2: Give Details About Your Monthly Income**

**Estimate the monthly income for both you and your spouse as of the date you file this form.** If you have nothing to report for any line, write \$0 in the space. Include your spouse if your spouse is living with you, even if your spouse is not filing. Do not include your spouse if you are separated and your spouse is not filing with you.

If a debtor or non-filing spouse has more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

	For Debtor 1	For Debtor 2 or non-filing spouse
2. List your monthly gross wages, salary, and commissions (before all payroll deductions). If you are not paid monthly, calculate what your monthly wage would be.	2. \$ _____	\$ _____
3. Estimate and list your monthly overtime pay, if any.	3. + \$ _____	+ \$ _____
4. Calculate your gross income. Add line 2 + line 3.	4. \$ _____	\$ _____

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

Case number (if known) \_\_\_\_\_

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

	For Debtor 1	For Debtor 2 or non-filing spouse
<b>5. List all payroll deductions:</b>		
5a. Payroll taxes and social security payments	5a. \$ _____	\$ _____
5b. Contributions for retirement plans	5b. \$ _____	\$ _____
5c. Required repayments of retirement fund loans	5c. \$ _____	\$ _____
5d. Insurance	5d. \$ _____	\$ _____
5e. Union dues	5e. \$ _____	\$ _____
5f. Other deductions. Specify: _____	5f. \$ _____	\$ _____
5g. Other deductions. Specify: _____	5g. \$ _____	\$ _____
5h. Other deductions. Specify: _____	5h. + \$ _____	+ \$ _____
6. Add the payroll deductions. Add lines 5a + 5b + 5c + 5d + 5e +5f + 5g +5h.	6. \$ _____	\$ _____
7. Calculate your total monthly take-home pay. Subtract line 6 from line 4.	7. \$ _____	\$ _____
<b>8. List all other income that you regularly receive:</b>		
8a. Net income from rental property and from operating a business, profession, or farm Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a. \$ _____	\$ _____
8b. Interest and dividends	8b. \$ _____	\$ _____
8c. Family support payments that you, your spouse, or a dependent regularly receive Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c. \$ _____	\$ _____
8d. Unemployment compensation	8d. \$ _____	\$ _____
8e. Social Security	8e. \$ _____	\$ _____
8f. Other government assistance. Specify: _____	8f. \$ _____	\$ _____
8g. Pension or retirement income	8g. \$ _____	\$ _____
8h. Other monthly income, including community property income. Specify: _____	8h. + \$ _____	+ \$ _____
9. Add all other income. Add lines 8a + 8b + 8c + 8d + 8e + 8f +8g + 8h.	9. \$ _____	\$ _____
10. Calculate your monthly income. Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2.	10. \$ _____ +	\$ _____ = \$ _____
<b>11. List all contributions to the expenses that you list in Schedule H that anyone else makes.</b> Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives. Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in Schedule H. Specify: _____		
		11. + \$ _____
<b>12. Add the amount in last column of line 10 to the amount in line 11.</b> The result is your combined monthly income. Write that amount on the <i>Summary of Schedules</i> and the <i>Statistical Summary of Certain Liabilities and Related Data</i> , if it applies.		
		12. \$ _____
<b>Your combined monthly income</b>		
<b>13. Do you expect an increase or decrease within the year after you file this form?</b>		
<input type="checkbox"/> No.		
<input type="checkbox"/> Yes. Explain: _____		



## Official Form 106H

# About Schedule H: Your Expenses

United States Bankruptcy Court

2011

### Understand the terms used in the form

*Schedule H: Your Expenses* (Official Form 106H) uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

### How to fill out *Schedule H*

Use Column A of this form to estimate the monthly expenses, as of the date you file for bankruptcy, for you, your dependents, and the other people in your household who combine income included on *Schedule G: Your Income* (Official Form 106G).

If you are filing under chapter 13, you must also complete Column B. In Column B, itemize what your monthly expenses would be under the plan that you are submitting with this schedule or, if no plan is being submitted now, under the most recent plan you previously submitted.

Include your spouse's expenses if your spouse is living with you, even if your spouse is not filing with you. If your spouse keeps a separate household and is filing with you, fill out a separate *Schedule H* for your spouse's expenses and write *spouse* at the top of page 1 of that form.

Do not include expenses that other members of your household pay directly from their income if you did not include that income on *Schedule G*. For example, if you have a roommate and you divide the rent and utilities and you have not listed your roommate's contribution to household expenses in line 11 of *Schedule G*, you would list only your share of these expenses on *Schedule H*.

Show all totals as monthly payments. If you have weekly, quarterly, or annual payments, calculate how much you would spend on those items every month.

Do not include business expenses on this form. You have already accounted for those expenses as part of determining net business income on *Schedule G*.

On line 20, do not include expenses for your residence or for any rental or business property. You have already listed expenses for your residence on lines 4 and 5 of this form. You listed the expenses for your rental and business property as part of the process of determining your net income from that property on *Schedule G* (line 8a).

If you have nothing to report for a line, write \$0.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

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

*Sample August 16, 2011*

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)

**Official Form 106H**  
**Schedule H: Your Expenses**

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Describe Your Household and Your Employment**

1. **Do you have dependents who live with you?**

- No  
 Yes. Fill out this information.

Do not list Debtor 1 and Debtor 2.

If you are filing jointly and live in separate households, list dependents who live in either household.

Each dependent who lives in the household	That person's relationship to Debtor 1 or Debtor 2	That person's age
Person 1	_____	_____
Person 2	_____	_____
Person 3	_____	_____
Person 4	_____	_____
Person 5	_____	_____

2. **Do you have dependents who do not live with you?**

- No  
 Yes. Fill out this information:

Do not list anyone listed in line 1.

Each dependent who does not live in the household	That person's relationship to Debtor 1 or Debtor 2	That person's age
Person 1	_____	_____
Person 2	_____	_____

3. **Does anyone else live in your household?**

- No  
 Yes. Fill out this information

Do not list Debtor 1, Debtor 2, and any dependents listed on lines 1 and 2.

If you are filing jointly and live in separate households, list everyone else who lives in either household.

Each other person who lives in the household	That person's relationship to Debtor 1 or Debtor 2
Person 1	_____
Person 2	_____
Person 3	_____

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

Case number (if known) \_\_\_\_\_

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

**Part 2: Estimate Your Monthly Expenses**

	<i>Column A For all individuals</i>	<i>Column B For Chapter 13 ONLY</i>
	<b>Your expenses as of the date you file for bankruptcy</b>	<b>What your expenses will be if your current plan is confirmed</b>
<b>4. The rental or home ownership expenses for your residence.</b> Include first mortgage payments and any rent for the ground or lot. <b>If not included in line 4:</b>	4. \$ _____	\$ _____
4a. Real estate taxes	4a. \$ _____	\$ _____
4b. Property, homeowner's, or renter's insurance	4b. \$ _____	\$ _____
4c. Home maintenance, repair, and upkeep expenses	4c. \$ _____	\$ _____
4d. Homeowner's association or condominium dues	4d. \$ _____	\$ _____
<b>5. Additional mortgage payments for your residence</b>	5. \$ _____	\$ _____
<b>6. Utilities:</b>		
6a. Electricity, heat, natural gas	6a. \$ _____	\$ _____
6b. Water, sewer, garbage collection	6b. \$ _____	\$ _____
6c. Telephone, cell phone, Internet, satellite, and cable services	6c. \$ _____	\$ _____
6d. Other. Specify: _____	6d. \$ _____	\$ _____
<b>7. Food and housekeeping supplies</b>	7. \$ _____	\$ _____
<b>8. Childcare and children's education costs</b>	8. \$ _____	\$ _____
<b>9. Clothing, laundry, and dry cleaning</b>	9. \$ _____	\$ _____
<b>10. Personal care products and services</b>	10. \$ _____	\$ _____
<b>11. Medical and dental expenses</b>	11. \$ _____	\$ _____
<b>12. Transportation.</b> Include gas, maintenance, bus or train fare. Do not include car payments.	12. \$ _____	\$ _____
<b>13. Entertainment, clubs, recreation, newspapers, magazine, and books</b>	13. \$ _____	\$ _____
<b>14. Charitable contributions and religious donations</b>	14. \$ _____	\$ _____
<b>15. Insurance.</b> Do not include insurance deducted from your pay or included in lines 4 or 20.		
15a. Life insurance	15a. \$ _____	\$ _____
15b. Health insurance	15b. \$ _____	\$ _____
15c. Vehicle insurance	15c. \$ _____	\$ _____
15d. Other insurance. Specify: _____	15d. \$ _____	\$ _____
<b>16. Taxes.</b> Do not include taxes deducted from your pay or included in lines 4 or 20. Specify: _____	16. \$ _____	\$ _____
<b>17. Installment payments:</b>		
17a. Car payments for Vehicle 1	17a. \$ _____	\$ _____
17b. Car payments for Vehicle 2	17b. \$ _____	\$ _____
17c. Student loan payments	17c. \$ _____	\$ _____
17d. Other. Specify: _____	17d. \$ _____	\$ _____
17e. Other. Specify: _____	17e. \$ _____	\$ _____

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

Case number (if known) \_\_\_\_\_

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

		Column A For all individuals	Column B For Chapter 13 ONLY
		Your expenses as of the date you file for bankruptcy	What your expenses will be if your current plan is confirmed
18.	<b>Alimony, maintenance, and support that you pay to others</b>	18. \$ _____	\$ _____
19.	<b>Other payments you make to support others who do not live with you.</b> Specify: _____	19. \$ _____	\$ _____
20.	<b>Other real property expenses not included in lines 4 or 5 of this form or on Schedule G: Your Income (Official Form 106G)</b>		
20a.	Mortgages on other property	20a. \$ _____	\$ _____
20b.	Real estate taxes	20b. \$ _____	\$ _____
20c.	Property, homeowner's, or renter's insurance	20c. \$ _____	\$ _____
20d.	Maintenance, repair, and upkeep expenses	20d. \$ _____	\$ _____
20e.	Homeowner's association or condominium dues	20e. \$ _____	\$ _____
21.	<b>Other.</b> Specify: _____	21. + \$ _____	+ \$ _____
22.	<b>Your monthly expenses.</b> Add lines 4 through 21. The result is your monthly expenses.	22. \$ _____	\$ _____
23.	<b>Calculate your monthly net income.</b>		
23a.	Copy line 12 (your monthly income) from Schedule G.	23a. \$ _____	\$ _____
23b.	Copy your monthly expenses from line 22 above.	23b. - \$ _____	- \$ _____
23c.	Subtract your monthly expenses from your monthly income. The result is your <i>monthly net income</i> .	23c. \$ _____	\$ _____
24.	<b>Do you expect an increase or decrease in your expenses within the year after you file this form?</b> For example, do you expect to finish paying for your car loan within the year? <input type="checkbox"/> No. <input type="checkbox"/> Yes. Explain here:  		

## Official Form 106-Summary

### About A Summary of Your Assets and Liabilities and Certain Statistical Information

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United States Bankruptcy Court

2011

When you file for bankruptcy, you must summarize certain information from the following forms:

- *Schedule A: Property* (Official Form 106A)
- *Schedule B: Creditors Who Have Claims Secured by Your Property* (Official Form 106B)
- *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C)
- *Schedule G: Your Income* (Official Form 106G)
- *Schedule H: Your Expenses* (Official Form 106H)
- *Chapter 7 Statement of Your Current Monthly Income*

(Official Form 108-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 109), or *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110-1)

After you fill out all of the forms, complete *A Summary of Your Assets and Liabilities and Certain Statistical Information* to report the totals of certain information that you listed in the forms.

If you are filing an amended version of any of these forms at some time after you file your original forms, you must fill out a new *Summary* to ensure that your information is up to date. In that case, write *Amended* on the top of your *Summary*.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**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)

## Official Form 106-Summary

# A Summary of Your Assets and Liabilities and Certain Statistical Information

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information.

Fill out all of your schedules first; then complete the information on this form. If you are filing amended schedules after you file your original forms, you must fill out a new *Summary* and write *Amended* on the top of this page.

### Part 1: Summarize Your Assets

	<b>Your assets</b> Value of what you own
1. <b>Schedule A: Property</b> (Official Form 106A).	
1a. Copy line 58, Total real estate, from <i>Schedule A</i> .....	\$ _____
1b. Copy line 65, Total personal property, from <i>Schedule A</i> .....	\$ _____
1c. Copy line 66, Total of all property on <i>Schedule A</i> .....	\$ _____

### Part 2: Summarize Your Liabilities

	<b>Your liabilities</b> Amount you owe
2. Schedule B: Creditors Who Have Claims Secured by Your Property (Official Form 106B)	
2a. Copy the total you listed in the <i>Amount of claim</i> column at the bottom of the last page of Part 1 of <i>Schedule B</i> .....	\$ _____
3. Schedule C: Creditors Who Have Unsecured Claims (Official Form 106C)	
3a. Copy the total claims from Part 2 (priority unsecured claims) from line 5e of <i>Schedule C</i> .....	\$ _____
3b. Copy the total claims from Part 3 (nonpriority unsecured claims) from line 5j of <i>Schedule C</i> .....	+ \$ _____
<b>Your total liabilities</b>	\$ _____

### Part 3: Summarize Your Income and Expenses

4. Schedule G: Your Income (Official Form 106G) Copy your combined monthly income from line 12 of <i>Schedule G</i> .....	\$ _____
5. Schedule H: Your Expenses (Official Form 106H) Copy your monthly expenses from line 22, Column A, of <i>Schedule H</i> .....	\$ _____

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

Case number (if known) \_\_\_\_\_

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

**Part 4: Answer These Questions for Administrative and Statistical Records**

6. **Are you filing for bankruptcy under Chapters 7, 11, or 13?**  
 No. You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.  
 Yes

7. **What kind of debt do you have?**  
 **Your debts are primarily consumer debts.** *Consumer debts* are those "incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). Fill out lines 8-10 for statistical purposes. 28 U.S.C. § 159.  
 **Your debts are not primarily consumer debts.** You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.

8. **From the Statement of Your Current Monthly Income** (Official Form 108-1, 109, or 110-1):  
 Copy your total current monthly income from line 14 of 108-1, line 11 of 109, or line 11 of 110-1. \$ \_\_\_\_\_

9. **Copy the following special categories of claims from Part 5, line 5 of Schedule C: Creditors Who Have Unsecured Claims** (Official Form 106C):

	Total claim
<b>From Part 5 on Schedule C, copy the following:</b>	
9a. Domestic support obligations (Copy line 5a.)	\$ _____
9b. Taxes and certain other debts you owe the government. (Copy line 5b.)	\$ _____
9c. Claims for death or personal injury while you were intoxicated. (Copy line 5c.)	\$ _____
<b>From Part 5 on Schedule C, copy the following:</b>	
9d. Student loans. (Copy line 5f.)	\$ _____
9e. Obligations arising out of a separation agreement or divorce that you did not report as priority claims. (Copy line 5g.)	\$ _____
9f. Debts to pension or profit-sharing plans, and other similar debts. (Copy line 5h.)	+ \$ _____
9g. <b>Total.</b> Add lines 9a through 9f.	\$ _____

**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)

Sample August 16, 2011

**Official Form 106**

**Declaration About an Individual Debtor's Schedules**

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, this form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information.

You must file this form whenever you file bankruptcy schedules or amended schedules. If you make a false statement, you could be fined up to \$500,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**Sign Here**

Did you pay or agree to pay someone who is NOT an attorney to help you fill out this bankruptcy filing package?

- No
- Yes. Name of person \_\_\_\_\_  
Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 113).

Under penalty of perjury, I declare that I have read the forms filed with this declaration, and that they are true and correct.

**x** \_\_\_\_\_  
Signature of Debtor 1

**x** \_\_\_\_\_  
Signature of Debtor 2

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

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



## Official Form 107

# About Your Statement of Financial Affairs if You Are an Individual Filing for Bankruptcy

United States Bankruptcy Court

2011

### How to Fill Out Your Statement of Financial Affairs

*Your Statement of Financial Affairs* provides a summary of your financial history over certain periods of time before you file for bankruptcy. If you are an individual in a bankruptcy case, you must fill out this statement. 11 U.S.C. § 521(a) and Fed. R. Bankr. P. 1007(b)(1).

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. You must report information for both of you on the same statement. The same person must be *Debtor 1* in all of the forms.

If you are married and your spouse is not filing this case with you, you need only provide information on this form about your spouse if you are filing under Chapter 12 or Chapter 13 and are not separated from your spouse.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any

additional pages, write your name and case number (if known). Answer every question.

If you are in business as a sole proprietor, partner, family farmer, or self-employed professional, you must provide the information about all of your business and personal financial activities.

If an involuntary bankruptcy case is filed against you and the court enters an order for relief, you must fill out this statement. When a question in this statement uses the phrases, *when you filed for bankruptcy*, or *before you filed for bankruptcy*, the question applies to your involuntary case as well, and means the date that your creditors filed the involuntary petition.

Although this statement may ask you questions that are similar to some questions on the schedules, you must fill out all of the forms completely to protect your legal rights.

### Do not list the full name of minor children

Do not list a minor child's full name. Instead, fill in only the child's initials and the full name and address of the child's parent or guardian. For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*. 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m) and 9037.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**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)

**Official Form 107**

**Your Statement of Financial Affairs for Individuals Filing for Bankruptcy 2011**

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Give Details About Where You Lived Before**

**1. During the last 3 years, have you lived anywhere other than where you live now?**

- No
- Yes. List all of the places you lived in the last 3 years. Do not include where you live now.

Debtor 1:	Dates Debtor 1 lived there	Debtor 2:	Dates Debtor 2 lived there
_____ Number Street	From _____ To _____	<input type="checkbox"/> Same as Debtor 1 _____ Number Street	<input type="checkbox"/> Same as Debtor 1 From _____ To _____
_____ City State ZIP Code		_____ City State ZIP Code	
_____ Number Street	From _____ To _____	<input type="checkbox"/> Same as Debtor 1 _____ Number Street	<input type="checkbox"/> Same as Debtor 1 From _____ To _____
_____ City State ZIP Code		_____ City State ZIP Code	

**2. Within the last 8 years, did you ever live in a community property state or territory or in Alaska?** (Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.)

- No. Go to Part 2.
- Yes. Did a spouse live with you at the time?
  - No. Go to Part 2.
  - Yes. In which community property states or territories did you live?

\_\_\_\_\_

State or territory

\_\_\_\_\_

State or territory

**Part 2: Explain the Sources of Your Income**

**3. Did you have any income from being employed or operating a business during this year or the two previous calendar years?**

Fill in a total amount for the income you receive from all jobs and all businesses, including part-time activities. If you are filing a joint case and you have income that you receive together, list it only once under Debtor 1.

- No
- Yes. Fill in the details.

	Debtor 1		Debtor 2	
	Sources of income Check all that apply.	Gross income (before deductions and exclusions)	Sources of income Check all that apply.	Gross income (before deductions and exclusions)
<b>From January 1 of current year until the date you filed for bankruptcy:</b>	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____
<b>For last calendar year:</b> (January 1 to December 31, _____) YYYY	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____
<b>For the calendar year before that:</b> (January 1 to December 31, _____) YYYY	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____

**4. Did you receive any other income during this year or the two previous calendar years?**

Include income regardless of whether that income is taxable. Examples of *other income* are alimony, child support, Social Security, unemployment, and other public benefit payments, pensions, rental income, interest, dividends, money collected from lawsuits, royalties, and gambling and lottery winnings. If you are filing a joint case and you have income that you receive together, list it only once under Debtor 1.

List each source and the gross income for each separately. Do not include income that you listed in line 3.

- No
- Yes. Fill in the details.

	Debtor 1		Debtor 2	
	Sources of income Describe below.	Gross income from each source (before deductions and exclusions)	Sources of income Describe below.	Gross income from each source (before deductions and exclusions)
<b>From January 1 of current year until the date you filed for bankruptcy:</b>	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
<b>For last calendar year:</b> (January 1 to December 31, _____) YYYY	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
<b>For the calendar year before that:</b> (January 1 to December 31, _____) YYYY	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____

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

Case number (if known) \_\_\_\_\_

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

**Part 3: List Certain Payments You Made Before You Filed for Bankruptcy**

**5. Are either Debtor 1's or Debtor 2's debts primarily consumer debts?**

No. **Your debts are not primarily consumer debts.** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

During the 90 days before you filed for bankruptcy, did you pay any creditor a total of \$5,475 or more?

No. Go to line 6.

Yes. List below each creditor to whom you paid a total of \$5,475 or more in one or more payments and the total amount you paid that creditor. Do not include payments for domestic support obligations, such as child support and alimony. Also, do not include payments to an attorney for this bankruptcy case.

Yes. **Your debts are primarily consumer debts.**

During the 90 days before you filed for bankruptcy, did you pay any creditor a total of \$600 or more?

No. Go to line 6.

Yes. List below each creditor to whom you paid a total of \$600 or more and the total amount you paid that creditor. Do not include payments for domestic support obligations, such as child support and alimony. Also, do not include payments to an attorney for this bankruptcy case.

	Dates of payment	Total amount paid	Amount you still owe	Was this payment for...
Creditor's Name _____  Number Street _____  City State ZIP Code _____	_____	\$ _____	\$ _____	<input type="checkbox"/> Mortgage <input type="checkbox"/> Car <input type="checkbox"/> Credit card <input type="checkbox"/> Loan repayment <input type="checkbox"/> Suppliers or vendors <input type="checkbox"/> Other _____
Creditor's Name _____  Number Street _____  City State ZIP Code _____	_____	\$ _____	\$ _____	<input type="checkbox"/> Mortgage <input type="checkbox"/> Car <input type="checkbox"/> Credit card <input type="checkbox"/> Loan repayment <input type="checkbox"/> Suppliers or vendors <input type="checkbox"/> Other _____
Creditor's Name _____  Number Street _____  City State ZIP Code _____	_____	\$ _____	\$ _____	<input type="checkbox"/> Mortgage <input type="checkbox"/> Car <input type="checkbox"/> Credit card <input type="checkbox"/> Loan repayment <input type="checkbox"/> Suppliers or vendors <input type="checkbox"/> Other _____

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

Case number (if known) \_\_\_\_\_

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

6. **Within 1 year before you filed for bankruptcy, did you make a payment on a debt you owed anyone who was an insider?**  
*Insiders include relatives; general partners of you or your relatives; corporations of which you are an officer, director, or person in control; and any managing agent. 11 U.S.C. § 101. Include payments for domestic support obligations, such as child support and alimony.*

- No  
 Yes. List all payments to an insider.

	Dates of payment	Total amount paid	Amount you still owe	Reason for this payment
Insider's Name _____  Number Street _____  City State ZIP Code _____	_____	\$ _____	\$ _____	
Insider's Name _____  Number Street _____  City State ZIP Code _____	_____	\$ _____	\$ _____	

7. **Within 1 year before you filed for bankruptcy, did you make any payments or transfer any property on account of a debt that benefitted an insider?**  
 Include payments on debts guaranteed or co-signed by an insider.

- No  
 Yes. List all payments that benefit an insider.

	Dates of payment	Total amount paid	Amount you still owe	Reason for this payment Include creditor's name
Insider's Name _____  Number Street _____  City State ZIP Code _____	_____	\$ _____	\$ _____	
Insider's Name _____  Number Street _____  City State ZIP Code _____	_____	\$ _____	\$ _____	

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

Case number (if known) \_\_\_\_\_

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

**Part 4: Identify Legal Actions, Repossessions, Foreclosures, and Returns**

**8. Within 1 year before you filed for bankruptcy, were you a party in any lawsuit, court action, or administrative proceeding?**

List all such matters, including personal injury cases, small claims actions, divorces, collection suits, paternity actions, support or custody modifications, and contract disputes.

- No
- Yes. Fill in the details.

	Nature of the case	Court or agency	Status of the case
Case title _____ _____ Case number _____		Court Name _____ Number Street _____ City State ZIP Code _____	<input type="checkbox"/> Pending <input type="checkbox"/> On appeal <input type="checkbox"/> Concluded
Case title _____ _____ Case number _____		Court Name _____ Number Street _____ City State ZIP Code _____	<input type="checkbox"/> Pending <input type="checkbox"/> On appeal <input type="checkbox"/> Concluded

**9. Within 1 year before you filed for bankruptcy, was any of your property repossessed, foreclosed, garnished, attached, seized, or levied?**

Check all that apply and fill in the details below.

- No. Go to line 10.
- Your property was repossessed.
- Your property was foreclosed.
- Your property was garnished.
- Your property was attached.
- Your property was seized or levied.

	Describe the property and what happened	Date	Value of the property
Creditor's Name _____ Number Street _____ City State ZIP Code _____		_____	\$ _____
Creditor's Name _____ Number Street _____ City State ZIP Code _____		_____	\$ _____

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

Case number (if known) \_\_\_\_\_

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

**10. Within 90 days before you filed for bankruptcy, did any creditor, including a bank or financial institution, set off or otherwise take anything from your accounts without your permission or refuse to make a payment because you owed a debt?**

- No  
 Yes. Fill in the details.

	Describe the action the creditor took	Date action was taken	Amount
Creditor's Name _____ Number Street _____ City State ZIP Code _____			\$ _____
	Last 4 digits of account number: xxxx-__ __ __ __		

**11. Within 1 year before you filed for bankruptcy, was any of your property in the possession of an assignee for the benefit of creditors, a court-appointed receiver, custodian, or other official?**

- No  
 Yes. Fill in the details.

	Describe the property	Value
Custodian's Name _____ Number Street _____ City State ZIP Code _____		\$ _____
	Case title _____	Court Name _____
	Case number _____	Number Street _____
	Date of order or assignment <u>   </u> / <u>   </u> / <u>   </u> MM / DD / YYYY	City State ZIP Code _____

**Part 5: List Certain Gifts and Contributions**

**12. Within 2 years before you filed for bankruptcy, did you give any gifts with a total value of more than \$600 per person?**

- No  
 Yes. Fill in the details for each gift or contribution.

Gifts with a total value of more than \$600 per person	Describe the gifts	Dates you gave the gifts	Value
Person to Whom You Gave the Gift _____ Number Street _____ City State ZIP Code _____			\$ _____
			\$ _____
Person's relationship to you _____			

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

Case number (if known) \_\_\_\_\_

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

Gifts with a total value of more than \$600 per person	Describe the gifts	Dates you gave the gifts	Value
Person to Whom You Gave the Gift		_____	\$ _____
		_____	\$ _____
Number Street			
City State ZIP Code			
Person's relationship to you _____			

**13. Within 2 years before you filed for bankruptcy, did you give any gifts or contributions with a total value of more than \$600 to any charity?**

- No
- Yes. Fill in the details for each gift or contribution.

Gifts or contributions to charities that total more than \$600	Describe what you contributed	Date you contributed	Value
Charity's Name		_____	\$ _____
		_____	\$ _____
Number Street			
City State ZIP Code			

**Part 6: List Certain Losses**

**14. Within 1 year before you filed for bankruptcy or since you filed for bankruptcy, did you lose anything because of theft, fire, other disaster, or gambling?**

- No
- Yes. Fill in the details.

Describe the property you lost and how the loss occurred	Describe insurance coverage for the loss Include the amount that insurance has paid. List pending insurance claims on line 34 of <i>Schedule A: Your Property</i> .	Date of your loss	Value of property lost
		_____	\$ _____



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

Case number (if known) \_\_\_\_\_

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

**Part 7: List Certain Payments or Transfers**

**15. Within 1 year before you filed for bankruptcy, did you or anyone else acting on your behalf pay or transfer any property to anyone you consulted about seeking bankruptcy or preparing a bankruptcy petition?**

Include any attorneys, bankruptcy petition preparers, or credit counseling agencies for services required in your bankruptcy.

- No
- Yes. Fill in the details.

	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
Person Who Was Paid _____  Number Street _____  City State ZIP Code _____  Email or website address _____  Person Who Made the Payment, if Not You _____		_____  _____	\$ _____  \$ _____

	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
Person Who Was Paid _____  Number Street _____  City State ZIP Code _____  Email or website address _____  Person Who Made the Payment, if Not You _____		_____  _____	\$ _____  \$ _____

**16. Within 1 year before you filed for bankruptcy, did you or anyone else acting on your behalf pay anything to anyone who promised to help you deal with your creditors or to make payments to your creditors?**

Do not include any payment or transfer that you listed on line 15.

- No
- Yes. Fill in the details.

	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
Person Who Was Paid _____  Number Street _____  City State ZIP Code _____		_____  _____	\$ _____  \$ _____

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

Case number (if known) \_\_\_\_\_

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

**17. Within 2 years before you filed for bankruptcy, did you sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?**

Include both outright transfers and transfers made as security. Do not include gifts and transfers that you have already listed on this statement.

- No
- Yes. Fill in the details.

	Description and value of property transferred	Describe any property or payments received or debts paid in exchange	Date transfer was made
Person Who Received Transfer _____  Number Street _____  City State ZIP Code _____  Person's relationship to you _____			_____
Person Who Received Transfer _____  Number Street _____  City State ZIP Code _____  Person's relationship to you _____			_____

**18. Within 10 years before you filed for bankruptcy, did you transfer any property to a self-settled trust or similar device of which you are a beneficiary? (These are often called *asset-protection devices*.)**

- No
- Yes. Fill in the details.

	Description and value of the property transferred	Date transfer was made
Name of trust _____  _____		_____

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

Case number (if known) \_\_\_\_\_

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

**Part 8: List Certain Financial Accounts, Safety Deposit Boxes, and Storage Units**

19. **Within 1 year before you filed for bankruptcy, were any financial accounts or instruments held in your name, or for your benefit, closed, sold, moved, or transferred?**

Include checking, savings, money market, or other financial accounts; certificates of deposit; shares in banks, credit unions, brokerage houses, pension funds, cooperatives, associations, and other financial institutions.

- No
- Yes. Fill in the details.

	Last 4 digits of account number	Type of account	Date account was closed, sold, moved, or transferred	Last balance before closing or transfer
Name of Financial Institution _____ Number Street _____ City State ZIP Code _____	XXXX-____-____-____	<input type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> Money market <input type="checkbox"/> Brokerage <input type="checkbox"/> Other _____	_____	\$ _____

	Last 4 digits of account number	Type of account	Date account was closed, sold, moved, or transferred	Last balance before closing or transfer
Name of Financial Institution _____ Number Street _____ City State ZIP Code _____	XXXX-____-____-____	<input type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> Money market <input type="checkbox"/> Brokerage <input type="checkbox"/> Other _____	_____	\$ _____

20. **Do you now have, or did you have within 1 year before you filed for bankruptcy, any safe deposit box or other depository for securities, cash, or other valuables?**

- No
- Yes. Fill in the details.

	Who else had access to it?	Describe the contents	Do you still have it?
Name of Financial Institution _____ Number Street _____ City State ZIP Code _____	Name _____ Number Street _____ City State ZIP Code _____	 	<input type="checkbox"/> No <input type="checkbox"/> Yes

21. **Do you store property in a storage unit, or have you stored property in a storage unit within 1 year before you filed for bankruptcy?** Do not include storage units that are part of the building in which you live.

- No
- Yes. Fill in the details.

	Who else has or had access to it?	Describe the contents	Do you still have it?
Name of Storage Facility _____ Number Street _____ City State ZIP Code _____	Name _____ Number Street _____ City State ZIP Code _____	 	<input type="checkbox"/> No <input type="checkbox"/> Yes

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

Case number (if known) \_\_\_\_\_

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

**Part 9: Identify Property You Hold or Control for Someone Else**

22. Do you hold or control any property that someone else owns? Include any property you borrowed from, are storing for, or hold in trust for someone.

- No
- Yes. Fill in the details.

	Where is the property?	Describe the property	Value
Owner's Name _____			\$ _____
Number Street _____	Number Street _____		
City State ZIP Code _____	City State ZIP Code _____		

**Part 10: Give Details About Environmental Information**

For the purpose of Part 10, the following definitions apply:

- *Environmental law* means any federal, state, or local statute or regulation concerning pollution, contamination, releases of hazardous or toxic substances, wastes, or material into the air, land, soil, surface water, groundwater, or other medium, including statutes or regulations controlling the cleanup of these substances, wastes, or material.
- *Site* means any location, facility, or property that any environmental law defines, whether you now own, operate, or utilize it or used to own, operate, or utilize it, including disposal sites.
- *Hazardous material* means anything an environmental law defines as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, contaminant, or similar term.

Report all notices, releases, and proceedings that you know about, regardless of when they occurred.

23. Has any governmental unit notified you that you may be liable or potentially liable under or in violation of an environmental law?

- No
- Yes. Fill in the details.

	Governmental unit	Environmental law, if you know it	Date of notice
Name of site _____	Governmental unit _____		_____
Number Street _____	Number Street _____		
City State ZIP Code _____	City State ZIP Code _____		

24. Have you notified any governmental unit of any release of hazardous material?

- No
- Yes. Fill in the details.

	Governmental unit	Environmental law, if you know it	Date of notice
Name of site _____	Governmental unit _____		_____
Number Street _____	Number Street _____		
City State ZIP Code _____	City State ZIP Code _____		

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

Case number (if known) \_\_\_\_\_

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

**25. Have you been a party in any judicial or administrative proceeding under any environmental law? Include settlements and orders.**

- No  
 Yes. Fill in the details.

	Court or agency	Nature of the case	Status of the case
Case title _____ _____	Court Name _____ Number Street _____		<input type="checkbox"/> Pending <input type="checkbox"/> On appeal <input type="checkbox"/> Concluded
Case number _____	City State ZIP Code _____		

**Part 11: Give Details About Your Business or Connections to Any Business**

**26. Within 4 years before you filed for bankruptcy, did you own a business or have any of the following connections to any business?**

- A sole proprietor or self-employed in a trade, profession, or other activity, either full-time or part-time  
 Member of a limited liability company (LLC) or limited liability partnership (LLP)  
 A partner in a partnership  
 An officer, director, or managing executive of a corporation  
 Owner of at least 5% of the voting or equity securities of a corporation
- No. None of the above applies. Go to Part 12.  
 Yes. Check all that apply above and fill in the details below for each business.

Business Name _____ Number Street _____ City State ZIP Code _____	<b>Describe the nature of the business</b> _____	<b>Employer Identification number</b> Do not include Social Security number or ITIN. EIN: ____ - ____	<b>Dates business existed</b> From ____ To ____
Business Name _____ Number Street _____ City State ZIP Code _____	<b>Describe the nature of the business</b> _____	<b>Employer Identification number</b> Do not include Social Security number or ITIN. EIN: ____ - ____	<b>Dates business existed</b> From ____ To ____
Business Name _____ Number Street _____ City State ZIP Code _____	<b>Describe the nature of the business</b> _____	<b>Employer Identification number</b> Do not include Social Security number or ITIN. EIN: ____ - ____	<b>Dates business existed</b> From ____ To ____

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

Case number (if known) \_\_\_\_\_

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

27. **Within 2 years before you filed for bankruptcy, did you give a financial statement to anyone about your business?** Include all financial institutions, creditors, or other parties.

- No
- Yes. Fill in the details below.

<p>_____ Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p>	<p style="text-align: center;"><b>Date issued</b></p> <p style="text-align: center;">_____ MM / DD / YYYY</p>
---	---

**Part 12: Sign Here**

I declare under penalty of perjury that I have read the answers on this Statement of Financial Affairs and any attachments and that the answers are true and correct.

**x** \_\_\_\_\_  
Signature of Debtor 1

**x** \_\_\_\_\_  
Signature of Debtor 2

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

**Did you attach additional pages to *Your Statement of Financial Affairs for Individuals Filing for Bankruptcy* (Official Form 107)?**

- No
- Yes

## Official Forms 108-1 and 108-2

# About the Chapter 7 Statement of Your Current Monthly Income and Means Test Calculation

United States Bankruptcy Court

2011

### How to fill out these forms

Official Forms 108-1 and 108-2 determine whether your income and expenses create a presumption of abuse that may prevent you from obtaining relief from your debts under chapter 7 of the Bankruptcy Code. Chapter 7 relief can be denied to a person who has primarily consumer debts if the court finds that the person has enough income to repay creditors a certain amount.

You must file 108-1, the *Chapter 7 Statement of Your Current Monthly Income* (Official Form 108-1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income for households of the same size in your state. If your income is not above the median, there is no presumption of abuse and you will not have to fill out the second form.

If your income is above the median, you must file the second form, 108-2, *Chapter 7 Means Test Calculation*. The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay other debts. If this amount is high enough, it will give rise to a *presumption of abuse*. A presumption of abuse does not mean you are actually trying to abuse the bankruptcy system. Rather, the presumption simply means that you may have enough income that you should not be granted relief under chapter 7. You may overcome the presumption by showing special circumstances that reduce your income or increase your expenses.

If you cannot obtain relief under chapter 7, you may be eligible to continue under another chapter of the Bankruptcy Code and pay creditors over a period of time.

Read each question carefully. You may not be required to answer every question on this form. For example, your military status may determine whether you must fill out the entire form. The instructions will alert you if you may skip questions.

If you have nothing to report for a line, write \$0.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

If you and your spouse are filing together, you and your spouse may file a single statement. However, if an exclusion in Parts 1 or 2 applies to either of you, separate statements may be required. 11 U.S.C. § 707(b)(2)(C).

### Understand the terms used in the form

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate.

If more space is needed, attach a separate sheet to the form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**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 one only as directed in lines 1, 2, 3, or 17:**

According to the calculations required by this Statement:

- 1. There is no presumption of abuse.
- 2. The presumption of abuse is determined by Form 108-2.
- 3. The Means Test does not apply now because of qualified military service but it could apply later.

# Official Form 108-1

## Chapter 7 Statement of Your Current Monthly Income

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

### Part 1: Identify the Kind of Debts You Have

**1. What kind of debts do you have?**

- Your debts are primarily consumer debts. *Consumer debts* are those “incurred by an individual primarily for a personal, family, or household purpose.” 11 U.S.C. § 101(8). ..... Go to Part 2.
- Your debts are not primarily consumer debts. Examples of debts that are NOT consumer debts are business debts and debts arising from an auto accident. If you choose this option, make sure that your answer is consistent with line 16 on the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 1). On the top of this page, check box 1, *There is no presumption of abuse*..... Go to Part 5.

### Part 2: Determine Whether Military Service Provisions Apply to You

**2. Are you a disabled veteran** (as defined in 38 U.S.C. § 3741(1))?

- No. Go to line 3.
- Yes. Did you incur your debts mostly while you were on active duty or while you were performing a homeland defense activity? 11 U.S.C. § 101(d)(1); 32 U.S.C. § 901(1)
  - No. Go to line 3.
  - Yes. On the top of this page, check box 1, *There is no presumption of abuse*..... Go to Part 5.

**3. Are you or have you been a Reservist or member of the National Guard?**

- No. Go to Part 3.
- Yes. Were you called to active duty or did you perform a homeland defense activity? 10 U.S.C. § 101(d)(1); 32 U.S.C. § 901(1)
  - No. Go to Part 3.
  - Yes. Check any one of the following categories that applies:
    - You were called to active duty after September 11, 2001**, for at least 90 days and remain on active duty.
    - You were called to active duty after September 11, 2001**, for at least 90 days and were released from active duty on \_\_\_\_/\_\_\_\_/\_\_\_\_, which is fewer than 540 days before you file this bankruptcy case.
    - You are performing a homeland defense activity for at least 90 days.**
    - You performed a homeland defense activity for at least 90 days**, ending on \_\_\_\_/\_\_\_\_/\_\_\_\_, which is fewer than 540 days before you file this bankruptcy case.

If you did not check any of these categories, go to Part 3.

If you checked one of the categories, go to the top of this page. Check box 3, *The Means Test does not apply now because of qualified military service but it could apply later*; then go to Part 9. You are not required to fill out the rest of this form during the exclusion period. The *exclusion period* means the time you are on active duty or are performing a homeland defense activity, and for 540 days afterward. 11 U.S.C. § 707(b)(2)(D)(ii). If your exclusion period ends before your case is closed, you may have to file an amended form later.



First Name Middle Name Last Name

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

**Part 3: Calculate Your Current Monthly Income**

4. **What is your marital and filing status?** Check one only.

**Not married.** Fill out Column A, lines 5-14.

**Married and your spouse is filing with you.** Fill out both Columns A and B, lines 5-14.

**Married and your spouse is NOT filing with you. You and your spouse are:**

**Living in the same household and are not legally separated.** Fill out both Columns A and B, lines 5-14.

**Living separately or are legally separated.** Fill out Column A, lines 5-14; do not fill out Column B. By checking this box, you declare under penalty of perjury that you and your spouse are legally separated under nonbankruptcy law that applies or that you and your spouse are living apart for reasons that do not include evading the Means Test requirements. 11 U.S.C. § 707(b)(7)(B).

**Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case.** 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

	Column A For you	Column B Debtor 2 or non-filing spouse
5. <b>Your gross wages, salary, tips, bonuses, overtime, and commissions</b> (before all payroll deductions).	\$ _____	\$ _____
6. <b>Alimony and maintenance payments</b>	\$ _____	\$ _____
7. <b>All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.</b> Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Also, include regular contributions from a spouse if Column B is not filled in. Do not include payments you listed on line 6.	\$ _____	\$ _____
8. <b>Net income from operating a business, profession, or farm</b>		
Gross receipts (before all deductions)	\$ _____	
Ordinary and necessary operating expenses	– \$ _____	
Net monthly income from a business, profession, or farm	\$ _____ <b>Copy here →</b>	\$ _____
9. <b>Net income from rental and other real property</b>		
Gross receipts (before all deductions)	\$ _____	
Ordinary and necessary operating expenses	– \$ _____	
Net monthly income from rental or other real property	\$ _____ <b>Copy here →</b>	\$ _____
10. <b>Interest, dividends, and royalties</b>	\$ _____	\$ _____
11. <b>Unemployment compensation</b>	\$ _____	\$ _____
Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: _____ ↓		
For you .....	\$ _____	
For your spouse .....	\$ _____	
12. <b>Pension or retirement income.</b> Do not include any amount received that was a benefit under the Social Security Act.	\$ _____	\$ _____
13. <b>Income from all other sources not listed above.</b> Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism. If necessary, list other sources on a separate page and put the total on line 13c.		
13a. _____	\$ _____	\$ _____
13b. _____	\$ _____	\$ _____
13c. Total amounts from separate pages, if any.	+ \$ _____	+ \$ _____
14. <b>Calculate your total current monthly income.</b> Add lines 5 through 13 for each column. Then add the total for Column A to the total for Column B.	\$ _____	\$ _____
	<b>+</b>	<b>=</b> \$ _____
		<b>Total current monthly income</b>

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

Case number (if known) \_\_\_\_\_

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

**Part 4: Determine Whether the Means Test Applies to You**

15. Calculate your annual income using your total current monthly income from Part 3. Follow these steps:

15a. Copy your total current monthly income from line 14..... Copy line 14 here → 15a. \$ \_\_\_\_\_  
Multiply by 12 (the number of months in a year). x 12  
15b. The result is your annual income for this part of the form. 15b. \$ \_\_\_\_\_

16. Calculate the median family income that applies to you. Follow these steps:

Fill in the state in which you live. \_\_\_\_\_  
Fill in the number of people in your household. \_\_\_\_\_  
Fill in the median family income for your state and size of household. .... 16. \$ \_\_\_\_\_  
To find that information, either go to the Means Test information at <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm> or ask for help at the clerk's office of the bankruptcy court.

17. How do the lines compare?

- 17a.  Line 15b is less than or equal to line 16. On the top of page 1, check box 1, *There is no presumption of abuse.* Go to Part 5.
- 17b.  Line 15b is more than line 16. On the top of page 1, check box 2, *The presumption of abuse is determined by Form 108-2.* Go to Part 5 and fill out Form 108-2.

**Part 5: Sign Here**

By signing here, you declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

x \_\_\_\_\_  
Signature of Debtor 1

x \_\_\_\_\_  
Signature of Debtor 2

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

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

If you checked 17a, do NOT fill out or file Official Form 108-2, *Chapter 7 Means Test Calculation*.  
If you checked line 17b, fill out Official Form 108-2, *Chapter 7 Means Test Calculation* and file it with this form.

**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 one only as directed in lines 41 or 43:**

According to the calculations required by this Statement:

1. There is no presumption of abuse.

2. There is a presumption of abuse.

# Official Form 108-2

## Chapter 7 Means Test Calculation

Sample August 16, 2011

2011

To fill out this form, you will need your completed copy of Form 108-1: *Chapter 7 Statement of Your Current Monthly Income*.

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

### Part 1: Determine Your Adjusted Income

1. Copy your total current monthly income. .... Copy line 14 here → 1. \$ \_\_\_\_\_

2. Did you fill out Column B in Part 3 of Form 108-1?

No. Fill in zero on line 3d.

Yes. Is your spouse filing with you?

No. Go to line 3.

Yes. Fill in zero on line 3d.

3. Adjust your current monthly income by subtracting any part of your spouse's income not used to pay for the household expenses of you or your dependents. Follow these steps:

On line 14, Column B of Form 108-1, was any amount of the income you reported for your spouse NOT regularly used for the household expenses of you or your dependents?

No. Fill in zero on line 3d.

Yes. Fill in the information below:

State each purpose for which the income was used For example, the income is used to pay your spouse's tax debt or to support people other than you or your dependents	Fill in the amount you are subtracting from your spouse's income
3a. _____	\$ _____
3b. _____	\$ _____
3c. _____	+ \$ _____
3d. <b>Total.</b> Add lines 3c and 3f. ....	\$ _____

Copy total here → 3d. - \$ \_\_\_\_\_

4. Adjust your current monthly income. Subtract line 3d from line 1. \_\_\_\_\_

First Name Middle Name Last Name

First Name Middle Name Last Name

**Part 2: Calculate Your Deductions from Your Income**

**The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 5-14. To find the IRS standards, either go to <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm> or ask for help at the clerk's office of the bankruptcy court.**

Deduct the expense amounts set out in lines 5-14 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not deduct any amounts that you subtracted from your spouse's income in line 3 and do not deduct any operating expenses that you subtracted from income in lines 8 and 9 of Form 108-1.

If your expenses differ from month to month, enter the average expense.

Whenever this part of the form refers to *you*, it means both you and your spouse if Column B of Form 108-1 is filled in.

**5. What is the number of people used in determining your deductions from income?**

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

**National Standards** You must use the IRS National Standards to answer the questions in lines 6-7.

**6. Food, clothing, and other items:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items.

**7. Out-of-pocket health care allowance:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories — people who are under 65 and people who are 65 or older — because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

**People who are under 65 years of age**

7a. Out-of-pocket health care allowance per person \$ \_\_\_\_\_

7b. Number of people who are under 65 X \_\_\_\_\_

7c. **Subtotal.** Multiply line 7a by line 7b. \$ \_\_\_\_\_

Copy line 7c here →

**People who are 65 years of age or older**

7d. Out-of-pocket health care allowance per person \$ \_\_\_\_\_

7e. Number of people who are 65 or older X \_\_\_\_\_

7f. **Subtotal.** Multiply line 7d by line 7e. \$ \_\_\_\_\_

Copy line 7f here →

7g. **Total.** Add lines 7c and 7f. ....

Copy total here →

**Local Standards** You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- Housing and utilities – Insurance and operating expenses
- Housing and utilities – Mortgage or rent expenses

Use the U.S. Trustee Program chart to answer the questions in lines 8-9. Go to <http://www.justice.gov/ust/ea/bapcpa/meanstesting.htm> or ask for help at the clerk's office of the bankruptcy court.

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 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 for mortgage or rent expenses. \$ \_\_\_\_\_

9b. Total average monthly payment for all mortgages and other debts secured by your home.  
 To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of the creditor	Does payment include taxes or	Average monthly payment
	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
	<input type="checkbox"/> No <input type="checkbox"/> Yes	+ \$ _____

9b. Total average monthly payment \$ \_\_\_\_\_ **Copy line 9b here →** – \$ \_\_\_\_\_ Repeat this amount on line 34a.

9c. Net mortgage or rent expense.  
 Subtract line 9b (*total average monthly payment*) from line 9a (*mortgage or rent expense*). If this number is less than zero, enter zero. \$ \_\_\_\_\_ **Copy line 9c here →** \$ \_\_\_\_\_

10. **If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing does not accurately compute the amount that applies to you, fill in any additional amount you claim.** \$ \_\_\_\_\_

Explain why:

11. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.
- 0. Go to line 14.
  - 1. Go to line 12.
  - 2 or more. Go to line 12.

12. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the *Operating Costs* that apply for your Census region or metropolitan statistical area.

\$ \_\_\_\_\_

13. **Vehicle ownership or lease expense:** Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

**Vehicle 1** Describe Vehicle 1: \_\_\_\_\_

13a. Ownership or leasing costs using IRS Local Standard 13a. \$ \_\_\_\_\_

13b. Average monthly payment for all debts secured by Vehicle 1.  
 Do not include costs for leased vehicles.

To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of each creditor for Vehicle 1	Average monthly payment
	\$ _____

Copy 13b here → \$ \_\_\_\_\_

Repeat this amount on line 34b.

13c. Net Vehicle 1 ownership or lease expense  
 Subtract line 13b from line 13a. If this number is less than zero, enter zero. 13c. \$ \_\_\_\_\_

Copy net Vehicle 1 expense here → \$ \_\_\_\_\_

**Vehicle 2** Describe Vehicle 2: \_\_\_\_\_

13d. Ownership or leasing costs using IRS Local Standard 13d. \$ \_\_\_\_\_

13e. Average monthly payment for all debts secured by Vehicle 2.  
 Do not include costs for leased vehicles.

Name of each creditor for Vehicle 2	Average monthly payment
	\$ _____

Copy here → \$ \_\_\_\_\_

Repeat this amount on line 34c.

13f. Net Vehicle 2 ownership or lease expense  
 Subtract line 13e from line 13d. If this number is less than zero, enter zero. 13f. \$ \_\_\_\_\_

Copy net Vehicle 2 expense here → \$ \_\_\_\_\_

14. **Public transportation expense:** If you claimed 0 vehicles in line 11, using the IRS Local Standards, fill in the *Public Transportation* expense allowance regardless of whether you use public transportation.

\$ \_\_\_\_\_

15. **Additional public transportation expense:** If you claimed 1 or more vehicles in line 11 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for *Public Transportation*.

\$ \_\_\_\_\_

**Other Necessary Expenses**

In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

16. **Taxes:** The total monthly amount that you actually pay for federal, state and local taxes, such as income taxes, self-employment taxes, social security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. If you expect to receive a tax refund, you must divide the refund by 12 and subtract that number from the total monthly amount you actually pay for taxes.  
 Do not include real estate or sales taxes.

\$ \_\_\_\_\_

17. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs.  
 Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings.

\$ \_\_\_\_\_

18. **Life insurance:** The total monthly premiums that you pay for your term life insurance.  
 Do not include premiums for insurance on your dependents, for whole life, or for any other form of life insurance.

\$ \_\_\_\_\_

19. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments.  
 Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 36.

\$ \_\_\_\_\_

20. **Education:** The total monthly amount that you pay for education that is either required:  
 as a condition for your job, or  
 for your physically or mentally challenged dependent child if no public education is available for similar services.

\$ \_\_\_\_\_

21. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool.  
 Do not include payments for any elementary or secondary school education.

\$ \_\_\_\_\_

22. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 7.  
 Payments for health insurance or health savings accounts should be listed only in line 26.

\$ \_\_\_\_\_

23. **Telecommunication services:** The total monthly amount that you pay for telecommunication services for you and your dependents, such as pagers, call waiting, caller identification, special long distance, internet, and business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer.  
 Do not include payments for basic home telephone, basic cell phone service, or any amount you previously deducted.

+ \$ \_\_\_\_\_

24. **Add all of the expenses allowed under the IRS expense allowances.**  
 Add lines 16 through 23.

\$ \_\_\_\_\_

25. **Do you believe that lines 16-23 leave out any Other Necessary Expenses that you should be able to deduct from your current monthly income because they are required for the health and welfare of you and your family under 11 U.S.C. § 707(b)(2)(A)(ii)(I)?**

- No. Go to line 26.  
 Yes. Fill in the following information. All figures should reflect your average monthly expense for each item.

Describe the Other Necessary Expenses	Average monthly expense
	\$ _____
	\$ _____
	\$ _____

These amounts may not be included in the calculations of deductions on this form.

First Name Middle Name Last Name

First Name Middle Name Last Name

**Additional Expense Deductions**

These are additional deductions allowed by the Means Test.  
*Note:* Do not include any expense allowances listed in lines 6-25.

**26. Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.

Health insurance \$ \_\_\_\_\_

Disability insurance \$ \_\_\_\_\_

Health savings account + \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

Copy total here → ..... \$ \_\_\_\_\_

Do you actually spend this total amount?

No. How much do you actually spend? \$ \_\_\_\_\_

Yes

**27. Continued contributions to the care of household or family members.** The actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.

\$ \_\_\_\_\_

**28. Protection against family violence.** The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply.

\$ \_\_\_\_\_

By law, the court must keep the nature of these expenses confidential.

**29. Additional home energy costs.** Your home energy costs are included in your non-mortgage housing and utilities allowance on line 8.

If you believe that you have home energy costs that are more than the home energy costs included in the non-mortgage housing and utilities allowance, then fill in the excess amount of home energy costs.

You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary.

\$ \_\_\_\_\_

**30. Education expenses for dependent children who are younger than 18.** The monthly expenses (not more than \$147\* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school.

\$ \_\_\_\_\_

You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 6-23.

\* Subject to adjustment on 4/01/13, and every 3 years after that for cases begun on or after the date of adjustment.

**31. Additional food and clothing expense.** The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards.

\$ \_\_\_\_\_

To find the maximum additional allowance, either go to [http://www.justice.gov/ust/eo/bapcpa/20100315/bci\\_data/national\\_expense\\_standards.htm](http://www.justice.gov/ust/eo/bapcpa/20100315/bci_data/national_expense_standards.htm) or ask for help at the clerk's office of the bankruptcy court.

You must show that the additional amount claimed is reasonable and necessary.

**32. Continuing charitable contributions.** The amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization. 11 U.S.C. § 548(d)(3) and (4).

\$ \_\_\_\_\_

**33. Add all of the additional expense deductions.**

Add lines 26 through 32.

\$ \_\_\_\_\_



First Name Middle Name Last Name

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

**Deductions for Debt Payment**

**34. For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 34a through 34g.**

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

			Average monthly payment
<b>Mortgages on your home</b>			
34a. Copy line 9b here .....			\$ _____
<b>Loans on your first two vehicles</b>			
34b. Copy line 13b here. ....			\$ _____
34c. Copy line 13e here. ....			\$ _____
Name of each creditor for other secured debt	Identify property that secures the debt	Does payment include taxes or insurance?	
34d.		<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
34e.		<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
34f.		<input type="checkbox"/> No <input type="checkbox"/> Yes	+ \$ _____
34g. Total average monthly payment. Add lines 34a through 34f.....			\$ _____

**Copy total here →** \$ \_\_\_\_\_

**35. Are any debts that you listed in line 34 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?**

- No. Go to line 36.
- Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 34, to keep possession of your property (called the *cure amount*). Next, divide by 60 and fill in the information below.

Name of the creditor	Identify property that secures the debt	Total cure amount		Monthly cure amount
		\$ _____	÷ 60 =	\$ _____
		\$ _____	÷ 60 =	\$ _____
		\$ _____	÷ 60 =	+ \$ _____
Total				\$ _____

**Copy total here →** \$ \_\_\_\_\_

First Name Middle Name Last Name

First Name Middle Name Last Name

36. Do you owe any priority claims — such as a priority tax, child support, or alimony — that are past due as of the filing date of your bankruptcy case? 11 U.S.C. § 507

- No. Go to line 37.
Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 19.

Total amount of all past-due priority claims.

Form with input fields for total amount of all past-due priority claims, divided by 60, resulting in a dollar amount.

37. Are you eligible to file a case under Chapter 13? 11 U.S.C. § 109(e). For more information, go to www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter13.aspx

- No. Go to line 38.
Yes. Fill in the following information.

Projected monthly plan payment if you were filing under Chapter 13

Form with input field for projected monthly plan payment.

Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. To find this information, go to www.usdoj.gov/ust/ or ask for help at the clerk's office of the bankruptcy court.

Form with input field for current multiplier, preceded by an 'X'.

Average monthly administrative expense if you were filing under Chapter 13

Form with input field for average monthly administrative expense.

Copy total here ->

Form with input field for the total of lines 37a, 37b, and 37c.

38. Add all of the deductions for debt payment. Add lines 34g through 37.

Form with input field for the total of lines 34g through 37.

Total Deductions from Income

39. Add all of the allowed deductions.

Copy line 24, All of the expenses allowed under IRS expense allowances.....

Form with input field for line 24.

Copy line 33, All of the additional expense deductions.....

Form with input field for line 33.

Copy line 38, All of the deductions for debt payment.....

Form with input field for line 38, preceded by a '+' sign.

Total deductions

Form with input field for total deductions.

Copy total here ->

Form with input field for the total of lines 39a, 39b, and 39c.

Part 3: Determine Whether There Is a Presumption of Abuse

40. Calculate monthly disposable income for 60 months

40a. Copy line 4, adjusted current monthly income.....

Form with input field for line 4.

40b. Copy line 39, Total deductions...

Form with input field for line 39, preceded by a '-' sign.

40c. Monthly disposable income 11 U.S.C. § 707(b)(2) Subtract line 40b from line 40a.

Form with input field for the result of line 40c.

Copy line 40c here ->

Form with input field for the result of line 40c.

For the next 60 months (5 years)

x 60

40d. Total. Multiply line 40c by 60.....40d.

Form with input field for the result of line 40d.

Copy line 40d here ->

Form with input field for the result of line 40d.

First Name Middle Name Last Name

First Name Middle Name Last Name

41. Find out whether there is a presumption of abuse. Check the box that applies:

- The line 40d is less than \$7,025\*. On the top of page 1 of this form, check box 1, *There is no presumption of abuse.* Go to Part 5.
- The line 40d is more than \$11,725\*. On the top of page 1 of this form, check box 2, *There is a presumption of abuse.* You may fill out Part 4 if you claim special circumstances. Then go to Part 5.
- The line 40d is at least \$7,025\*, but not more than \$11,725\*. Go to line 42.

\* Subject to adjustment on 4/01/13, and every 3 years after that for cases filed on or after the date of adjustment.

42. Fill in the amount of your total nonpriority unsecured debt. If you filled out *A Summary of Your Assets and Liabilities and Certain Statistical Information Schedules* (Official Form 6), you may refer to line 3b.

\$ \_\_\_\_\_

x .25

42b. 25% of your total nonpriority unsecured debt. 11 U.S.C. § 707(b)(2)(A)(i)(I)  
Multiply line 38a by .25.

\$ \_\_\_\_\_

Copy here →

\$ \_\_\_\_\_

43. Determine whether the income you have left over after subtracting all allowed deductions is enough to pay 25% of your unsecured, nonpriority debt. Check the box that applies:

- Line 40d is less than line 42b. On the top of page 1 of this form, check box 1, *There is no presumption of abuse.* Go to Part 5.
- Line 40d is equal to or more than line 42b. On the top of page 1 of this form, check box 2, *There is a presumption of abuse.* You may fill out Part 4 if you claim special circumstances. Then go to Part 5.

Part 4: Give Details About Special Circumstances

44. Do you have any special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative? 11 U.S.C. § 707(b)(2)(B)

- No. Go to Part 5.
- Yes. Fill in the following information. All figures should reflect your average monthly expense or income adjustment for each item. You may include expenses you listed in line 25.

You must give a detailed explanation of the special circumstances that make the expenses or income adjustments necessary and reasonable. You must also give your case trustee documentation of your actual expenses or income adjustments.

Give a detailed explanation of the special circumstances	Average monthly expense or income adjustment
	\$ _____
	\$ _____
	\$ _____
	\$ _____

Part 5: Sign Here

By signing here, you declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

X \_\_\_\_\_

Signature of Debtor 1

X \_\_\_\_\_

Signature of Debtor 2

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

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

## Official Form 109

# About the Chapter 11 Statement of Your Current Monthly Income

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United States Bankruptcy Court

2011

### How to fill out this form

You must file the *Chapter 11 Statement of Your Current Monthly Income* (Official Form 109) if you are an individual filing for bankruptcy under Chapter 11.

If you have nothing to report for a line, write \$0.

### Understand the terms used in the form

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When

information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate.

If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

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

Sample August 16, 2011

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)

**Official Form 109**

**Chapter 11 Statement of Your Current Monthly Income**

2011

You must file this form if you are an individual and are filing for bankruptcy under Chapter 11. This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

**Part 1: Calculate Your Current Monthly Income**

**1. What is your marital and filing status? Check one only.**

- Not married.** Fill out Column A, lines 2-10.
- Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-10.

**Married and your spouse is NOT filing with you: You and your spouse are:**

- Living in the same household and not legally separated.** Fill out both Columns A and B, lines 2-10.
- Living separately or are legally separated.** Fill out Column A, lines 2-10; do not fill out Column B.

**Fill in the average monthly income that you received from all sources during the 6 full months before you filed for bankruptcy.**

11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result.

Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

**2. Your gross wages, salary, tips, bonuses, overtime, and commissions (before all payroll deductions).**

**3. Alimony and maintenance payments**

**4. All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Also, include regular contributions from a spouse if Column B is not filled in. Do not include payments you listed on line 3.

**5. Net income from operating a business, profession, or farm**

Gross receipts (before all deductions) \$ \_\_\_\_\_

Ordinary and necessary operating expenses - \$ \_\_\_\_\_

Net monthly income from a business, profession, or farm \$ \_\_\_\_\_ **Copy here →**

**6. Net income from rental and other real property**

Gross receipts (before all deductions) \$ \_\_\_\_\_

Ordinary and necessary operating expenses - \$ \_\_\_\_\_

Net monthly income from rental or other real property \$ \_\_\_\_\_ **Copy here →**

	Column A For Debtor 1	Column B Debtor 2 or non-filing spouse
2. Your gross wages, salary, tips, bonuses, overtime, and commissions (before all payroll deductions).	\$ _____	\$ _____
3. Alimony and maintenance payments	\$ _____	\$ _____
4. All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.	\$ _____	\$ _____
5. Net income from operating a business, profession, or farm	\$ _____	\$ _____
6. Net income from rental and other real property	\$ _____	\$ _____

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

Case number (if known) \_\_\_\_\_

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

	Column A For Debtor 1	Column B Debtor 2 or non-filing spouse
7. <b>Interest, dividends, and royalties</b>	\$ _____	\$ _____
8. <b>Unemployment compensation.</b> Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ..... ↓  For you ..... \$ _____ For your spouse ..... \$ _____	\$ _____	\$ _____
9. <b>Pension or retirement income.</b> Do not include any amount received that was a benefit under the Social Security Act.	\$ _____	\$ _____
10. <b>Income from all other sources not listed above.</b> Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism. If necessary, list other sources on a separate page and put the total on line 10c.		
10a. _____	\$ _____	\$ _____
10b. _____	\$ _____	\$ _____
10c. Total amounts from separate pages, if any.	+ \$ _____	+ \$ _____
11. <b>Calculate your total current monthly income.</b> Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	\$ _____	\$ _____
	+ = \$ _____	
	<b>Total current monthly income</b>	

**Part 2: Sign Here**

By signing here, under penalty of perjury you declare that the information on this statement or in any attachments is true and correct.

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

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

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

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

## Official Forms 110–1 and 110–2

### About the Chapter 13 Statement of Your Current Monthly Income, Calculation of Commitment Period and Chapter 13 Calculation of Your Disposable Income

United States Bankruptcy Court

2011

#### How to fill out these forms

Official Forms B22C–1 and B22C–2 determine the period for your payments to creditors, how the amount you may be required to pay to creditors is established, and, in some situations, how much you must pay.

You must file B22C–1, the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form B22C–1) if you are an individual and you are filing under chapter 13. This form will determine your current monthly income and determine whether your income is below the median income for households of the same size in your state. If your income is not above the median, you will not have to fill out the second form. Form B22C-1 also will determine your applicable commitment period—the time period for making payments to your creditors.

If your income is above the median, you must file the second form, B22C–2, *Chapter 13 Calculation of Your Disposable Income*. The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay unsecured debts. Your chapter 13 plan may be required to provide for payment of this amount toward unsecured debts.

Read each question carefully. You may not be required to answer every question on this form. The instructions will alert you if you may skip questions.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

If you and your spouse are filing together, you and your spouse must file a single statement.

#### Understand the terms used in the form

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate.

If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

**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 as directed in lines 17 and 21:**

- According to the calculations required by this Statement:
- 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
  - 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- 
- 3. The commitment period is 3 years.
  - 4. The commitment period is 5 years.

**Official Form 110-1**

**Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period**

2011

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

**Part 1: Calculate Your Average Monthly Income**

1. **What is your marital and filing status?** Check one only.

- Not married.** Fill out Column A, lines 2-11.
- Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.  
**Married and your spouse is NOT filing with you. You and your spouse are:**
  - Living in the same household and are not legally separated.** Fill out both Columns A and B, lines 2-11.
  - Living separately or are legally separated.** Fill out Column A, lines 2-11; do not fill out Column B.

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

	Column A For Debtor 1	Column B Debtor 2 or non-filing spouse
2. <b>Your gross wages, salary, tips, bonuses, overtime, and commissions</b> (before all payroll deductions).	\$ _____	\$ _____
3. <b>Alimony and maintenance payments</b>	\$ _____	\$ _____
4. <b>All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.</b> Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Also, include regular contributions from a spouse if Column B is not filled in. Do not include payments you listed on line 3.	\$ _____	\$ _____
5. <b>Net income from operating a business, profession, or farm</b>		
Gross receipts (before all deductions)	\$ _____	
Ordinary and necessary operating expenses	- \$ _____	
Net monthly income from a business, profession, or farm	\$ _____	
	<b>Copy here →</b>	\$ _____



First Name Middle Name Last Name

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

Column A  
For Debtor 1

Column B  
Debtor 2 or  
non-filing spouse

6. Net income from rental and other real property

Gross receipts (before all deductions) \$ \_\_\_\_\_

Ordinary and necessary operating expenses - \$ \_\_\_\_\_

Net monthly income from rental or other real property \$ \_\_\_\_\_

Copy here →

\$ \_\_\_\_\_

\$ \_\_\_\_\_

7. Interest, dividends, and royalties

\$ \_\_\_\_\_

\$ \_\_\_\_\_

8. Unemployment compensation

Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ↓

For you..... \$ \_\_\_\_\_

For your spouse..... \$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

9. Pension or retirement income. Do not include any amount received that was a benefit under the Social Security Act.

\$ \_\_\_\_\_

\$ \_\_\_\_\_

10. Income from all other sources not listed above. Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism. If necessary, list other sources on a separate page and put the total on line 10c.

10a. \_\_\_\_\_

10b. \_\_\_\_\_

10c. Total amounts from separate pages, if any. \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

+ \$ \_\_\_\_\_

+ \$ \_\_\_\_\_

11. Calculate your total average monthly income. Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.

\$ \_\_\_\_\_

+

\$ \_\_\_\_\_

=

\$ \_\_\_\_\_

Total average monthly income

Part 2. Determine How to Measure Your Deductions from Income

12. Copy your total average monthly income from line 11. ....

\$ \_\_\_\_\_

13. Calculate the marital adjustment. Check one:

- You are not married. Fill in zero in line 13d.
 You are married and your spouse is filing with you. Fill in zero in line 13d.
 You are married and your spouse is not filing with you.

Fill in the amount of the income listed in line 11, Column B, that was NOT regularly paid for the household expenses of you or your dependents, such as payment of the spouse's tax liability or the spouse's support of someone other than you or your dependents.

In lines 13a-c, specify the basis for excluding this income and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page.

If this adjustment does not apply, enter zero on line 13d.

13a. \_\_\_\_\_ \$ \_\_\_\_\_

13b. \_\_\_\_\_ \$ \_\_\_\_\_

13c. \_\_\_\_\_ + \$ \_\_\_\_\_

Total

\$ \_\_\_\_\_

Copy here. →

13d. - \$ \_\_\_\_\_

First Name Middle Name Last Name

(Spouse if filing) First Name Middle Name Last Name

14. **Your current monthly income.** Subtract line 13d from line 12. 14. \$ \_\_\_\_\_

15. **Calculate your current monthly income for the year.** Follow these steps:

15a. Copy line 14 here → ..... 15a. \$ \_\_\_\_\_

Multiply line 15a by 12 (the number of months in a year). **x 12**

15b. The result is your current monthly income for the year for this part of the form. 15b. \$ \_\_\_\_\_

16. **Calculate the median family income that applies to you.** Follow these steps:

16a. Fill in the state in which you live. \_\_\_\_\_

16b. Fill in the number of people in your household. \_\_\_\_\_

16c. Fill in the median family income for your state and size of household..... 16c. \$ \_\_\_\_\_

To find that information, either go to the Means Test information at <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm> or ask for help at the clerk's office of the bankruptcy court .

17. **How do the lines compare?**

17a.  Line 15b is less than line 16c. On the top of page 1 of this form, check box 1, *Disposable income is not determined under 11 U.S.C. § 1325(b)(3)*. **Go to Part 3.** Do NOT fill out Official Form 110-2: *Calculation of Disposable Income*.

17b.  Line 15b is equal to or more than line 16c. On the top of page 1 of this form, check box 2, *Disposable income is determined under 11 U.S.C. § 1325(b)(3)*. **Go to Part 3 and fill out Official Form 110-2: Calculation of Disposable Income.** On line 37 of that form, copy your current monthly income from line 14 above.

**Part 3: Calculate Your Commitment Period Under 11 U.S.C. § 1325(b)(4)**

18. **Copy your total average monthly income from line 11.** ..... 18. \$ \_\_\_\_\_

19. **Deduct the marital adjustment if it applies.** If you are married, your spouse is not filing with you, and you contend that calculating the commitment period under 11 U.S.C. § 1325(b)(4) allows you to deduct part of your spouse's income, copy the amount from line 13d.

If the marital adjustment does not apply, fill in zero on line 19a. 19a. — \$ \_\_\_\_\_

**Subtract line 19a from line 18.** 19b. \$ \_\_\_\_\_

20. **Calculate your current monthly income for the year.** Follow these steps:

20a. Copy line 19b..... 20a. \$ \_\_\_\_\_

Multiply by 12 (the number of months in a year). **x 12**

20b. The result is your current monthly income for the year for this part of the form. 20b. \$ \_\_\_\_\_

20c. Copy the median family income for your state and size of household from line 16c..... \$ \_\_\_\_\_

21. **How do the lines compare?**

Line 20b is less than or equal to line 20c. On the top of page 1 of this form, check box 3, *The commitment period is 3 years*. Go to Part 4.

Line 20b is more than line 20c. On the top of page 1 of this form, check box 4, *The commitment period is 5 years*. Go to Part 4.

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

Case number (if known) \_\_\_\_\_

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

**Part 4: Sign Here**

By signing here, under penalty of perjury you declare that the information on this statement and in any attachments is true and correct.

**x** \_\_\_\_\_

Signature of Debtor 1

**x** \_\_\_\_\_

Signature of Debtor 2

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

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

If you checked 17a, do NOT fill out or file Official Form 110-2: *Calculation of Disposable Income*.

If you checked 17b, fill out Official Form 110-2: *Calculation of Disposable Income* and file it with this form. On line 37 of that form, copy your current monthly income from line 14 above.

**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)

**Official Form 110-2**  
**Chapter 13 Calculation of Your Disposable Income**

2011

To fill out this form, you will need your completed copy of Form 110-1: *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period*.

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

**Part 1: Calculate Your Deductions from Your Income**

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 1-11. To find the IRS standards, either go to <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm> or ask for help at the clerk's office of the bankruptcy court.

Deduct the expense amounts set out in lines 1-11 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not deduct any operating expenses that you subtracted from income in lines 5 and 6 of Official Form 110-1, and do not deduct any amounts that you subtracted from your spouse's income in line 13 of Form 110-1.

If your expenses differ from month to month, enter the average expense.

Whenever this part of the form refers to *you*, it means both you and your spouse if Column B is filled in.

**1. The number of people used in determining your deductions from income**

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

\_\_\_\_\_

**National Standards** You must use the IRS National Standards to answer the questions in lines 2-3.

**2. Food, clothing, and other items:** Using the number of people you entered in line 1 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items.

\$ \_\_\_\_\_

First Name Middle Name Last Name

First Name Middle Name Last Name

3. **Out-of-pocket health care allowance:** Using the number of people you entered in line 1 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories—people who are under 65 and people who are 65 or older—because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 18.

**People who are under 65 years of age**

3a. Out-of-pocket health care allowance per person \$ \_\_\_\_\_  
3b. Number of people who are under 65 X \_\_\_\_\_  
3c. Subtotal \$ \_\_\_\_\_ Copy line 3c here → \$ \_\_\_\_\_

**People who are 65 years of age or older**

3d. Out-of-pocket health care allowance per person \$ \_\_\_\_\_  
3e. Number of people who are 65 or older X \_\_\_\_\_  
3f. Subtotal \$ \_\_\_\_\_ Copy line 3f here → + \$ \_\_\_\_\_

3g. **Total.** Add lines 3c and 3f ..... \$ \_\_\_\_\_ Copy total here → 3g. \$ \_\_\_\_\_

**Local Standards** You must use the IRS Local Standards to answer the questions in lines 5-11.

**Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:**

- **Housing and utilities – Insurance and operating expenses**
- **Housing and utilities – Mortgage or rent expenses**

**Refer to the U.S. Trustee website to answer the questions in lines 4-5.** Go to <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm> or ask for help at the clerk's office of the bankruptcy court.

4. **Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 1, fill in the dollar amount listed for your county for insurance and operating expenses. \$ \_\_\_\_\_

**5. Housing and utilities – Mortgage or rent expenses:**

5a. Using the number of people you entered in line 1, fill in the dollar amount listed for your county for mortgage or rent expenses. \$ \_\_\_\_\_

5b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Next divide by 60.

Name of the creditor	Average monthly payment
_____	\$ _____
_____	\$ _____
	+ \$ _____
5b. Total average monthly payment .....	\$ _____

Copy line 5b here → - \$ \_\_\_\_\_ Repeat this amount on line 30a.

5c. Net mortgage or rent expense.

Subtract line 5b (total average monthly payment) from line 5a (mortgage or rent expense). If this number is less than zero, enter zero.

\$ \_\_\_\_\_ Copy 5c here → \$ \_\_\_\_\_

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

Case number (if known) \_\_\_\_\_

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

6. **If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing does not accurately compute the amount that applies to you, fill in any additional amount you claim.** \$ \_\_\_\_\_

Explain why: \_\_\_\_\_

7. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.

- 0. Go to line 10.
- 1. Go to line 8.
- 2 or more. Go to line 8.

8. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the *Operating Costs* that apply for your Census region or metropolitan statistical area. \$ \_\_\_\_\_

9. **Vehicle ownership or lease expense:** Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

**Vehicle 1** Describe Vehicle 1: \_\_\_\_\_

9a. Ownership or leasing costs using IRS Local Standard 9a. \$ \_\_\_\_\_

9b. Average monthly payment for all debts secured by Vehicle 1.  
 Do not include costs for leased vehicles.

To calculate the average monthly payment here and on line 9e, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of each creditor for Vehicle 1	Average monthly payment
	\$ _____

Copy 9b here → \$ \_\_\_\_\_ Repeat this amount on line 30b.

9c. Net Vehicle 1 ownership or lease expense 9c. \$ \_\_\_\_\_  
 Subtract line 9b from line 9a. If this number is less than zero, enter zero. Copy net Vehicle 1 expense here → \$ \_\_\_\_\_

**Vehicle 2** Describe Vehicle 2: \_\_\_\_\_

9d. Ownership or leasing costs using IRS Local Standard 9d. \$ \_\_\_\_\_

9e. Average monthly payment for all debts secured by Vehicle 2. Do not include costs for leased vehicles.

Name of each creditor for Vehicle 2	Average monthly payment
	\$ _____

Copy here → \$ \_\_\_\_\_ Repeat this amount on line 30c.

9f. Net Vehicle 2 ownership or lease expense 9f. \$ \_\_\_\_\_  
 Subtract line 9e from 9d. If this number is less than zero, enter zero. Copy net Vehicle 2 expense here → \$ \_\_\_\_\_

10. **Public transportation expense:** If you claimed 0 vehicles in line 7, using the IRS Local Standards, fill in the *Public Transportation* expense allowance regardless of whether you use public transportation. \$ \_\_\_\_\_

11. **Additional public transportation expense:** If you claimed 1 or more vehicles in line 7 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for *Public Transportation*. \$ \_\_\_\_\_

First Name Middle Name Last Name

First Name Middle Name Last Name

**Other Necessary Expenses**

In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

12. **Taxes:** The total monthly amount that you actually pay for federal, state and local taxes, such as income taxes, self-employment taxes, social security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. If you expect to receive a tax refund, you must divide the refund by 12 and subtract that number from the total monthly amount you actually pay for taxes. Do not include real estate or sales taxes. \$ \_\_\_\_\_

13. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs. Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings. \$ \_\_\_\_\_

14. **Life insurance:** The total monthly premiums that you pay for your term life insurance. Do not include premiums for insurance on your dependents, for whole life, or for any other form of life insurance. \$ \_\_\_\_\_

15. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments. Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 32. \$ \_\_\_\_\_

16. **Education:** The total monthly amount that you pay for education that is either required:   
 as a condition for your job, or   
 for your physically or mentally challenged dependent child if no public education is available for similar services. \$ \_\_\_\_\_

17. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool. Do not include payments for any elementary or secondary school education. \$ \_\_\_\_\_

18. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 3. Payments for health insurance or health savings accounts should be listed only in line 22. \$ \_\_\_\_\_

19. **Telecommunication services:** The total monthly amount that you pay for telecommunication services, such as pagers, call waiting, caller identification, special long distance, internet, and business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer. Do not include payments for basic home telephone, basic cell phone service, or any amount you previously deducted. + \_\_\_\_\_

20. **Add all of the expenses allowed under the IRS expense allowances.** Add lines 2 through 19. \$ \_\_\_\_\_

21. **Do you believe that lines 12-20 leave out any Other Necessary Expenses that you should be able to deduct from your current monthly income because they are required for the health and welfare of you and your family under 11 U.S.C. § 707(b)(2)(A)(ii)(I)?**

- No. Go to line 22.
- Yes. Fill in the following information. All figures should reflect your average monthly expense for each item.

Describe the Other Necessary Expenses	Average monthly expense
_____	\$ _____
_____	\$ _____
_____	\$ _____

These amounts may not be included in the calculations of deductions on this form.

First Name Middle Name Last Name

First Name Middle Name Last Name

**Additional Expense Deductions**

These are additional deductions allowed by the Means Test.

Note: Do not include any expense allowances listed in lines 2-21.

22. **Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.

Health insurance	\$ _____
Disability insurance	\$ _____
Health savings account	+ \$ _____
Total	\$ _____

Copy total here → ..... \$ \_\_\_\_\_

Do you actually spend this total amount?

No. How much do you actually spend? \$ \_\_\_\_\_

Yes

23. **Continuing contributions to the care of household or family members.** The actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.

\$ \_\_\_\_\_

24. **Protection against family violence.** The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply.

\$ \_\_\_\_\_

By law, the court must keep the nature of these expenses confidential.

25. **Additional home energy costs.** Your home energy costs are included in your non-mortgage housing and utilities allowance on line 4.

If you believe that you have home energy costs that are more than the home energy costs included in the non-mortgage housing and utilities allowance, then fill in the excess amount of home energy costs.

\$ \_\_\_\_\_

You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary.

26. **Education expenses for dependent children who are younger than 18.** The monthly expenses (not more than \$147\* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school.

\$ \_\_\_\_\_

You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 2-20.

\* Subject to adjustment on 4/01/13, and every 3 years after that for cases begun on or after the date of adjustment.

27. **Additional food and clothing expense.** The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards.

\$ \_\_\_\_\_

To find the maximum additional allowance, either go to [http://www.justice.gov/ust/eo/bapcpa/20100315/bci\\_data/national\\_expense\\_standards.htm](http://www.justice.gov/ust/eo/bapcpa/20100315/bci_data/national_expense_standards.htm) or ask for help at the clerk's office of the bankruptcy court.

You must show that the additional amount claimed is reasonable and necessary.

28. **Charitable contributions.** The amount reasonably necessary for you to contribute each month in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).

+ \_\_\_\_\_

Do not include any amount more than 15% of your gross monthly income.

29. **Add all of the additional expense deductions.**

Add lines 22 through 28.

\$ \_\_\_\_\_



First Name Middle Name Last Name

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

**Deductions for Debt Payment**

**30. For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 30a through 30g.**

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

			Average monthly payment
<b>Mortgages on your home</b>			
30a. Copy line 5b here .....			\$ _____
<b>Loans on your first two vehicles</b>			
30b. Copy line 9b here. ....			\$ _____
30c. Copy line 9e here. ....			\$ _____
Name of each creditor for other secured debt	Identify property that secures the debt	Does payment include taxes or insurance?	
30d.		No Yes	\$ _____
30e.		No Yes	\$ _____
30f.		No Yes	+ \$ _____
30g. Total average monthly payment. Add lines 30a through 30f.....			\$ _____
			Copy total here → \$ _____

**31. Are any debts that you listed in line 30 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?**

No. Go to line 32.

Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 30, to keep possession of your property (called the *cure amount*). Next, divide by 60 and fill in the information below.

Name of the creditor	Identify property that secures the debt	Total cure amount	Monthly cure amount
		\$ _____ ÷ 60 =	\$ _____
		\$ _____ ÷ 60 =	\$ _____
		\$ _____ ÷ 60 =	+ \$ _____
Total			\$ _____
			Copy total here → \$ _____

**32. Do you owe any priority claims — such as a priority tax, child support, or alimony — that are past due as of the filing date of your bankruptcy case? 11 U.S.C. § 507**

No. Go to line 33.

Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 15.

Total amount of all past-due priority claims. \$ \_\_\_\_\_ ÷ 60 = \$ \_\_\_\_\_

First Name Middle Name Last Name

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

33. Projected monthly Chapter 13 plan payment

Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. To find this information, go to www.usdoj.gov/ust/ or ask for help at the clerk's office of the bankruptcy court .

Average monthly administrative expense

\$ \_\_\_\_\_  
X \_\_\_\_\_  
\$ \_\_\_\_\_  
Copy total here → \$ \_\_\_\_\_  
\$ \_\_\_\_\_

34. Add all of the deductions for debt payment. Add lines 30 through 33.

Total Deductions from Income

35. Add all of the allowed deductions.

Copy line 20, All of the expenses allowed under IRS expense allowances .....

Copy line 29, All of the additional expense deductions .....

Copy line 34, All of the deductions for debt payment .....

Total deductions

\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
+ \$ \_\_\_\_\_  
\$ \_\_\_\_\_  
Copy total here → \$ \_\_\_\_\_

Part 2: Determine Your Disposable Income Under 11 U.S.C. § 1325(b)(2)

36. Copy your total current monthly income from line 11 of Form 110-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period..... \$ \_\_\_\_\_

37. Fill in any reasonably necessary income you receive for support for dependent children. The monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I of Form B22C-1, that you received in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child. \$ \_\_\_\_\_

38. Fill in all qualified retirement deductions. The monthly total of all amounts that your employer withheld from wages as contributions for qualified retirement plans, as specified in § 541(b)(7) plus all required repayments of loans from retirement plans, as specified in § 362(b)(19). \$ \_\_\_\_\_

39. Change in income or expenses. If the income in Form 110-1 or the expenses you reported in this form has changed or is virtually certain to change during the 12 months after the date you filed your bankruptcy petition, fill in the information below. For example, if the wages reported increased after you filed your petition, check 110-1 in the first column, enter line 2 in the second column, explain why the wages increased, fill in when the increase occurred, and fill in the amount of the increase.

Form	Line	Reason for change	Date of change	Increase or decrease?	Amount of change
B22C-1 B22C-2	_____ _____		_____	Increase Decrease	\$ _____
B22C-1 B22C-2	_____ _____		_____	Increase Decrease	\$ _____
B22C-1 B22C-2	_____ _____		_____	Increase Decrease	\$ _____
B22C-1 B22C-2	_____ _____		_____	Increase Decrease	\$ _____

40. Total of all deductions allowed under 11 U.S.C. § 707(b)(2)(A). Copy line 35. .... \$ \_\_\_\_\_

Debtor 1 \_\_\_\_\_

First Name Middle Name Last Name

Case number (if known) \_\_\_\_\_

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

41. **Deduction for special circumstances.** If special circumstances justify additional expenses and you have no reasonable alternative, describe the special circumstances and their expenses. You must give your case trustee a detailed explanation of the special circumstances and documentation for the expenses.

Describe the special circumstance	Amount of expense
41a. _____	\$ _____
41b. _____	\$ _____
41c. _____	+ \$ _____
41d. <b>Total.</b> Add lines 41a through 41c.....41d.	\$ _____

Copy 41d here → + \$ \_\_\_\_\_

42. **Total adjustments.** Add lines 41d and through 41.

\$ \_\_\_\_\_ Copy total here → - \$ \_\_\_\_\_

43. **Calculate your monthly disposable income under § 1325(b)(2).** Subtract line 42 from line 36.

\$ \_\_\_\_\_

**Part 3: Sign Here**

By signing here, under penalty of perjury you declare that the information on this statement and in any attachments is true and correct.

x \_\_\_\_\_  
Signature of Debtor 1

x \_\_\_\_\_  
Signature of Debtor 2

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

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

## Official Form 112

### About the Statement of Intention for Individuals Filing Under Chapter 7

United States Bankruptcy Court

2011

You must fill out the *Statement of Intention for Individuals Filing Under Chapter 7* (Official Form 112) if you are an individual filing under Chapter 7 and creditors have claims secured by your property. The Bankruptcy Code requires you to state your intentions about such claims and provides for early termination of the automatic stay as to personal property if the statement is not timely filed. The same early termination of the automatic stay applies to any unexpired lease of personal property unless you state that you intend to assume the unexpired lease if the trustee does not do so.

To help fill out this form, use the information you have already provided on the following forms:

- *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106),
- *Schedule D: The Property You Claim as Exempt* (Official Form 106D), and
- *Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106E).

#### Explain what you intend to do with your property that is collateral for a claim

If you have property that is collateral (or security) for a claim, you must show what you intend to do with that property. You may choose to either:

- Give the property to the creditor, or
- Keep the property by redeeming it, signing a *Reaffirmation Agreement* (Form B340A), or taking some other action such as avoiding a lien using 11 U.S.C. § 522(f).

**You may give the property to the creditor.** If you give the property to the creditor (*you surrender the property*), your bankruptcy discharge will protect you from any claim for a deficiency if the property is worth less than what you owe the creditor.

**You may want to keep the property.** If you want to keep your secured personal property, you should be aware of the following options and requirements:

- **You may be able to redeem your property.** 11 U.S.C. § 722. You can redeem property only if all of the following apply:
  - The property secures a debt that is a *consumer debt* — you incurred the debt primarily for personal, family, or household use.
  - The property is *personal tangible property* — the property can be touched, such as furniture, appliances, and cars.
  - You are either claiming the property as exempt or the trustee has abandoned it.

To obtain court authorization to redeem your property, you must file a motion to redeem. If the court grants your motion, you pay the creditor the value of the property or the amount of the claim, whichever is less. The payment will be a single lump-sum payment.

- **You may be able to reaffirm the debt.** You may decide to remain legally obligated to pay a debt so that you can keep the property securing the debt. This is called *reaffirming a debt*. You may reaffirm the debt in full on its original terms or you and the creditor may agree to change the terms. For example, if you want to keep your car, you may reaffirm a car loan, stating that you will continue to make monthly payments for it. Only reaffirm those debts that you are confident you can repay. You may reaffirm the debt if you sign a *Reaffirmation Agreement*, which is a contract between you and a creditor and you follow the proper procedure for the *Reaffirmation Agreement*. 11 U.S.C. § 524. The procedure is explained in greater detail in the Disclosures that are part of the reaffirmation documents.

### **Explain what you intend to do with your leased personal property**

If you lease personal property, you may be able to continue your lease if the trustee does not assume the lease. To continue your lease, you write to the lessor that you want to assume your lease. The creditor may respond by telling you whether it agrees that you may assume the lease and may require you to pay any past-due amounts before you can do so. If the lessor agrees to your request to assume the lease, you must write to the lessor within 30 days stating that you assume the lease. 11 U.S.C. § 365(p)(2).

### **File the form before the deadline**

You must file this form either within 30 days after you file your bankruptcy petition or by the date set for the meeting of creditors, whichever is earlier. You must also deliver copies of this statement to the creditors and lessors you listed on the form. Fed. R. Bankr. P. 1007(b)(2).

If two married people are filing together in a joint case, both are equally responsible for supplying correct information. Both debtors must sign and date the form.

Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).

### **Understand other terms used in the form**

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

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

Sample August 16, 2011

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)

**Official Form 112**

**Statement of Intention for Individuals Filing Under Chapter 7**

2011

If you are an individual filing under Chapter 7 and creditors have claims secured by your property or you have leased personal property and the lease has not expired, you must fill out this form. You must file this form with the court within 30 days after you file your bankruptcy petition or by the date set for the meeting of creditors, whichever is earlier, unless the court extends the time for cause. You must also have delivered copies to the creditors and lessors you listed on the form.

If two married people are filing together in a joint case, both are equally responsible for supplying correct information. Both debtors must sign and date the form.

Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).

**Part 1: List Your Creditors Who Hold Secured Claims**

1. For any creditors that you listed in Part 1 of *Schedule B*, fill in the information below.

Identify the creditor and the property that is collateral		What do you intend to do with the property that is subject to a secured debt?	Did you claim the property as exempt on Schedule C?
Creditor's name:		<input type="checkbox"/> Give the property to the creditor. <input type="checkbox"/> Keep the property. <i>Check one:</i> <input type="checkbox"/> You will redeem the property. <input type="checkbox"/> You will sign a <i>Reaffirmation Agreement</i> . <input type="checkbox"/> Other. Explain: _____ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of property securing debt:			
Creditor's name:		<input type="checkbox"/> Give the property to the creditor. <input type="checkbox"/> Keep the property. <i>Check one:</i> <input type="checkbox"/> You will redeem the property. <input type="checkbox"/> You will sign a <i>Reaffirmation Agreement</i> . <input type="checkbox"/> Other. Explain: _____ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of property securing debt:			
Creditor's name:		<input type="checkbox"/> Give the property to the creditor. <input type="checkbox"/> Keep the property. <i>Check one:</i> <input type="checkbox"/> You will redeem the property. <input type="checkbox"/> You will sign a <i>Reaffirmation Agreement</i> . <input type="checkbox"/> Other. Explain: _____ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of property securing debt:			
Creditor's name:		<input type="checkbox"/> Give the property to the creditor. <input type="checkbox"/> Keep the property. <i>Check one:</i> <input type="checkbox"/> You will redeem the property. <input type="checkbox"/> You will sign a <i>Reaffirmation Agreement</i> . <input type="checkbox"/> Other. Explain: _____ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of property securing debt:			

Your name \_\_\_\_\_  
First Name Middle Name Last Name

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

Spouse's name \_\_\_\_\_  
(If filing with you) First Name Middle Name Last Name

**Part 2: List Your Unexpired Personal Property Leases**

For any unexpired personal property leases that you listed in *Schedule E*, fill in the information below. *Unexpired leases* are leases that are still in effect; the lease period has not yet ended. You may assume an unexpired personal property lease if the trustee does not assume it. 11 U.S.C. § 365(p)(2).

Describe your unexpired personal property leases	Will the lease be assumed?
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Lessor's name: _____ Description of leased property: _____	<input type="checkbox"/> No <input type="checkbox"/> Yes

**Part 3: Sign Here**

Under penalty of perjury, I declare that I have indicated my intention about any property of my estate that secures a debt and any personal property that is subject to an unexpired lease.

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

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

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

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

Fill in this information to identify the 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 \_\_\_\_\_ Chapter \_\_\_\_\_  
 (If known)

Sample August 16, 2011

Official Form 113

Bankruptcy Petition Preparer's Notice, Declaration, and Signature

2011

Bankruptcy petition preparers as defined in 11 U.S.C. § 110 must fill out this form. Only bankruptcy petition preparers should fill out this form. Bankruptcy petition preparers must fill out a copy of this form anytime they help prepare documents to be filed in the case. If more than one bankruptcy petition preparer helped with the documents, each must sign in Part 3. A bankruptcy petition preparer who does not comply with the provisions of title 11 of the United States Code and the Federal Rules of Bankruptcy Procedure may be fined and imprisoned. 11 U.S.C. § 110; 18 U.S.C. § 156.

Part 1: Notice to Debtor

Bankruptcy petition preparers must give the debtor a copy of this form and have the debtor sign it before they prepare any documents for filing or accept any compensation. A signed copy of this form must be filed with any document prepared.

Bankruptcy petition preparers are not attorneys and may not practice law or give you legal advice, including the following:

- Whether to file a petition under the Bankruptcy Code (11 U.S.C. § 101 et seq.);
- Whether filing a case under Chapter 7, 11, 12, or 13 is appropriate;
- Whether your debts will be eliminated or discharged in a case under the Bankruptcy Code;
- Whether you will be able to keep your home, car, or other property after filing a case under the Bankruptcy Code;
- The tax consequences that may arise because a case is filed under the Bankruptcy Code;
- Whether any tax claims may be discharged;
- Whether you may or should promise to repay debts to a creditor or enter into a reaffirmation agreement;
- How to characterize the nature of your interests in property or your debts; or
- Bankruptcy procedures and rights.

The bankruptcy petition preparer \_\_\_\_\_ has notified me of  
 Name  
 any maximum allowable fee before preparing any document for filing or accepting any fee.

X \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Signature of Debtor 1 acknowledging receipt of this notice MM / DD / YYYY

X \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Signature of Debtor 2, acknowledging receipt of this notice MM / DD / YYYY



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

Case number (if known) \_\_\_\_\_

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

## Part 2: Declaration of the Bankruptcy Petition Preparer

### Under penalty of perjury, I declare that:

- I am a bankruptcy petition preparer or the officer, principal, responsible person, or partner of a bankruptcy petition preparer;
- I or my firm prepared the documents listed below and gave the debtor a copy of them and the *Notice to Debtor by Bankruptcy Petition Preparer* as required by 11 U.S.C. §§ 110(b), 110(h), and 342(b); and
- if rules or guidelines are established according to 11 U.S.C. § 110(h) setting a maximum fee for services that bankruptcy petition preparers may charge, I or my firm have notified the debtor of the maximum amount before preparing any document for filing or before accepting any fee from the debtor.

Printed name \_\_\_\_\_ Title, if any \_\_\_\_\_ Firm name, if it applies \_\_\_\_\_  
Number \_\_\_\_\_ Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Contact phone \_\_\_\_\_

### I or my firm prepared the documents listed below:

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Voluntary Petition (Form 101)                      | <input type="checkbox"/> Schedule E (Form 106E)  | <input type="checkbox"/> Statement of Current Monthly Income (Forms 108-1, 108-2, 109, 110-1, 110-2)          |
| <input type="checkbox"/> Statement About Social Security Numbers (Form 102) | <input type="checkbox"/> Schedule F (Form 106F)  | <input type="checkbox"/> Application to Pay Filing Fee in Installments (Form 103A)                            |
| <input type="checkbox"/> A Summary of Schedules (Form 106-Summary)          | <input type="checkbox"/> Schedule G (Form 106G)  | <input type="checkbox"/> Application to Have Chapter 7 Filing Fee Waived (Form 103B)                          |
| <input type="checkbox"/> Schedule A (Form 106A)                             | <input type="checkbox"/> Schedule H (Form 106H)  | <input type="checkbox"/> A list of names and addresses of all creditors ( <i>creditor or mailing matrix</i> ) |
| <input type="checkbox"/> Schedule B (Form 106B)                             | <input type="checkbox"/> Statement of Financial Affairs (Form 107)                                 | <input type="checkbox"/> Other _____  |
| <input type="checkbox"/> Schedule C (Form 106C)                             | <input type="checkbox"/> Declaration About an Individual Debtor's Schedules (Form 106-Declaration) |   |
| <input type="checkbox"/> Schedule D (Form 106D)                             | <input type="checkbox"/> Debtor's Statement of Intention (Form 112)                                |   |

## Part 3: Sign Here

Bankruptcy petition preparers must sign and give their Social Security numbers. If more than one bankruptcy petition preparer prepared the documents to which this declaration applies, the signature and Social Security number of each preparer must be provided. 11 U.S.C. § 110.

X \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner Social Security number of person who signed MM / DD / YYYY

\_\_\_\_\_  
Printed name

X \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner Social Security number of person who signed MM / DD / YYYY

\_\_\_\_\_  
Printed name



## COMMITTEE NOTE

This form, which now applies only in cases of individual debtors, is amended in its entirety. It was substantially revised as part of the Forms Modernization Project. Among the goals of the Project was the clarification of forms and their instructions in order to make them easier to read and, as a result, to increase the completeness and accuracy of responses. In pursuit of this goal, the revised forms provide a context for the questions being asked and explain technical terms that are used. They also adopt a more conversational tone that addresses the individual debtor directly as “you” and are made more visually appealing. In order to simplify the task of providing information, the revised forms frequently provide examples of the type of information being sought and include information needed to answer some of the questions or directions about where necessary information can be found. Rather than posing broad, open-ended questions that may not be fully answered, the revised forms break down questions into specific subparts for which an answer – even if “no” – is prompted.

The revised forms have been placed in a sequence that more accurately reflects the order in which they must be filed. As a result, they have been renumbered, using a three-digit designation to distinguish them from the prior forms. This form is derived from former Official Form B\_\_\_\_.



# TAB 8A



Business – Section 524(g) Trusts

Professor McKenzie's memo will be distributed separately.





**TAB 8B**



## MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: SUGGESTION FOR AMENDMENT OF RULE 1014(b) REGARDING  
TRANSFER OF RELATED CASES

DATE: AUGUST 22, 2011

Bankruptcy Judge Linda Riegle (D. Nev.) submitted suggestion 10-BK-J concerning Rule 1014(b). That rule governs the procedure for determining where cases will proceed if petitions are filed in different districts by, against, or regarding the same debtor or related debtors. The rule provides that, upon motion, the court in which the first-filed petition is pending may determine – in the interest of justice or for the convenience of the parties – the district or districts in which the cases will proceed. Except as otherwise ordered by that court, proceedings in the cases in the other districts “shall be stayed by the courts in which they have been filed” until the first court makes its determination.

Judge Riegle expressed concern that there is no mechanism for alerting the first court that a subsequent case has been filed. She also said that the rule seems to prevent the second court from transferring venue on its own motion. She suggested two possible solutions to these problems: (1) require the debtor in the second case to file a notice of related proceeding in the first court (although she expressed concern that the notice might not come to the attention of the judge in the first case); or (2) clarify that the second court may determine on its own motion whether to transfer venue in the second case.

At the spring 2011 Advisory Committee meeting, this suggestion was referred to the Subcommittee. It was discussed during the Subcommittee’s conference calls on June 15 and

August 17. Although the Subcommittee was not persuaded that the amendments proposed by Judge Riegler are needed, **it does recommend that Rule 1014(b) be amended to specify that proceedings in subsequently filed cases are stayed only upon order of the court in which the first-filed petition is pending. It also recommends some stylistic changes to the rule to provide greater clarity.**

#### Uncertainties about Rule 1014(b)

Rule 1014(b) attempts to provide a clear solution for the situation in which multiple cases involving the same debtor or closely related debtors (partnership and general partner(s), two or more general partners, or debtor and affiliate(s)) are filed in different districts. It designates the court that should determine the venue issue, thus preventing competing rulings, and it provides that proceedings in the other courts will be stayed until that determination has been made. The Subcommittee discovered, however, that the wording of Rule 1014(b) has created some uncertainties about the proper application of its provisions.

Judge Riegler's suggestion seems to arise out of the following scenario: Petition A involving a debtor is filed in district # 1. Later petition B involving the same debtor or an affiliate is filed in district # 2. The bankruptcy judge in district # 2 is made aware of the overlapping cases because it is revealed in the petition or a party otherwise informs the judge. The bankruptcy judge in district # 1, however, is unaware of the subsequent filing. For some reason, no one calls the situation to the attention of bankruptcy judge # 1, and no motion is filed under Rule 1014(b) in that court. Bankruptcy judge # 2 would like to transfer the case before her, perhaps to district # 1, but she believes she lacks authority to do so.

The Subcommittee considered whether bankruptcy judge # 2's conclusion about lack of authority is correct. It focused on two possible readings of Rule 1014(b) that would support that conclusion.

**1. Proceedings in district # 2 are stayed.** One uncertainty about Rule 1014(b) is which event triggers the stay of proceedings in the court in which a subsequent petition is filed. As stated by the Collier treatise, "The language of the rule is not completely clear regarding whether such a stay goes into effect immediately upon the filing of the second petition or only upon the filing of a motion to determine where the case should proceed." 9 COLLIER ON BANKRUPTCY ¶ 1014.04 (16<sup>th</sup> ed. rev. 2011). If the stay goes into effect upon the filing of the second petition, bankruptcy judge # 2 is correct that she may not transfer the case before her. All proceedings in her case are stayed.

Although there is not a lot of case law on the question, several courts have held that it is the filing of a Rule 1014(b) motion in district # 1 that triggers the stay under that rule. *See, e.g., In re Knight-Celotex, LLC*, 427 B.R. 697, 710 (Bankr. N.D. Ill. 2010) ("Once Bank of America filed this motion to transfer venue . . . , proceedings in New Hampshire should not have gone forward."); *In re United Press Int'l, Inc.*, 134 B.R. 507, 510 (Bankr. S.D.N.Y. 1991) ("The filing of a F.R. Bankr. P. 1014(b) motion stays all proceedings in other districts unless otherwise ordered by the Court in which the first case is filed."); *In re Shapiro*, 128 B.R. 328, 332 (Bankr. E.D.N.Y. 1991) ("[A] formal motion would automatically stay the proceedings in the [second court]."). Another court has held that not even the filing of the motion for determination of venue triggers the stay; instead, it concluded that the stay does not go into effect until the bankruptcy court in district # 1 hears the motion and "issue[s] instructions" about the stay of proceedings in other courts. *In re Bagel Bros. Bakery & Deli, Inc.*, 220 B.R. 1, 4 (Bankr.

W.D.N.Y. 1998). Although a couple of cases contain dicta suggesting that the stay goes into effect when the second petition is filed (*see In re First Federal Corp.*, 50 B.R. 415, 417 (Bankr. M.D. Fla. 1985); *In re Slentz*, 94 B.R. 446, 451 (Bankr. N.D. Ohio 1988)), the majority view appears to be that proceedings in district # 2 are not stayed prior to the filing of a Rule 1014(b) motion in district # 1. Under that reading of the rule, the case in district #2 may proceed unaffected by the case in district #1 if no motion for determination of venue has been filed in district # 1.

**2. Rule 1014(b) provides bankruptcy judge # 1 the exclusive authority to transfer venue.** Even if proceedings in the district # 2 case are not stayed, the bankruptcy judge presiding over that case may not transfer venue if Rule 1014(b) provides the bankruptcy judge in court # 1 with exclusive authority to make the venue determination when related cases are filed in different districts. That is how courts have read the rule. For example, in *In re Raytech Corp.*, 222 B.R. 19, 24 (Bankr. D. Conn. 1998), the court explained as follows:

There is no question that the Raytech and Raymark bankruptcies should be administered in the same district. . . . The controversy here is which court will make that decision. If the requisite affiliation required by Rule 1014(b) is established, it will be this court [district # 1]; otherwise, if asked, the Utah court [district # 2] will decide under 28 U.S.C. § 1412 what is “in the interest of justice or for the convenience of the parties.”

*See also In re Salem*, 465 F.3d 767, 776 (7<sup>th</sup> Cir. 2006) (“Federal Rule of Bankruptcy Procedure 1014(b) provides specific transfer procedures that apply when two petitions involving the same debtor are filed in different courts. . . . This rule suggests that Salem should have requested a transfer from the Southern District of New York [district # 1].”); *In re Reddington Invs. Ltd. P’ship-VIII*, 90 B.R. 429, 431 (B.A.P. 9th Cir. 1988) (holding that Rule 1014(a), which implements 28 U.S.C. § 1412, is the general venue transfer rule, but that Rule 1014(b) applies

when petitions involving a debtor and an affiliate are filed in different districts); *In re Lawrence & Assoc., LLC*, 2009 Bankr. LEXIS 1845 at \* 12-13 (Bankr. D. Idaho 2009) (noting that 28 U.S.C. § 1412 authorizes transfer of venue, but then stating that “Rule 1014(b) governs the transfer when petitions involving the same debtor or related debtors are filed in different courts”).

According to that reading of Rule 1014(b), when a subsequent petition within the scope of the rule is filed, the court in district # 1 is the only one with authority to determine venue for any of the related cases. The other courts’ authority to transfer venue under 28 U.S.C. § 1412 is supplanted by the exclusive authority given to the court in which the first-filed petition is pending.

The Subcommittee considered whether it is proper to read the rule as superseding the other courts’ statutory authority since the Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, does not have a supersession clause. None of the courts cited above, however, addressed that issue.

The Subcommittee concluded that Rule 1014(b) provides a necessary procedure for a matter not addressed by any statute. Section 1412 of title 28 authorizes the transfer of a bankruptcy case or proceeding to another district, in the interest of justice or for the convenience of the parties. This statutory authority is implemented by Rule 1014(a), which provides that the bankruptcy court, on the motion of a party or on its own motion and after notice and hearing, may transfer a case on the statutory grounds to any other district.

A practical problem arises, however, when related petitions are filed in different districts. Section 1412 appears to give each of the courts in which the cases are pending the authority to decide whether the case before it should be transferred to another district, most likely one in

which another related case is pending. If there is no coordination among the judges, they might reach conflicting decisions, and cases that should be consolidated could still end up in different districts. Rule 1014(b) attempts to eliminate this problem by designating a single judge – the judge in the district in which the first-filed petition is pending – to make the venue decision for all of the cases. Although this rule takes away the authority that the other judges would otherwise possess to transfer their cases under § 1412, it provides a useful solution to a problem that the bankruptcy venue statutes do not directly address.<sup>1</sup> Viewed in that light, Rule 1014(b) is not inconsistent with statutory authority.

#### The Subcommittee’s Recommendation

The Subcommittee concluded that Rule 1014(b) does not need to be amended to require the debtor in case # 2 to inform court # 1 about the subsequent filing. In most situations in which Rule 1014(b) applies, it will be advantageous to at least one party in interest to inform the first court about the related case in order to reduce costs, inefficiencies, and the possibility of conflicting rulings. If no party takes action on its own to give notice to the first court, court # 2 – upon learning of the related petitions – can order the debtor to inform the first court.

The Subcommittee also concluded that Rule 1014(b) should not be amended to overrule existing case law that recognizes court # 1 as having exclusive authority to determine the venue

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<sup>1</sup> Rule 1014(b), if not unique among venue provisions, is at least unusual in authorizing a court to order the transfer of a case pending in another court. In the civil context, when related cases are pending, a court may transfer only the case before it to another district under 28 U.S.C. §§ 1404 or 1406, or in limited circumstances the multidistrict litigation procedure can be invoked under 28 U.S.C. § 1407, resulting in the transfer of all of the related cases to a single judge – for pretrial purposes only. Under § 1407, however, the venue decision is made by the Judicial Panel on Multidistrict Litigation, not by a judge presiding over one of the cases. Nevertheless, courts have consistently read Rule 1014(b) as authorizing court # 1 to transfer the venue of the related case in court # 2. *See, e.g., In re Emerson Radio Corp.*, 52 F.3d 50, 55 n.8 (3d Cir. 1995) (“Although 28 U.S.C. § 1412, in and of itself, may not provide the authority for a district court to transfer to itself a case pending in another court, Rule 1014(b) provides precisely such authority.”) (citation omitted); *In re Knight-Celotex, LLC*, 427 B.R. 697, 706 (Bankr. N.D. Ill. 2010), (holding that the court had “jurisdiction to determine the proper venue of a case, pending in another district, that involves an affiliate of a debtor in an earlier-filed case pending in this district”); *In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey*, 149 B.R. 365, 368 (Bankr. S.D.N.Y. 1993) (“B.R. 1014(b) is unusual in that it creates a mechanism by which venue motions are determined by a court other than the court in which the case is pending.”).



of the related cases. Members of the Subcommittee believe that this interpretation furthers the rule's underlying purposes. The rule is designed to prevent conflicting venue rulings by designating a single decision maker. Allowing court # 2 to transfer the case before it would usurp court # 1's authority under the rule and could result in a decision at odds with the court # 1's eventual determination.

The Subcommittee did conclude, however, that Rule 1014(b) should be amended to state clearly when the stay of any subsequently filed case goes into effect. Rather than selecting either the filing of a subsequent petition or the filing of a motion under the rule as the event that commences the stay, the Subcommittee recommends that an order by court # 1 be required. That requirement would eliminate any uncertainty about whether a stay was in effect. It would also permit a judicial determination – not just a party's assertion – that the rule applied and that a stay of other proceedings was needed.

If Rule 1014(b) is to be amended to require a judicial imposition of the stay, the Subcommittee also recommends that stylistic changes be made so that the rule is more comprehensible.

The Subcommittee recommends that Rule 1014(b) be amended as indicated below:

**Rule 1014. Dismissal and Change of Venue**

\* \* \* \* \*

(b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS. If petitions commencing cases under the Code or seeking recognition under chapter 15 are filed in different districts by, regarding, or against (1) the same debtor, (2) a

7 partnership and one or more of its general partners, (3) two or  
8 more general partners, or (4) a debtor and an affiliate, ~~on motion~~  
9 ~~filed the court~~ in the district in which the first-filed petition ~~filed~~  
10 ~~first is pending and after hearing on notice to the petitioners, the~~  
11 ~~United States trustee, and other entities as directed by the court, the~~  
12 ~~court~~ may determine, in the interest of justice or for the  
13 convenience of the parties, the district or districts in which ~~the case~~  
14 ~~or any of the cases~~ should proceed. The court may make this  
15 determination on motion and after hearing on notice to the  
16 petitioners, the United States trustee, and other entities as directed  
17 by the court. ~~Except as otherwise ordered by t~~The court in the  
18 ~~district in which the petition filed first is pending, may order the~~  
19 ~~parties to the subsequently filed cases to refrain from proceeding~~  
20 ~~further in those cases the proceedings on the other petitions shall~~  
21 ~~be stayed by the courts in which they have been filed until it makes~~  
22 the determination under this subdivision ~~is made~~.

## **COMMITTEE NOTE**

Subdivision (b) provides a practical solution for resolving venue issues when related cases are filed in different districts. It designates the court in which the first-filed petition is pending as the decision maker if a party seeks a determination of where the related cases should proceed. Subdivision (b) is amended to clarify when proceedings in the subsequently filed cases are stayed. It requires an order of the court in which the first-filed petition is pending to stay proceedings in the related cases. Requiring a court order to trigger the stay will prevent the disruption of other cases unless there is a judicial determination that this subdivision of the rule applies and that a stay of related cases is needed while the court makes its venue determination.

The other changes to subdivision (b) are stylistic.



TAB 8C



## MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: SUGGESTION FOR CREATION OF A NATIONAL RULE AND AN OFFICIAL FORM FOR THE ALLOWANCE OF ADMINISTRATIVE EXPENSES

DATE: AUGUST 30, 2011

Bankruptcy Judge William F. Stone, Jr. (W.D. Va.) submitted a suggestion (09-BK-J) that national rules and an Official Form be adopted to govern applications for the payment of administrative expenses. Judge Stone noted that the Bankruptcy Code and Rules provide extensive details about the procedures for seeking payment of one type of administrative expense – compensation of professionals retained in the case – but virtually no guidance about applications for the allowance of other types of administrative expenses. He stated, for example, that there is no rule provision about who is to receive notice of an application, and, unlike Form 10, no Official Form for an administrative expense application. He suggested that, rather than leaving the procedures up to local rules and practices, it would be useful to have a uniform national procedure for the allowance of administrative expenses.

At the spring 2010 Advisory Committee meeting, Judge Stone’s suggestion was referred to this Subcommittee for consideration. The Subcommittee recommended at the fall 2010 meeting that additional information be gathered to determine whether there is a need for a national rule or Official Form for the allowance of administrative expenses. Accepting that recommendation, the Committee requested Molly Johnson and Beth Wiggins of the Federal Judicial Center (“FJC”) to undertake a survey of bankruptcy clerks and business bankruptcy

attorneys regarding the existence of local rules and practices governing applications for administrative expenses, whether they had encountered problems with existing practices, and whether a national rule and form would be desirable.

Ms. Johnson reported on the survey results at the spring 2011 Advisory Committee meeting. After discussion, the Committee requested the Subcommittee to consider the range of possible responses to Judge Stone's suggestion and to report back at the fall 2011 meeting with a recommendation as to whether one or more national rules and/or forms for the allowance of administrative expenses should be developed.

During a conference call on June 15, the Subcommittee reviewed the survey results and considered possible actions that might be taken in response to Judge Stone's suggestion. Based on its thorough discussion of the issue, **the Subcommittee recommends that Judge Stone's suggestion not be pursued further.** This memorandum reviews the legal background of the suggestion and the results of the FJC survey. It then discusses the reasons for the Subcommittee's recommendation.

#### Legal Background

The Bankruptcy Code and Rules provide little detail about the method of seeking payment of administrative expenses. Section 503(a) provides that an entity may "file a request for payment of an administrative expense." This filing may either be timely or, with the court's permission and for cause, tardy. The legislative history of this provision states that the Bankruptcy Rules "will specify the time, the form, and the method of such a filing." S. REP. NO. 95-989, at 66 (1978). Section 503(b) provides that administrative expenses shall be allowed after notice and a hearing.



The Rules, however, do not provide much detail about requests for allowance or payment of administrative expenses. Rule 2016 prescribes procedures for obtaining compensation from the estate for services rendered and reimbursement of expenses, and Rule 1019(6) governs the payment of postpetition claims incurred before conversion of a case. Under that rule, payment of administrative expenses must be sought by a request for payment. Rule 1019(6) sets forth a procedure for providing notice of the time for filing such requests after the case has been converted. There is no Official Form for requests for payment of administrative expenses, and no rule that generally prescribes the time, form, and method of filing such requests.

#### Results of the FJC Surveys

Following this memorandum in the agenda book are summaries of the survey results. Copies of the reports, as well as an appendix to the clerk survey report, were distributed with the agenda materials for the spring meeting in San Francisco and will be available at this meeting. The appendix to the clerk survey report is a compilation of local rules and forms addressing requests for payment of administrative expenses.

Seventy responses to the clerk survey were submitted, and 94 to the attorney survey. The attorney responses represented only a small percentage of the membership of the two listservs that were used to solicit input (Business Bankruptcy Section of ABA and the American Bankruptcy Institute). The surveys revealed a fairly low level of discontent with the absence of national procedures for the allowance of administrative expenses. Only a small percentage of the responding clerks indicated that their districts had any difficulties in handling administrative expenses, and only 10% of the clerks desired greater standardization. Perhaps not surprisingly, there was greater support for national procedures among the attorneys who responded, particularly those who practice in multiple districts. Approximately two-thirds thought that

standardized procedures would be beneficial. Relatively few attorneys (4% of the respondents), however, said that they had experienced great difficulties with the current practices for handling administrative expense requests, while 20% reported having moderate difficulties. The rest stated that they had experienced slight or no difficulties with the current system.

#### Basis for the Subcommittee's Recommendation

The Subcommittee noted that the surveys do not reveal any real fervor for the promulgation of national rules or forms governing the allowance of administrative expenses. The majority of respondents to both surveys stated that they had encountered no significant problems with existing practices, although when asked about it, attorneys seemed to favor – at least in the abstract – the creation of national rules. Congress apparently anticipated that such rules would be promulgated, yet for over 30 years the bankruptcy system has operated fairly well without them. The main difficulties that were identified in the surveys were the need to determine how to seek allowance of administrative expenses (motion versus a claim-type procedure), the attempt by some attorneys to use proofs of claim for administrative expenses, and the possibly excessive cost of having to file a motion and perhaps retain local counsel in order to receive payment of a relatively small administrative expense.

In light of these conflicting considerations, the Subcommittee considered potential responses to Judge Stone's suggestion. They consisted of the following range of actions by the Committee:

- Do nothing; maintain the status quo.
- Help the Administrative Office develop guidelines or recommendations for the courts' consideration regarding the handling of administrative expenses, including the possibility of creating a docket for administrative expense claims.

- Draft a Director’s Form for a request for allowance of an administrative expense, which courts could choose to adopt.
- Propose a rule or rules governing the method of seeking allowance of an administrative expense, including the type of filing required, when it must be filed, to whom notice must be given, and where the filing is made (on the court docket or on a separate administrative expenses register).
- In addition to or in lieu of a rule or rules, propose an Official Form that would be the administrative-expense counterpart to Form 10 (Proof of Claim).

Like the survey respondents, members of the Subcommittee did not express strong feelings that a problem exists and that national uniformity is needed. Some members initially expressed some support for encouraging the creation of administrative-expense docket or a model form. Others, however, observed that they did not think the absence of uniform procedures had caused any serious problems in practice and that devising a comprehensive national procedure would be a complex task due to the wide variety of administrative expenses. Moreover, it was noted that courts and practitioners accustomed to a practice that works well in their district might object to the imposition of a different national procedure.

In the end, the Subcommittee concluded that the efforts of the Committee would be better spent on other issues for which the need for a national solution or a revision of existing rules or forms is greater.



## Attorney Survey, Administrative Expenses

This report contains tables of the results of the *Survey of Bankruptcy Attorneys Regarding Applications for Administrative Expenses*. Respondents include attorneys who belong to listservs hosted by the Business Bankruptcy Section of the ABA and the American Bankruptcy Institute; the survey link was published to each of the listservs along with an invitation to participate. The analysis includes answers from 94 respondents who took the survey between Friday, January 21, 2011 and Monday, March 7, 2011. The tables consist of statistical summaries of responses to objective questions, as well as open-ended comments.

Collectively, the listservs have memberships of more than 1,500 attorneys, and although it is likely that the membership of the two listservs overlap, only a small proportion of attorneys to whom the link was made available responded to the survey. Thus, the results of this survey are not necessarily representative of all bankruptcy attorneys, and may in fact disproportionately reflect the views of attorneys who have encountered problems with requests for payment of administrative expenses.

Results indicate:

- Almost two-thirds of the responding attorneys (63%) reported that they practice in more than one bankruptcy district.
- Most responding attorneys (60%) said that none of the bankruptcy districts in which they practice has formal or informal procedures for requesting payment of administrative expenses (Table 1). (Tables 2, 3, and 4 provide more information from those attorneys who reported practicing in districts that had formal or informal procedures.)
- When asked to what extent they encountered difficulties in their practice due to how requests for administrative expense are handled, respondents most frequently (39%) indicated that they experienced “slight” difficulties because of this. Just under 30 percent said they encountered no difficulties, while 20% said they encounter moderate difficulties, and 4% said they encounter great difficulties. (Table 5). A higher percentage of attorneys who practice in multiple districts reported experiencing difficulties, with about 30% (16 respondents) saying they experienced “moderate” or “great” difficulties, compared to about 12% (3 respondents) of attorneys who reported practicing in only one district.
- Almost two-thirds of responding attorneys (64%) said that their practice would benefit from more standardization of the *procedures* governing requests for payment of administrative expenses. More than one-third (34%) said their practice would benefit from more standardization of the *forms* used to apply for payment of administrative expenses; 20% said their practice would benefit from no change to current procedures and forms (Table 6 and Table 7, which contains explanations of their responses). Attorneys who practice in multiple districts appeared to be slightly more supportive of standardization of both procedures and forms than were attorneys who practice in a single district (68% of attorneys who practice in multiple districts said their practice would benefit from more

## Attorney Survey, Administrative Expenses

standardization of procedures, compared to 57% of attorneys who practice in single districts; similarly, 37% of attorneys who practice in multiple districts said their practice would benefit from more standardization of the forms, compared to 29% of attorneys in single districts).

- When asked to rate the extent to which national changes are necessary, responding attorneys were most supportive of changes to the national rules governing how applications for administrative expenses are handled and nationally-available procedural forms that attorneys and districts could adapt; roughly 60% rated such changes a “4” or “5” on a 5-point scale where “1” represented “not at all necessary” and “5” represented “very necessary.” There was slightly less support among respondents for nationally-mandated Official Forms for payment of administrative expenses, for which 44% gave a “4” or “5” (Table 8).
- Responding attorneys indicated that the most important procedural aspects to cover in a national rule would be the *manner of filing* (e.g., motion, application; selected by 84% of respondents); *noticing requirements* (selected by 79% of respondents); and *hearing opportunities* (e.g., negative notice; selected by 71% of respondents. (Table 9 and Table 10, which contains additional suggestions and explanation).
- The types of expenses that attorneys considered most important to address were *administrative expenses in Chapter 11 cases* (selected by 89% of attorneys); *payment to suppliers that delivered goods to the debtor within 20 days before the petition* (selected by 73% of respondents); and *payment for goods and services furnished in the ordinary course of business in a Chapter 11 case prior to conversion to Chapter 7* (selected by 70% of attorneys). More than half of the respondents also thought national rules or forms should address *administrative expenses in Chapter 7 cases* (66%) and *expenses incurred by a creditor for the benefit of the estate* (61%). (Table 11 and Table 12, which contains additional suggestions and explanation).
- Table 13 provides miscellaneous additional comments the attorneys provided.

## Executive Summary

This report contains preliminary tables of results of the survey titled *Survey of Bankruptcy Clerks of Court Regarding Applications for Administrative Expenses*. The results analysis includes answers from all respondents who took the survey in the 81-day period from Friday, December 03, 2010 to Monday, February 21, 2011. Seventy completed responses to the survey were received during this time.

Preliminary results indicate:

- More than half of respondents (54%) indicated that their district has no district-wide procedures or forms regarding the payment of administrative expenses. Of those that do, they most commonly have a local rule (30% of respondents overall), followed by guidelines (10%) or standardized forms (7%). (Table 1).
- Of the district-wide procedures, 86% cover requests for *all* types of administrative expenses listed in 11 U.S.C. § 503(b). (Table 2 and Table 3, which provides more information about the types of expenses covered).
- Over 90% of respondents said that no judges in their district had *written* chambers-specific procedures, and most also reported no *unwritten* chambers-specific procedures (78% said there were none, while 15% couldn't say, and 7.5% said at least one judge in their district had such procedures). (Table 6).
- Only two respondents (3%) said that the procedures for requesting administrative expenses varied among the judges in their district, while 80% said this was not the case, and 17% couldn't say. (Table 7 and Table 8, which provides more detail about how procedures vary).
- About three-quarters (74%) of respondents said their district encounters very few difficulties with requests for payment of administrative expenses. Ten percent said their district could benefit from more standardization of procedures, and 11% said their district could benefit from more standardization of the forms used for requesting payment of administrative expenses. (Table 9 and Table 10, which contains explanations of their responses).
- With respect to whether national changes are necessary, the greatest support was for nationally-available procedural forms (which could be adapted for use by districts or attorneys), followed closely by national rules to govern how applications for administrative expenses were handled. Neither of these changes, however, was seen as "very necessary" by more than 8% of respondents. (Table 11).

## Clerk Survey, Administrative Expenses

- When asked which procedural aspects would be most important to address if the Committee decided national rules or forms were necessary, respondents most frequently indicated *noticing requirements* (selected by 70% of respondents); *manner of filing* (e.g., motion, application; selected by 66% of respondents); and *hearing opportunities* (e.g., negative notice; selected by 64% of respondents). (Table 12 and Table 13, which contains additional suggestions and explanations).
- When asked which types of administrative expenses would be most important to address if the Committee decided that national rules or forms were necessary, respondents most frequently indicated *administrative expenses in Chapter 11 cases* (selected by 69% of respondents); *administrative expenses in Chapter 7 cases* (selected by 57% of respondents); and *payments for goods and services furnished in the ordinary course of business in a Chapter 11 case prior to conversion to Chapter 7* (selected by 57% of respondents). (Table 14 and Table 15, which contains additional suggestions and explanations).
- Table 16 provides miscellaneous additional comments the clerks of court provided.
- Appendix A provides examples of existing court procedures for requesting payment of administrative expenses.



# TAB 9



**FEDERAL RULES OF BANKRUPTCY PROCEDURE**

**PART VIII. BANKRUPTCY APPEALS**

**Rule**

- 8001. Scope of Part VIII Rules; Definitions
- 8002. Time for Filing Notice of Appeal
- 8003. Appeal as of Right – How Taken; Docketing of Appeal
- 8004. Appeal by Leave – How Taken; Docketing of Appeal
- 8005. Election to Have Appeal Heard by District Court Instead of BAP
- 8006. Certification of Direct Appeal to Court of Appeals
- 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings
- 8008. Indicative Rulings
- 8009. Record and Issues on Appeal; Sealed Documents
- 8010. Completion and Transmission of the Record
- 8011. Filing and Service
- 8012. Corporate Disclosure Statement
- 8013. Motions; Intervention
- 8014. Briefs
- 8015. Form of Briefs, Appendices, and Other Papers
- 8016. Cross-Appeals
- 8017. Brief of an Amicus Curiae

8018	Serving and Filing Briefs; Appendices
8019	Oral Argument
8020	<del>Disposition of Appeal;</del> Weight Accorded Bankruptcy Judge's Findings of Fact and Conclusions of Law
8021	<del>Damages and Costs for</del> Frivolous Appeals <del>and Other Misconduct</del>
8022	Costs
8023	Motion for Rehearing
8024	Voluntary Dismissal
8025	Duties of Clerk on Disposition of Appeal
8026	Stay of Appellate Court Judgment
8027	Rules by Courts of Appeals and District Courts; Procedure When There is No Controlling Law
8028	Suspension of Rules in Part VIII

**Rule 8001. Scope of Part VIII Rules; Definitions**

1 (a) GENERAL SCOPE. These Part VIII rules govern the  
2 procedure in United States district courts and bankruptcy appellate  
3 panels for appeals taken from judgments, orders, and decrees of  
4 bankruptcy ~~judges courts~~. They also govern ~~the certain~~ procedures  
5 ~~involving for certification of~~ appeals ~~directly~~ to courts of appeals  
6 under 28 U.S.C. § 158(d)~~(2)~~.

7 (b) PROCEDURE IN OTHER COURTS. When these  
8 rules provide for filing a document in a bankruptcy court or a court  
9 of appeals, the procedure ~~shall~~ **must** comply with the practice of  
10 the court in which the document is filed.

11 (c) “BAP.” As used in these Part VIII rules, “BAP” means  
12 a bankruptcy appellate panel established by the judicial council of  
13 a circuit and authorized to hear appeals from the bankruptcy court  
14 for the district in which an appeal **is taken** under 28 U.S.C. § 158 ~~is~~  
15 ~~taken~~.

16 (d) “APPELLATE COURT.” As used in these Part VIII  
17 rules, “appellate court” means either the district court or the BAP –  
18 whichever is the court in which the bankruptcy appeal is pending  
19 or to which the appeal will be taken.

20 (e) “TRANSMIT.” As used in these Part VIII rules,  
21 “transmit” means to send electronically unless the governing rules

22 of the court permit or require mailing or other means of delivery of the document in question.

### COMMITTEE NOTE

These Part VIII rules apply to appeals under 28 U.S.C. § 158(a) from bankruptcy courts to district courts and BAPs. As provided in subdivision (d) of this rule, the term “appellate court” is used in Part VIII to refer to the court – district court or BAP – to which a bankruptcy appeal is taken.

Subsequent appeals to courts of appeals are governed by the Federal Rules of Appellate Procedure. ~~Five~~Seven of the Part VIII rules do, however, relate to appeals to courts of appeals. Rule 8004(e) provides that an authorization by the court of appeals of a direct appeal of a bankruptcy court’s interlocutory judgment, order, or decree constitutes a grant of leave to appeal. Rule 8006 governs the procedure for certification under 28 U.S.C. § 158(d)(2) of a direct appeal from a judgment, order, or decree of a bankruptcy judge court to a court of appeals. Rule 8007 deals with stays pending a direct appeal to a court of appeals. Rule 8008 authorizes a bankruptcy court to issue an indicative ruling while an appeal is pending in a court of appeals. Rules 8009 and 8010 govern the record on appeal in a direct appeal allowed under 28 U.S.C. § 158(d)(2). And Rule 8026 governs the granting of a stay of an appellate court judgment pending an appeal to the court of appeals.

These rules take account of the evolving technology in the federal courts for the electronic filing, storage, and transmission of documents. The term “transmit” is used to encompass the electronic conveyance of information. Unless applicable ~~these or local~~ rules or orders require or permit another means of sending a particular document, a provision in the Part VIII rules to transmit a document requires it to be sent electronically.

**Rule 8002. Time for Filing Notice of Appeal**

1 (a) FOURTEEN-DAY PERIOD.

2 (1) Except as provided in Rule 8002 (b) and (c), the  
3 notice of appeal required by Rule 8003 or 8004 ~~shall~~ **must** be filed  
4 with the bankruptcy clerk within 14 days after entry of the  
5 judgment, order, or decree being appealed.

6 (2) If one party files a timely notice of appeal, any  
7 other party may file a notice of appeal with the bankruptcy clerk  
8 within 14 days after the date on which the first notice of appeal  
9 was filed, or within the time otherwise allowed by ~~this~~ ~~this Rule~~  
10 **8002**, whichever period ends later.

11 (3) A notice of appeal filed after a bankruptcy court  
12 announces a decision or order, but before entry of the judgment,  
13 order, or decree, ~~is shall be~~ treated as filed after entry of the  
14 judgment, order, or decree and on the date of entry.

15 (4) If a notice of appeal is mistakenly filed with the  
16 appellate court or the court of appeals, the clerk of that court ~~shall~~  
17 **must** indicate on the notice the date on which it was received and  
18 transmit it to the bankruptcy clerk. The notice of appeal is ~~deemed~~  
19 **then considered** filed ~~with in~~ the bankruptcy ~~clerk court~~ on the date  
20 so indicated.

21 (b) EFFECT OF MOTION ON TIME FOR APPEAL.

22 (1) If a party timely files in the bankruptcy court  
23 any of the following motions, the time to file an appeal runs for all  
24 parties from the entry of the order disposing of the last such  
25 remaining motion, ~~or the entry of any judgment, order, or decree~~  
26 ~~altered or amended upon such motion, whichever is later:~~

27 (A) to amend or make additional findings  
28 under Rule 7052, whether or not granting the motion would alter  
29 the judgment;

30 (B) to alter or amend the judgment under  
31 Rule 9023;

32 (C) for a new trial under Rule 9023; or

33 (D) for relief under Rule 9024 if the motion  
34 is filed no later than 14 days after entry of the judgment.

35 (2)(A) If a party files a notice of appeal after the  
36 court announces or enters a judgment, order, or decree – but before  
37 it disposes of any motion listed in Rule 8002(b)(1) – the notice  
38 becomes effective ~~to appeal a judgment, order, or decree, in whole~~  
39 ~~or in part,~~ when the order disposing of the last such remaining  
40 motion is entered, ~~or when any judgment, order, or decree altered~~  
41 ~~or amended upon such motion is entered, whichever is later.~~

42 (B) A party intending to challenge on appeal an  
43 order disposing of any motion listed in Rule 8002(b)(1), or the



44 alteration or amendment of a judgment, order, or decree upon such  
45 a motion, ~~must shall~~ file a notice of appeal or an amended notice of  
46 appeal. The notice of appeal or amended notice of appeal ~~shall~~  
47 ~~must~~ be filed in compliance with Rule 8003 or 8004 and within the  
48 time prescribed by ~~this this Rrule-8002~~, measured from the entry of  
49 the order disposing of the last such remaining motion, ~~or the entry~~  
50 ~~of any judgment, order, or decree altered or amended upon such~~  
51 ~~motion, whichever is later.~~

52 (3) No additional fee is required to file an amended  
53 notice of appeal.

54 (c) APPEAL BY AN INMATE ~~CONFINED IN AN~~  
55 ~~INSTITUTION. The provisions of Rule 4(c)(1) and (c)(2) F.R.~~  
56 ~~App. P. apply to an appeal taken by an inmate from a judgment,~~  
57 ~~order, or decree of a bankruptcy judge to an appellate court. The~~  
58 ~~reference in Rule 4(c)(2) F.R. App. P. to “the 14-day period~~  
59 ~~provided in Rule 4(a)(3)” shall be read as a reference to the 14-day~~  
60 ~~period in Rule 8002(a)(2), and the term “district court” in Rule~~  
61 ~~4(c)(2) F.R. App. P. 4(c)(2) means “bankruptcy court.”~~

62 (1) If an inmate confined in an institution files a  
63 notice of appeal from a judgment, order, or decree of a bankruptcy  
64 court to an appellate court, the notice is timely if it is deposited in  
65 the institution’s internal mail system on or before the last day for

66 filing. If an institution has a system designed for legal mail, the  
67 inmate must use that system to receive the benefit of this rule.  
68 Timely filing may be shown by a declaration in compliance with  
69 28 U.S.C. § 1746 or by a notarized statement, either of which must  
70 set forth the date of deposit and state that first-class postage has  
71 been prepaid.

72 (2) If an inmate files under ~~this~~ Rule 8002(c) the  
73 first notice of appeal from a judgment, order, or decree of a  
74 bankruptcy court to an appellate court, the 14-day period provided  
75 in Rule 8002(a)(2) for another party to file a notice of appeal runs  
76 from the date when the bankruptcy court docketed the first notice.

77 (d) EXTENSION OF TIME FOR APPEAL.

78 (1) The bankruptcy court may extend the time for  
79 filing a notice of appeal by a party unless the judgment, order, or  
80 decree appealed from:

81 (A) grants relief from an automatic stay  
82 under § 362, § 922, § 1201, or § 1301 of the Code;

83 (B) authorizes the sale or lease of property  
84 or the use of cash collateral under § 363 of the Code;

85 (C) authorizes the obtaining of credit under  
86 § 364 of the Code;

87 (D) authorizes the assumption or

88 assignment of an executory contract or unexpired lease under §  
89 365 of the Code;

90 (E) approves a disclosure statement under  
91 § 1125 of the Code; or

92 (F) confirms a plan under § 943, § 1129,  
93 § 1225, or § 1325 of the Code.

94 (2) ~~The bankruptcy court~~ ~~A request to~~ may extend  
95 the time ~~to file for filing~~ a notice of appeal if:

96 (A) a motion for extension of time is filed  
97 with the bankruptcy clerk within the time prescribed by this rule;

98 or

99 (B) a motion is filed with the bankruptcy  
100 clerk no later than 21 days after the time prescribed by this rule  
101 expires and is accompanied by a demonstration of excusable  
102 neglect; but

103 (C) no extension of time for filing a notice  
104 of appeal may exceed 21 days after the time otherwise prescribed  
105 by this rule, or 14 days after the date the order granting the motion  
106 is entered, whichever is later. ~~shall be made by motion filed with~~  
107 ~~the bankruptcy clerk before the time for filing a notice of appeal~~  
108 ~~has expired, but such a motion filed no later than 21 days after the~~  
109 ~~expiration of the time for filing a notice of appeal may be granted~~

110 ~~upon a showing of excusable neglect. An extension of time for~~  
111 ~~filing a notice of appeal may not exceed 21 days after the time~~  
112 ~~otherwise prescribed by this Rule 8002, or 14 days after the date~~  
113 ~~the order granting the motion is entered, whichever is later.~~

### COMMITTEE NOTE

This rule is derived from former Rule 8002 and F.R. App. P. 4(a) and (c). With the exception of subdivision (c), the changes to the former rule are stylistic. The rule retains the former rule's 14-day time period for filing a notice of appeal, as opposed to the longer periods permitted for appeals in civil cases under F.R. App. P. 4(a).

Subdivision (a) continues to allow any other party to file a notice of appeal within 14 days after the first notice of appeal is filed, or thereafter to the extent otherwise authorized by this rule. Subdivision (a) also retains provisions of the former rule that prescribe the date of filing of the notice of appeal if the appellant files it prematurely or in the wrong court.

Subdivision (b), like former Rule 8002(b) and F.R. App. P. 4(a), tolls the time for filing a notice of appeal when certain post-judgment motions are filed, and it provides the effective date of a notice of appeal that is filed before the court disposes of all of the specified motions. As under the former rule, a party that wants to appeal the court's disposition of such a motion or the alteration or amendment of a judgment, order, or decree in response to such a motion must file a notice of appeal or, if it has already filed one, an amended notice of appeal.

Although Rule 8003(a)(3)(C) requires a notice of appeal to be accompanied by the required fee, no additional fee is required for the filing of an amended notice of appeal ~~under subdivision (b) of this rule.~~

Subdivision (c) ~~incorporates mirrors~~ the provisions of F.R. App. P. 4(c)(1) and (2), which specify timing rules for a notice of appeal filed by an inmate confined in an institution. ~~The inmate's filing of a notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last date for filing. If the institution has a special system for legalmail, it must be used. When the inmate is the first party to file a notice of appeal, the 14-day period for any other party to file a notice of appeal runs from the bankruptcy court's docketing of the inmate's notice.~~

Subdivision (d) continues to allow the court to grant an extension of time to file a notice of appeal, except with respect to certain specified judgments, orders, and decrees.

**Rule 8003. Appeal as of Right – How Taken; Docketing of Appeal**

1 (a) FILING THE NOTICE OF APPEAL.

2 (1) ~~Except as provided by Rule 8002(c), a~~An  
3 appeal from a judgment, order, or decree of a bankruptcy ~~judge~~  
4 ~~court~~ to a district court or a BAP as permitted by 28 U.S.C. §  
5 158(a)(1) or (a)(2) may be taken only by filing a notice of appeal  
6 with the bankruptcy clerk within the time allowed by Rule 8002.

7 (2) An appellant's failure to take any step other  
8 than timely filing a notice of appeal does not affect the validity of  
9 the appeal, but is ground for such action as the appellate court  
10 deems appropriate, including dismissal of the appeal.

11 (3) The notice of appeal ~~shall~~ **must**:

12 (A) conform substantially to the appropriate  
13 Official Form;

14 (B) ~~attach~~ **be accompanied by** the judgment,  
15 order, or decree, or part thereof, being appealed; and

16 (C) be accompanied by the prescribed fee.

17 (4) If requested by the bankruptcy clerk, each  
18 appellant ~~shall~~ **must** promptly file the number of copies of the  
19 notice of appeal that the bankruptcy clerk needs for compliance  
20 with Rule 8003(c).

21 (b) JOINT OR CONSOLIDATED APPEALS.

22 (1) When two or more parties are entitled to appeal  
23 from a judgment, order, or decree of a bankruptcy ~~judge court~~ and  
24 their interests make joinder practicable, they may file a joint notice  
25 of appeal. They may then proceed on appeal as a single appellant.

26 (2) When parties have separately filed timely  
27 notices of appeal, the ~~appellate court may join or consolidate the~~  
28 ~~appeals may be joined or consolidated by the appellate court.~~

29 (c) SERVING THE NOTICE OF APPEAL.

30 (1) The bankruptcy clerk ~~must shall~~ serve ~~the~~  
31 notice of ~~the filing of a notice of~~ appeal by transmitting it to  
32 counsel of record for each party to the appeal – ~~other than~~  
33 ~~excluding~~ the appellant – or, if a party is ~~not represented by~~  
34 ~~counsel proceeding pro se~~, to the ~~pro se~~ party's ~~at its~~ last known  
35 address.

36 (2) The bankruptcy clerk's failure to serve notice  
37 does not affect the validity of the appeal.

38 (3) The bankruptcy clerk ~~shall must~~ give to each  
39 party served notice of the date of the filing of the notice of appeal  
40 and ~~shall must~~ note on the docket the names of the parties served  
41 and the date and method of the ~~transmission service~~.

42 (4) The bankruptcy clerk ~~shall must~~ promptly  
43 transmit the notice of appeal to the United States trustee, but

44 failure to transmit notice to the United States trustee does not  
45 affect the validity of the appeal.

46 (d) TRANSMITTING THE NOTICE OF APPEAL TO  
47 THE BAP OR DISTRICT COURT; DOCKETING THE APPEAL.

48 (1) The bankruptcy clerk ~~shall~~ **must** promptly  
49 transmit the notice of appeal to the BAP clerk if a BAP has been  
50 established for appeals from that district and the appellant has not  
51 elected to have the appeal heard by the district court. Otherwise,  
52 the bankruptcy clerk ~~shall~~ **must** promptly transmit the notice of  
53 appeal to the district clerk.

54 (2) Upon receiving the notice of appeal, the clerk  
55 of the appellate court ~~shall~~ **must** docket the appeal under the title of  
56 the bankruptcy court action with the appellant identified – adding  
57 the appellant’s name if necessary— ~~and promptly give notice of the~~  
58 ~~date on which the appeal was docketed to all parties to the~~  
59 ~~appealed judgment, order, or decree.~~

#### COMMITTEE NOTE

This rule is derived in part from former Rule 8001(a) and F.R. App. P. 3. It ~~makes~~ **encompasses** stylistic changes to the former provision governing appeals as of right. In addition it addresses joint and consolidated appeals and incorporates and modifies provisions of former Rule 8004 regarding service of the notice of appeal. The rule changes the timing of the docketing of an appeal in the district court or BAP.

Subdivision (a) incorporates much of the content of former Rule 8001(a) regarding the taking of an appeal as of right under 28 U.S.C.



§ 158(a)(1) or (2). The rule now requires that the judgment, order, or decree being appealed be attached to the notice of appeal.

Subdivision (b), which is an adaptation of F.R. App. P. 3(b), permits the filing of a joint notice of appeal by multiple appellants that have sufficiently similar interests that their joinder is practicable. It also provides for the appellate court's consolidation of appeals taken separately by two or more parties.

Subdivision (c) is derived from former Rule 8004 and F.R. App. P. 3(d). By using the term "transmitting," it modifies the former rule's requirement that service of the notice of appeal be accomplished by mailing and allows for service by electronic transmission [to counsel] by the bankruptcy clerk.

Subdivision (d) modifies the provision of former Rule 8007(b), which delayed the docketing of an appeal by the appellate court until the record was complete and transmitted by the bankruptcy clerk. The new provision, adapted from F.R. App. P. 3(d) and 12(a), requires the bankruptcy clerk to promptly transmit the notice of appeal to the clerk of the appellate court. Upon receipt of the notice of appeal, the clerk of the appellate court must docket the appeal. Under this procedure, motions filed in the appellate court prior to completion and transmission of the record can generally be placed on the docket of an already pending appeal.

**Rule 8004. Appeal by Leave – How Taken; Docketing of Appeal**

1 (a) NOTICE OF APPEAL AND MOTION FOR LEAVE  
2 TO APPEAL.

3 (1) To request leave to appeal an interlocutory  
4 judgment, order, or decree of a bankruptcy court as permitted by  
5 28 U.S.C. § 158(a)(3), the party must file a notice of appeal and a  
6 motion for leave to appeal with the bankruptcy clerk.

7 (2) The notice must be filed in the form prescribed  
8 by Rule 8003(a) and within the time provided in Rule 8002.

9 (3) The motion for leave to appeal must be  
10 prepared in accordance with Rule 8004(b) and, unless served  
11 electronically using the court’s transmission equipment, with proof  
12 of service in accordance with Rule 8011(d).

13 ~~An appeal from an interlocutory judgment, order, or decree of a~~  
14 ~~bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) may be~~  
15 ~~taken only by filing with the bankruptcy clerk a notice of appeal of~~  
16 ~~the judgment, order, or decree – as prescribed by Rule 8003(a) and~~  
17 ~~within the time allowed by Rule 8002 – accompanied by a motion~~  
18 ~~for leave to appeal prepared in accordance with Rule 8004(b) and,~~  
19 ~~unless served electronically using the court’s transmission~~  
20 ~~equipment, with proof of service in accordance with Rule 8011(d).~~

21 (b) CONTENT OF MOTION; RESPONSE.

22 (1) A motion for leave to appeal under 28 U.S.C.  
23 § 158(a)(3) ~~shall contain~~ must include the following:

24 (A) ~~a statement of~~ the facts necessary to  
25 understand the questions presented;

26 (B) ~~a statement of those~~ the questions  
27 ~~themselves and the relief sought;~~

28 (C) the relief sought;

29 (D) ~~a statement of~~ the reasons why leave  
30 to appeal should be granted; and

31 (E) ~~an~~ attachment of the interlocutory  
32 judgment, order, or decree from which appeal is sought, and any  
33 related opinions or memoranda.

34 (2) ~~Within 14 days after the motion is served, a~~ A  
35 party may file with the clerk of the appellate court a response in  
36 ~~opposition or a cross-motion or a response within 14 days after the~~  
37 ~~motion is served.~~

38 (c) TRANSMITTING THE NOTICE OF APPEAL AND  
39 MOTION; DOCKETING THE APPEAL; DETERMINING THE  
40 MOTION.

41 (1) The bankruptcy clerk ~~shall~~ must promptly  
42 transmit the notice of appeal and the motion for leave to appeal,  
43 together with any statement of election under Rule 8005, to the

44 clerk of the appellate court.

45 (2) Upon receiving the notice of appeal and motion  
46 for leave to appeal, the clerk of the appellate court ~~shall~~ must  
47 docket the appeal under the title of the bankruptcy court action  
48 with the movant-appellant identified – adding the movant-  
49 appellant’s name if necessary – ~~and promptly give notice of the~~  
50 ~~date on which the appeal was docketed to all parties to the~~  
51 ~~interlocutory judgment, order, or decree from which appeal is~~  
52 ~~sought.~~

53 (3) The motion and any response or cross-motion  
54 are submitted without oral argument unless the appellate court  
55 orders otherwise. If the motion for leave to appeal is denied, the  
56 appellate court ~~shall~~ must dismiss the appeal.

57 (d) FAILURE TO FILE A MOTION. If an appellant does  
58 not file a ~~required~~ motion for leave to appeal an interlocutory  
59 judgment, order, or decree, but ~~does~~ timely files a notice of appeal,  
60 the appellate court may:

- 61 • direct ~~the appellant to file that~~ a motion for leave to  
62 appeal ~~be filed~~; or  
63 • treat the notice of appeal as a motion for leave to  
64 appeal and either grant or deny leave.

65 If the court directs that a motion for leave to appeal be filed, the

66 appellant ~~shall~~ **must** file the motion within 14 days after the order  
67 directing the filing is entered, unless the order provides otherwise.

68 (e) DIRECT APPEAL TO COURT OF APPEALS. If  
69 leave to appeal an interlocutory judgment, order, or decree is  
70 required under 28 U.S.C. § 158(a)(3) and has not been granted by  
71 the district court or the BAP, an authorization by the court of  
72 appeals of a direct appeal under 28 U.S.C. § 158(d)(2) satisfies the  
73 requirement for leave to appeal.

#### COMMITTEE NOTE

This rule is derived from former Rules 8001(b) and 8003 and F.R. App. P. 5. It retains the practice for interlocutory bankruptcy appeals of requiring a notice of appeal to be filed along with a motion for leave to appeal. Like current Rule 8003, it alters the timing of the docketing of the appeal in the appellate court.

Subdivision (a) requires a party seeking leave to appeal under 28 U.S.C. § 158(a)(3) to file with the bankruptcy clerk both a notice of appeal and a motion for leave to appeal.

Subdivision (b) prescribes the contents of the motion, retaining the requirements of former Rule 8003(a). It also continues to allow another party to file a cross-motion or response to the appellant's motion. Because of the prompt docketing of the appeal under the current rule, the cross-motion or response must be filed in the appellate court, rather than in the bankruptcy court as the former rule required.

Subdivision (c) requires the bankruptcy clerk to transmit promptly the notice of appeal and the motion for leave to appeal to the appellate court. Upon receipt of the notice and the motion, the clerk of the appellate court must docket the appeal. Unless the appellate court orders otherwise, no oral argument will be held on the motion.

Subdivision (d) retains the provisions of former Rule 8003(c) that state the appellate court's options if the appellant timely files a notice of

appeal but fails to file a motion for leave to appeal. The court can either direct that a motion be filed or treat the notice of appeal as the motion and either grant or deny leave.

Subdivision (e), like former Rule 8003(d), treats the authorization of a direct appeal by the court of appeals as a grant of leave to appeal under 28 U.S.C. § 158(a)(3) if the district court or BAP has not already granted leave to appeal. Thus a separate order granting leave to appeal is not required. If the court of appeals grants permission to appeal, the record must be assembled and transmitted in accordance with Rules 8009 and 8010.

**Rule 8005. Election to Have Appeal Heard by District Court Instead of BAP**

1 (a) FILING OF THE STATEMENT OF ELECTION. To  
2 elect under 28 U.S.C. § 158(c)(1) to have an appeal heard by the  
3 district court, a party must:

4 (1) submit a statement of election that conforms  
5 substantially to the appropriate Official Form; and

6 (2) file the statement within the time prescribed by  
7 28 U.S.C. § 158(c)(1). ~~An election under 28 U.S.C. § 158(c)(1) to~~  
8 ~~have an appeal heard by the district court may be made only by a~~  
9 ~~statement of election that conforms substantially to the appropriate~~  
10 ~~Official Form and is filed within the time prescribed by 28 U.S.C.~~  
11 ~~§ 158(c)(1).~~

12 (b) TRANSFER OF THE APPEAL. Upon receiving an  
13 appellant’s timely statement of election, the bankruptcy clerk ~~shall~~  
14 **must** transmit all documents related to the appeal to the district  
15 court. Upon receiving a timely statement of election by a party  
16 other than the appellant, the BAP clerk ~~shall~~ **must** promptly  
17 transfer the appeal and any pending motions to the district court.

18 (c) DETERMINING THE VALIDITY OF AN  
19 ELECTION. No later than 14 days after the statement of election  
20 is filed, a party seeking a determination of the validity of an  
21 election ~~shall~~ **must** file a motion in the court in which the appeal is

22 then pending.

23 (d) APPEAL BY LEAVE – TIMING OF ELECTION. If

24 an appellant moves for leave to appeal under Rule 8004 and fails

25 to file a separate notice of appeal concurrently with the filing of its

26 motion, the motion ~~shall~~ **must** be treated as if it were a notice of

27 appeal for purposes of determining the timeliness of the filing of a

28 statement of election.

### COMMITTEE NOTE

This rule is derived from former Rule 8001(e), and it implements 28 U.S.C. § 158(c)(1).

As was required by the former rule, subdivision (a) requires an appellant that elects to have its appeal heard by a district court, rather than the BAP established in its circuit, to file with the bankruptcy clerk a statement of election when it files its notice of appeal. The statement must conform substantially to Official Form \_\_. If a BAP has been established for appeals from the bankruptcy court and the appellant does not file a timely statement of election, any other party that elects to have the appeal heard by the district court must file a statement of election with the BAP clerk no later than 30 days after service of the notice of appeal.

Subdivision (b) requires the bankruptcy clerk to transmit all appeal documents to the district clerk if the appellant files a timely statement of election. If the appellant does not make that election, the bankruptcy clerk must transmit the appeal documents to the BAP clerk, and upon a timely election by any other party, the BAP clerk must promptly transfer the appeal to the district court.

Subdivision (c) provides a new procedure for the resolution of disputes regarding the validity of an election. A motion challenging the validity of an election must be filed no later than 14 days after the statement of election is filed. Nothing in this rule prevents a court from determining the validity of an election on its own motion.

Subdivision (d) provides that, in the case of an appeal by leave, if



the appellant files a motion for leave to appeal but fails to file a notice of appeal, the filing **and service** of the motion will be treated for timing purposes under this rule as the filing **and service** of the notice of appeal.

**Rule 8006. Certification of Direct Appeal to Court of Appeals**

1 (a) EFFECTIVE DATE OF CERTIFICATION.

2 Certification of a judgment, order, or decree of a bankruptcy ~~judge~~  
3 ~~court~~ for direct review in a court of appeals under 28 U.S.C. §  
4 158(d)(2) is effective when the following events have occurred:

5 (i) the certification has been filed;

6 (ii) a timely appeal has been taken from the  
7 judgment, order, or decree in accordance with Rule 8003 or 8004;  
8 and

9 (iii) the notice of appeal has become effective  
10 under Rule 8002.

11 (b) FILING OF CERTIFICATION. ~~A~~The certification  
12 ~~that a circumstance specified in~~ required by 28 U.S.C.

13 § 158(d)(2)(A) ~~(i)-(iii) exists shall~~ must be filed with the clerk of  
14 the court in which a matter is pending. For purposes of this rule, a  
15 matter is pending in the bankruptcy court for 30 days after the  
16 ~~filing effective date~~ of the first notice of appeal from the judgment,  
17 order, or decree for which direct review in the court of appeals is  
18 sought, ~~or the entry of the order disposing of the last remaining~~  
19 ~~motion specified in Rule 8002(b), whichever is later~~. A matter is  
20 pending in the appellate court thereafter.

21 (c) JOINT CERTIFICATION BY ALL APPELLANTS

22 AND APPELLEES. A joint certification by all the appellants and  
23 appellees ~~that a circumstance specified in under~~ 28 U.S.C.  
24 § 158(d)(2)(A)(~~i)-(iii)~~ ~~exists shall~~ **must** be made by executing the  
25 appropriate Official Form and filing it with the clerk of the court in  
26 which the matter is pending. The **parties may supplement the**  
27 certification ~~may be supplemented by with~~ a short statement of the  
28 basis for the certification, which may include the information listed  
29 in Rule 8006(f)(3).

30 (d) COURT THAT MAY MAKE CERTIFICATION.

31 (1) Only the bankruptcy court may make a  
32 certification on request of parties or on its own motion while the  
33 matter is pending before it as provided in Rule 8006(b).

34 (2) Only the district court or the BAP may make a  
35 certification on request of parties or on its own motion while the  
36 matter is pending before it as provided in Rule 8006(b).

37 (e) CERTIFICATION ON THE COURT'S OWN  
38 MOTION.

39 (1) A certification on the court's own motion ~~that a~~  
40 ~~circumstance specified in under~~ 28 U.S.C. § 158(d)(2)(A)(~~i)-(iii)~~  
41 ~~exists shall~~ **must** be set forth in a separate document. **The clerk of**  
42 **the certifying court must served this document** on the parties in the  
43 manner required for service of a notice of appeal under Rule

44 8003(c)(1). The certification ~~shall~~ **must** be accompanied by an  
45 opinion or memorandum that contains the information required by  
46 Rule 8006(f)(3)(A)-(D).

47 (2) Within 14 days after the court's certification, a  
48 party may file with the clerk of the certifying court a short  
49 supplemental statement regarding the merits of certification.

50 (f) CERTIFICATION BY THE COURT ON REQUEST.

51 (1) A request by a party for certification that a  
52 circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists,  
53 or a request by a majority of the appellants and a majority of the  
54 appellees, ~~shall~~ **must** be filed with the clerk of the court in which  
55 the matter is pending within the time specified by 28 U.S.C.  
56 § 158(d)(2)(E).

57 (2) A request for certification ~~shall~~ **must** be served  
58 in the manner required for service of a notice of appeal under Rule  
59 8003(c)(1).

60 (3) A request for certification ~~shall~~ **must** include  
61 the following:

62 (A) the facts necessary to understand the  
63 question presented;

64 (B) the question itself;

65 (C) the relief sought;

66 (D) the reasons why the appeal should be  
67 allowed and is authorized by statute and rule, including why a  
68 circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists;  
69 and

70 (E) ~~an attached~~ copy of the judgment, order,  
71 or decree that is the subject of the requested certification and any  
72 related opinion or memorandum.

73 (4) A party may file a response to a request for  
74 certification within 14 days after the request is served, or such  
75 other time as the court in which the matter is pending may ~~fix~~  
76 ~~allow~~. A party may file a cross-request for certification within 14  
77 days after ~~notice of~~ the request is served, or within 60 days after  
78 the entry of the judgment, order, or decree, whichever occurs first.

79 (5) The request, cross-request, and any response  
80 are not governed by Rule 9014 and are submitted without oral  
81 argument unless the court in which the matter is pending otherwise  
82 directs.

83 (6) A certification of an appeal under 28 U.S.C.  
84 § 158(d)(2) in response to a request ~~shall~~ ~~must~~ be made in a  
85 separate document served on the parties in the manner required for  
86 service of a notice of appeal under Rule 8003(c)(1).

87 (g) PROCEEDING IN THE COURT OF APPEALS

88 FOLLOWING CERTIFICATION. A request for permission to  
89 take a direct appeal to the court of appeals under 28 U.S.C.  
90 § 158(d)(2) ~~shall~~ **must** be filed with the circuit clerk within 30 days  
91 after the date the certification becomes effective under subdivision  
92 (a).

### COMMITTEE NOTE

This rule is derived from former Rule 8001(f), and it provides the procedures for the certification of a direct appeal of a judgment, order, or decree of a bankruptcy ~~judge~~ **court** to the court of appeals under 28 U.S.C. § 158(d)(2). Once a case has been certified in the bankruptcy court or the appellate court for direct appeal and a request for permission to appeal has been timely filed, the Federal Rules of Appellate Procedure govern ~~any~~ further proceedings in the court of appeals.

Subdivision (a), like the former rule, requires that an appeal must be properly taken – now under Rule 8003 or 8004 – before a certification for direct review in the court of appeals takes effect. This rule requires the timely filing of a notice of appeal under Rule 8002 and takes into account the delayed effectiveness of a notice of appeal filed before all motions specified under Rule 8002(b) have been resolved by the bankruptcy judge.

Subdivision (b) provides that a certification must be filed in the court in which the matter is pending, as determined by this subdivision. This provision modifies the former rule. Because of the prompt docketing of appeals in the appellate court under Rules 8003 and 8004, a matter is deemed – for purposes of this rule only – to remain pending in the bankruptcy court for 30 days after the filing of the notice of appeal from the judgment, order, or decree being appealed, or the disposition of the last remaining motion specified in Rule 8002(b), whichever is later. This provision will in appropriate cases give the bankruptcy judge, who will be familiar with the matter being appealed, an opportunity to decide whether certification ~~of~~ **for** direct review is appropriate. Similarly, subdivision (d) provides that, when certification is made by the court, only the court in which the matter is then pending according to (b) may make the certification.

Section 158(d)(2) provides three different ways in which an appeal

may be certified for direct review. Implementing these options, the rule provides in subdivision (c) for the joint certification by all appellants and appellees, in subdivision (e) for the bankruptcy or appellate court's certification on its own motion, and in subdivision (f) for the bankruptcy or appellate court's certification on request of a party or of a majority of appellants and a majority of appellees.

Subdivision (g) requires that, once a certification for direct review has been made, a request ~~of~~to the court of appeals for permission to take a direct appeal to that court must be filed with the circuit clerk no later than 30 days after the effective date of the certification. Rule 6(c) of the Federal Rules of Appellate Procedure, which incorporates all of F.R. App. P. 5 except subdivision (a)(3), prescribes the procedure for requesting the permission of the court of appeals, and it governs ~~any~~ proceedings that take place thereafter in that court.

**Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings**

1           (a) INITIAL MOTION IN THE BANKRUPTCY COURT;  
2           TIME TO FILE.

3                   (1) A party ~~shall~~ **must** ordinarily move first in the  
4           bankruptcy court for the following relief:

5                           (A) a stay of a judgment, order, or decree of  
6           ~~a the~~ bankruptcy ~~judge court~~ pending appeal;

7                           (B) approval of a supersedeas bond;

8                           (C) an order suspending, modifying,  
9           restoring, or granting an injunction while an appeal is pending; or

10                          (D) the suspension or continuation of  
11           proceedings in a case or other relief permitted by Rule 8007(e).

12                          (2) A motion for a type of relief specified in ~~(1)~~  
13           **Rule 8007(a)(1)** may be made in the bankruptcy court either before  
14           or after the filing of a notice of appeal of the judgment, order, or  
15           decree appealed from.

16           (b) MOTION IN THE APPELLATE COURT **OR THE**  
17           **COURT OF APPEALS IN A DIRECT APPEAL**; CONDITIONS  
18           ON RELIEF.

19                          (1) A motion for a type of relief specified in Rule  
20           8007(a)(1), or to vacate or modify an order of the bankruptcy court  
21           granting such relief, may be made in the appellate court **or in the**



22 court of appeals in a direct appeal to that court.

23 (2) ~~When the motion is made in the appellate court,~~

24 ~~t~~ The motion ~~shall~~ must:

25 (A) show that it would be impracticable to  
26 move first in the bankruptcy court if the moving party has not  
27 sought relief in the first instance in the bankruptcy court; or

28 (B) state ~~that~~ the bankruptcy court's ruling  
29 ~~denied the motion or failed to afford the relief requested~~ and state  
30 any reasons given by the bankruptcy court for its ~~action or inaction~~  
31 ruling.

32 (3) ~~If the motion is made in the appellate court, it~~

33 ~~shall~~ The motion must also include:

34 (A) the reasons for granting the relief  
35 requested and the pertinent facts;

36 (B) originals or copies of affidavits or other  
37 sworn statements supporting facts subject to dispute; and

38 (C) relevant parts of the record.

39 (4) ~~If the motion is made in the appellate court,~~

40 ~~T~~he movant ~~shall~~ must give reasonable notice of the motion to all  
41 parties.

42 (c) FILING OF BOND OR OTHER SECURITY. The  
43 appellate court may condition relief under this rule on the filing of

44 a bond or other appropriate security with the bankruptcy court.  
45 (d) REQUIREMENT OF BOND FOR TRUSTEE OR  
46 THE UNITED STATES. When a trustee appeals, a bond or other  
47 appropriate security may be required. When an appeal is taken by  
48 the United States, its officer, or its agency or by direction of any  
49 department of the federal government, a bond or other security  
50 ~~shall is not be~~ required.

51 (e) CONTINUATION OF PROCEEDINGS IN THE  
52 BANKRUPTCY COURT. Notwithstanding Rule 7062 and subject  
53 to the authority of the appellate court ~~or court of appeals~~, the  
54 bankruptcy court may:

55 (1) suspend or order the continuation of other  
56 proceedings in the case; or

57 (2) make any other appropriate orders during the  
58 pendency of an appeal on terms that protect the rights of all parties  
59 in interest.

#### COMMITTEE NOTE

This rule is derived from former Rule 8005 and F.R. App. P. 8. ~~The changes from the former rule are primarily stylistic. It now applies to direct appeals in courts of appeals as well as to appeals in district courts and BAPs.~~

Subdivision (a), like the former rule, requires a party ordinarily to seek relief pending an appeal in the bankruptcy court. Subdivision (a)(1) expands the list of relief enumerated in F.R. App. P. 8(a)(1) to reflect bankruptcy practice. It includes the suspension or continuation of other proceedings in the bankruptcy case, as authorized by subdivision (e).

Subdivision (a)(2) clarifies that a motion for a stay pending appeal, approval of a supersedeas bond, or any other relief specified in paragraph (1) may be made in the bankruptcy court before or after the filing of a notice of appeal.

Subdivision (b) ~~continues to~~ authorizes a party to seek the relief specified in (a)(1), **or the vacation or modification of the granting of such relief**, by means of a motion filed in the appellate court **or the court of appeals**. Accordingly, a notice of appeal need not be filed with respect to a bankruptcy court's order granting or denying such a motion. The motion for relief in the appellate court **or court of appeals** must state why it was impracticable to seek relief initially in the bankruptcy court, if a motion was not filed there, or why the bankruptcy court denied the relief sought.

Subdivisions (c) and (d) retain the provisions of the former rule that permit the appellate court **(and now the court of appeals)** to condition the granting of relief on the posting of a bond by the appellant, except when that party is a federal government entity. Rule 9025 governs proceedings against sureties.

**Rule 8008. Indicative Rulings**

1           (a) RELIEF PENDING APPEAL. If a party files a timely  
2 motion in the bankruptcy court for relief that the bankruptcy court  
3 lacks authority to grant because of an appeal that has been  
4 docketed and is pending, the bankruptcy court may:

5                   (1) defer consideration of the motion;

6                   (2) deny the motion; or

7                   (3) state that the court would grant the motion if the  
8 court in which the appeal is pending remands for that purpose, or  
9 state that the motion raises a substantial issue.

10           (b) NOTICE TO COURT IN WHICH THE APPEAL IS  
11 PENDING. If the bankruptcy court states that it would grant the  
12 motion, or that the motion raises a substantial issue, the movant  
13 shall must promptly notify the clerk of the court in which the  
14 appeal is pending.

15           (c) REMAND AFTER INDICATIVE RULING. If the  
16 bankruptcy court states that it would grant the motion or that the  
17 motion raises a substantial issue and the appeal is pending in an  
18 appellate court, the appellate court may remand for further  
19 proceedings, but it retains jurisdiction unless it expressly dismisses  
20 the appeal. If the appellate court remands but retains jurisdiction,  
21 the parties shall must promptly notify the clerk of that court when

### COMMITTEE NOTE

This rule is an adaptation of F.R. Civ. P. 62.1 and F.R. App. P. 12.1. It provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue. The rule, however, does not attempt to define the circumstances in which an appeal limits or defeats the bankruptcy court's authority to act in the face of a pending appeal. (Rule 8002(b) identifies motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before the last such motion is resolved. In these circumstances, the bankruptcy court has authority to resolve the motion without resorting to the indicative ruling procedure.)

Subdivision (b) requires the movant to notify the court in which an appeal is pending if the bankruptcy court states that it would grant the motion or that it raises a substantial issue. This provision applies to appeals pending in the district court, the BAP, or the court of appeals ~~under 28 U.S.C. § 158(d)(2)~~.

Federal Rules of Appellate Procedure ~~6(c)~~ and 12.1 govern the procedure in the court of appeals following notification of the bankruptcy court's indicative ruling.

Subdivision (c) of this rule governs the procedure in the district court or BAP upon notification that the bankruptcy court has issued an indicative ruling. The appellate court may remand to the bankruptcy court for a ruling on the motion for relief. The appellate court may also remand all proceedings, thereby terminating the initial appeal, if it expressly states that it is dismissing the appeal. It should do so, however, only when the appellant has stated clearly its intention to abandon the appeal. Otherwise, the appellate court may remand for the purpose of ruling on the motion, while retaining jurisdiction to proceed with the appeal after the bankruptcy court rules, provided that the appeal is not then moot and any party wishes to proceed.

**Rule 8009. Record and Issues on Appeal; Sealed Documents**

1 (a) DESIGNATION AND COMPOSITION OF RECORD  
2 ON APPEAL; STATEMENT OF ISSUES ON APPEAL.

3 (1) *Appellant's Duties.* Within 14 days after filing  
4 a notice of appeal as prescribed by Rule 8003(a); entry of an order  
5 granting leave to appeal; ~~or~~ entry of an order disposing of the last  
6 remaining motion of a kind listed in Rule 8002(b)(1); ~~or entry of~~  
7 ~~an altered or amended judgment, order, or decree;~~ whichever is  
8 last, the appellant ~~shall~~ **must** file with the bankruptcy clerk and  
9 serve on the appellee a designation of the items to be included in  
10 the record on appeal and a statement of the issues to be presented.  
11 A designation and statement served prematurely ~~shall~~ **must** be  
12 treated as served on the first day on which filing is timely under  
13 this paragraph.

14 (2) *Appellee's and Cross-Appellant's Duties.*  
15 Within 14 days after service of the appellant's designation and  
16 statement, the appellee may file and serve on the appellant a  
17 designation of additional items to be included in the record on  
18 appeal and, if the appellee has filed a cross-appeal, the appellee as  
19 cross-appellant ~~shall~~ **must** file and serve a statement of the issues  
20 to be presented on the cross-appeal and a designation of additional  
21 items to be included in the record.

22                   (3) *Cross-Appellee's Duties.* Within 14 days after  
23 service of the cross-appellant's designation and statement, a cross-  
24 appellee may file and serve on the cross-appellant a designation of  
25 additional items to be included in the record.

26                   (4) *Record on Appeal.* Subject to Rule 8009(d) and  
27 (e), the record on appeal ~~shall~~ **must** include the following:

- 28                   • items designated by the parties as provided by  
29 paragraphs (1)-(3);
- 30                   • the notice of appeal;
- 31                   • the judgment, order, or decree being appealed;
- 32                   • any order granting leave to appeal;
- 33                   • any certification under 28 U.S.C. § 158(d)(2);
- 34                   • any opinion, findings of fact, and conclusions of  
35 law of the court **relating to the subject of the appeal,**  
36 **including transcripts of all oral rulings;**
- 37                   • any transcript ordered as prescribed by -Rule  
38 8009(b); and
- 39                   • any statement required by Rule 8009(c).

40 Notwithstanding the parties' designations, the appellate court may  
41 order the inclusion of additional items from the record as part of  
42 the record on appeal.

43                   (5) *Copies for the Bankruptcy Clerk.* If paper

44 copies are needed, a party filing a designation of items to be  
45 included in the record ~~shall~~ **must** provide to the bankruptcy clerk a  
46 copy of any designated items that the bankruptcy clerk requests. If  
47 the party fails to provide the copy, the bankruptcy clerk ~~shall~~ **must**  
48 prepare the copy at the party's expense.

49 (b) TRANSCRIPT OF PROCEEDINGS.

50 (1) *Appellant's Duty*. Within the time period  
51 prescribed by Rule 8009(a)(1), the appellant ~~shall~~ **must**:

52 (A) order in writing from the reporter a  
53 transcript of any parts of the proceedings not already on file that  
54 the appellant considers necessary for the appeal, and file the order  
55 with the bankruptcy clerk; or

56 (B) file with the bankruptcy clerk a  
57 certificate stating that the appellant is not ordering a transcript.

58 (2) *Cross-Appellant's Duty*. Within 14 days after  
59 the appellant files with the bankruptcy clerk a copy of the  
60 transcript order or a certificate stating that appellant is not ordering  
61 a transcript, the appellee as cross-appellant ~~shall~~ **must**:

62 (A) order in writing from the reporter a  
63 transcript of any parts of the proceedings not ordered by appellant  
64 and not already on file that the cross-appellant considers necessary  
65 for the appeal, and file a copy of the order with the bankruptcy



66 clerk; or

67 (B) file with the bankruptcy clerk a  
68 certificate stating that the cross-appellant is not ordering a  
69 transcript.

70 (3) *Appellee's or Cross-Appellee's Right to Order.*

71 Within 14 days after the appellant or cross-appellant files with the  
72 bankruptcy clerk a copy of a transcript order or certificate stating  
73 that a transcript will not be ordered, the appellee or cross-appellee  
74 may order in writing from the reporter a transcript of any parts of  
75 the proceedings not already ordered or on file that the appellee or  
76 cross-appellee considers necessary for the appeal. The order ~~shall~~  
77 **must** be filed with the bankruptcy clerk.

78 (4) *Payment.* At the time of ordering, a party ~~shall~~  
79 **must** make satisfactory arrangements with the reporter for paying  
80 the cost of the transcript.

81 (5) *Unsupported Finding or Conclusion.* If ~~an~~ **the**  
82 appellant intends to urge on appeal that a finding or conclusion is  
83 unsupported by the evidence or is contrary to the evidence, the  
84 appellant ~~shall~~ **must** include in the record a transcript of all  
85 testimony and copies of all exhibits relevant to that finding or  
86 conclusion.

87 (c) STATEMENT OF THE EVIDENCE WHEN A

88 TRANSCRIPT IS UNAVAILABLE. Within the time period  
89 prescribed by Rule 8009(a)(1), the appellant may prepare a  
90 statement of the evidence or proceedings from the best available  
91 means, including the appellant's recollection, if a transcript of ~~the~~  
92 a hearing or trial is unavailable. The statement ~~shall~~ **must** be  
93 served on the appellee, who may serve objections or proposed  
94 amendments within 14 days after being served. The statement and  
95 any objections or proposed amendments ~~shall~~ **must** then be  
96 submitted to the bankruptcy court for settlement and approval. As  
97 settled and approved, the statement ~~shall~~ **must** be included by the  
98 bankruptcy clerk in the record on appeal.

99 (d) AGREED STATEMENT AS THE RECORD ON  
100 APPEAL. Instead of the record on appeal as defined in (a), the  
101 parties may prepare, sign, and submit to the bankruptcy court a  
102 statement of the case showing how the issues presented by the  
103 appeal arose and were decided by the bankruptcy judge. The  
104 statement ~~shall~~ **must** set forth only those facts averred and proved  
105 or sought to be proved that are essential to the court's resolution of  
106 the issues. If the statement is truthful, it, together with any  
107 additions that the bankruptcy court may consider necessary to a  
108 full presentation of the issues on appeal, ~~shall~~ **must** be approved by  
109 the bankruptcy court and certified to the appellate court as the

110 record on appeal. The bankruptcy clerk ~~shall~~ **must** then transmit it  
111 to the clerk of the appellate court within the time provided by Rule  
112 8010~~(b)(1)~~. A copy of the agreed statement may be filed instead of  
113 the appendix required by Rule 8018(b).

114 (e) CORRECTION OR MODIFICATION OF THE  
115 RECORD.

116 (1) If any ~~dispute~~ **dispute difference** arises about whether  
117 the record truly discloses what occurred in the bankruptcy court,  
118 the ~~dispute shall~~ **dispute difference must** be submitted to and settled by the  
119 bankruptcy judge and the record conformed accordingly. If an  
120 item has been improperly designated as part of the record on  
121 appeal, a party may move to strike the improperly designated item.

122 (2) If anything material to either party is omitted  
123 from or misstated in the record by error or accident, the omission  
124 or misstatement may be corrected, and a supplemental record may  
125 be certified and transmitted:

126 (A) on stipulation of the parties;

127 (B) by the bankruptcy court before or after  
128 the record has been forwarded; or

129 (C) by the appellate court.

130 (3) All other questions as to the form and content  
131 of the record ~~shall~~ **must** be presented to the appellate court.

132 (f) SEALED DOCUMENTS. A document placed under  
133 seal by the bankruptcy court may be designated as part of the  
134 record on appeal. In designating a sealed document, a party  
135 ~~shall~~must identify it without revealing confidential or secret  
136 information. The bankruptcy clerk ~~shall~~must not transmit a sealed  
137 document to the clerk of the appellate court as part of the  
138 transmission of the record. Instead, a party seeking to present a  
139 sealed document to the appellate court as part of the record on  
140 appeal ~~shall~~must file a motion with the appellate court to accept  
141 the document under seal. If the motion is granted, the movant  
142 ~~shall~~must notify the bankruptcy court of the ruling, and the  
143 bankruptcy clerk ~~shall~~must promptly transmit the sealed document  
144 to the clerk of the appellate court.

145 (g) OTHER. All parties to an appeal ~~shall~~must take any  
146 other action necessary to enable the bankruptcy clerk to assemble  
147 and transmit the record.

148 (h) DIRECT APPEALS TO COURT OF APPEALS.  
149 Rules 8009 and 8010 apply to appeals taken directly to the court  
150 of appeals under 28 U.S.C. § 158(d)(2). A reference in Rules 8009  
151 and 8010 to the “appellate court” includes the court of appeals  
152 when it has authorized a direct appeal under 28 U.S.C. § 158(d)(2).  
153 In direct appeals to the court of appeals, the reference in Rule

### COMMITTEE NOTE

This rule is derived from former Rule 8006 and F.R. App. P. 10 and 11(a). It retains the practice of former Rule 8006 of requiring the parties to designate items to be included in the record on appeal. In this respect the bankruptcy rule differs from the appellate rule. Among other things, F.R. App. P. 10(a) provides that the record on appeal consists of all the documents and exhibits filed in the case. This requirement would often be unworkable in a bankruptcy context because thousands of items might have been filed in the overall bankruptcy case.

Subdivision (a) provides the time period for the appellant's filing of a designation of items to be included in the record on appeal and a statement of the issues to be presented. It then provides for the designation of additional items by the appellee, cross-appellant, and cross-appellee, as well as for the cross-appellant's statement of the issues to be presented in its appeal. Subdivision (a)(4) prescribes the content of the record on appeal. Ordinarily, the bankruptcy clerk will not need to have paper copies of the designated items because the clerk will either transmit them to the appellate court electronically or otherwise make them available electronically. If the bankruptcy clerk requires a paper copy of some or all of the items designated as part of the record, the clerk may request the parties to provide the necessary copies, and the parties must comply with the request.

Subdivision (b) governs the process for ordering a complete or partial transcript of the bankruptcy court proceedings. In situations in which a transcript is unavailable, subdivision (c) allows for the parties' preparation of a statement of the evidence or proceedings, which must be approved by the bankruptcy court.

Subdivision (d) adopts the practice of F.R. App. P. 10(d) of permitting the parties to agree on a statement of the case in place of the record on appeal. The statement must show how the issues ~~raised~~ on appeal arose and were decided in the bankruptcy court. It must be approved by the bankruptcy judge in order to be certified as the record on appeal.

Subdivision (e), modeled on F.R. App. P. 10(e), provides a procedure for correcting ~~the~~ record on appeal if an item is improperly designated, omitted, or misstated.

Subdivision (f) is a new provision that governs the handling of any

document that remains sealed by the bankruptcy court and that a party wants to include in the record on appeal. The party must request the appellate court to accept the document under seal, and that motion must be granted before the bankruptcy clerk may transmit the sealed document to the clerk of the appellate court.

Subdivision (g), which requires the parties' cooperation with the bankruptcy clerk in assembling and transmitting the record, retains the requirement of former Rule 8006, which was adapted from F.R. App. P. 11(a).

Subdivision (h) is new. It makes the provisions of this rule and Rule 8010 applicable to appeals taken directly to a court of appeals under 28 U.S.C. § 158(d)(2). See F.R. App. P. 6(c)(2)(A) and (B).

**Rule 8010. Completion and Transmission of the Record**

1 (a) DUTIES OF REPORTER TO PREPARE AND FILE  
2 TRANSCRIPT. The reporter ~~shall~~must prepare and file a  
3 transcript as follows:

4 (1) Upon receiving ~~a request an order~~ for a  
5 transcript, the reporter ~~shall~~must file in the appellate court an  
6 acknowledgment of the request, the date it was received, and the  
7 date on which the reporter expects to have the transcript  
8 completed.

9 (2) Upon completing the transcript, the reporter  
10 ~~shall~~must file it with the bankruptcy clerk and notify the clerk of  
11 the appellate court of the filing.

12 (3) If the transcript cannot be completed within 30  
13 days of receipt of the ~~request order~~, the reporter ~~shall~~must seek an  
14 extension of time from the clerk of the appellate court. ~~The clerk~~  
15 ~~must enter the action taken on the docket and notify the parties.~~  
16 ~~The action of that clerk shall be entered on the docket, and the~~  
17 ~~parties shall be notified.~~

18 (4) If the reporter does not file the transcript within  
19 the time allowed, the clerk of the appellate court ~~shall~~must notify  
20 the bankruptcy judge.

21 (b) DUTY OF BANKRUPTCY CLERK TO TRANSMIT

22 RECORD.

23 (1) Subject to Rules 8009(f) and 8010(b)(5), when  
24 the record is complete for purposes of appeal, the bankruptcy clerk  
25 ~~shall~~ must transmit to the clerk of the appellate court either the  
26 record or a notice of the availability of the record and the means of  
27 accessing it electronically.

28 (2) If there are multiple appeals from a judgment or  
29 order, the bankruptcy clerk ~~shall~~ must transmit a single record.

30 (3) Upon receiving the transmission of the record  
31 or notice of the availability of the record, the clerk of the appellate  
32 court ~~shall~~ must enter its receipt on the docket and give prompt  
33 notice to all parties to the appeal.

34 (4) If the appellate court directs that paper copies  
35 of the record be furnished, the clerk of that court ~~shall~~ must notify  
36 the appellant and, if the appellant fails to provide the copies, the  
37 bankruptcy clerk ~~shall~~ must prepare the copies at the appellant's  
38 expense.

39 (5) Subject to Rule 8010(c), if a motion for leave  
40 to appeal has been filed with the bankruptcy clerk under Rule  
41 8004, the bankruptcy clerk ~~shall~~ must prepare and transmit the  
42 record only after the appellate court grants leave to appeal.

43 (c) RECORD FOR PRELIMINARY MOTION IN



44 APPELLATE COURT. If, prior to the transmission of the record  
45 as prescribed by (b), a party moves in the appellate court for any of  
46 the following relief:

- 47 • leave to appeal;
- 48 • dismissal;
- 49 • a stay pending appeal;
- 50 • approval of a supersedeas bond, or additional  
51 security on a bond or undertaking on appeal; or
- 52 • any other intermediate order –

53 the bankruptcy clerk, **at the request of any party to the appeal,**  
54 **shall** must transmit to the clerk of the appellate court any parts of  
55 the record designated by a party to the appeal or a notice of the  
56 availability of those parts and the means of accessing them  
57 electronically.

#### COMMITTEE NOTE

This rule is derived from former Rule 8007 and F.R. App. P 11.

Subdivision (a) retains the procedure of former Rule 8007(a) regarding the reporter's duty to prepare and file a transcript if one is requested by a party. It clarifies that, while the reporter must file the completed transcript with the bankruptcy clerk, it is the clerk of the appellate court who must receive the reporter's acknowledgment of the request for a transcript and statement of the expected completion date and who must grant an extension of time beyond 30 days for completion of the transcript. **In courts that record courtroom proceedings electronically, the person who transcribes the recording of a proceeding is a reporter for purposes of this rule.**

Subdivision (b) requires the bankruptcy clerk to transmit the record to the clerk of the appellate court when the record is complete and, in the case of appeals under 28 U.S.C. § 158(a)(3), leave to appeal has been granted. This transmission will be made electronically, either by sending the record itself or sending notice of how the record can be accessed electronically. The appellate court may, however, require that a paper copy of some or all of the record be furnished, in which case the bankruptcy clerk will direct the appellant to provide the copies or will make the copies at the appellant's expense.

In a change from former Rule 8007(b), subdivision (b) of this rule no longer directs the clerk of the appellate court to docket the appeal upon receipt of the record from the bankruptcy clerk. Instead, under Rules 8003(d) and 8004(c), the clerk of the appellate court docket the appeal upon receipt of the notice of appeal or, in the case of appeals under 28 U.S.C. § 158(a)(3), the notice of appeal and the motion for leave to appeal. Those documents are to be sent promptly to the appellate court by the bankruptcy clerk. Accordingly, by the time the clerk of the appellate court receives the record, the appeal will already be docketed in that court.

Subdivision (c) is derived from former Rule 8007(c) and F.R. App. P. 11(g). It provides for the transmission of parts of the record designated by the parties for consideration by the appellate court in ruling on specified preliminary motions filed prior to the preparation and transmission of the record on appeal.

Rule 8009(h) makes this rule applicable to direct appeals to the court of appeals under 28 U.S.C. § 158(d)(2). It also provides that, for purposes of this rule and Rule 8009, "appellate court" includes the court of appeals when it has authorized a direct appeal under § 158(d)(2).

**Rule 8011. Filing and Service; Signature**

1 (a) FILING.

2 (1) *Filing with the Clerk.* A document required or  
3 permitted to be filed in the appellate court ~~shall~~ must be filed with  
4 the clerk of that court.

5 (2) *Filing: Method and Timeliness.*

6 (A) *In general.* Filing may be  
7 accomplished by transmission to the clerk of the appellate court,  
8 ~~but, e~~ Except as provided in (B)(ii), (B)(iii), and (C), filing is not  
9 timely unless the clerk receives the document within the time fixed  
10 for filing.

11 (B) *Brief or appendix.* A brief or appendix  
12 is timely filed if, on or before the last day for filing, it is:

13 (i) transmitted to the clerk of the  
14 appellate court in accordance with applicable electronic  
15 transmission procedures for the filing of documents in that court;

16 (ii) mailed to the clerk of the  
17 appellate court by first-class mail – or other class of mail that is at  
18 least as expeditious – postage prepaid, if the court’s procedures  
19 permit or require a brief or appendix to be filed by mailing; or

20 (iii) dispatched to a third-party  
21 commercial carrier for delivery within three days to the clerk of the

22 appellate court, if the court's procedures permit or require a brief  
23 or appendix to be filed by ~~delivery to the clerk~~ commercial carrier.

24 (C) *Inmate filing.* A document filed by an  
25 inmate confined in an institution is timely if deposited in the  
26 institution's internal mailing system on or before the last day for  
27 filing. If an institution has a system designed for legal mail, the  
28 inmate must use that system to receive the benefit of this rule.  
29 Timely filing may be shown by a declaration in compliance with  
30 28 U.S.C. § 1746 or by a notarized statement, either of which must  
31 set forth the date of deposit and state that first-class postage has  
32 been prepaid. ~~Rule 25(a)(2)(C) F.R. App. P. applies to an appeal  
33 taken by an inmate from a judgment, order, or decree of a  
34 bankruptcy judge to an appellate court.~~

35 (D) *Electronic filing.* The appellate court  
36 may by local rule permit or require documents to be filed, signed,  
37 or verified by electronic means that are consistent with any  
38 technical standards that the Judicial Conference of the United  
39 States establishes. A local rule requiring filing by electronic  
40 means ~~shall~~ must allow reasonable exceptions, including for  
41 individuals who are not represented by counsel.

42 (E) *Copies.* If a document is filed  
43 electronically in the appellate court, no paper copy is required. If a

44 document is filed by mail or delivery ~~in to the district appellate~~  
45 court, ~~an original and one copy of the document shall no additional~~  
46 ~~copies are required be filed. If a document is filed by mail or~~  
47 ~~delivery in the BAP, an original and three copies shall be filed.~~  
48 The ~~district court or BAP~~ appellate court may, however, require  
49 by local rule or order in a particular case the filing or furnishing of  
50 a specified number of paper copies ~~of a document filed~~  
51 ~~electronically or a different number of copies than required by this~~  
52 ~~subparagraph.~~

53 (3) *Filing a Motion with a Judge.* In appeals to the  
54 BAP, if a motion requests relief that may be granted by a single  
55 judge, any judge of that court may permit the motion to be filed  
56 with ~~the that judge if authorized by local rule.~~ The judge ~~shall~~must  
57 note the filing date on the motion and transmit it to the BAP clerk.

58 (4) *Clerk's ~~Acceptance Refusal~~ of Documents.* The  
59 clerk of the appellate court ~~shall~~must not refuse to accept for filing  
60 any document transmitted for that purpose solely because it is not  
61 presented in proper form as required by these rules or by any local  
62 rule or practice. ~~The appellate court may, by order, direct the~~  
63 ~~correction of any deficiency in any document that does not~~  
64 ~~conform to the requirements of these rules or applicable local rule,~~  
65 ~~and may prescribe such other relief as the court deems appropriate.~~

66 (5) *Privacy Protection*. Rule 9037 applies to an  
67 appeal to the appellate court taken from a judgment, order, or  
68 decree of a bankruptcy judge.

69 (b) SERVICE OF DOCUMENTS REQUIRED. Copies of  
70 all documents filed by any party and not required by these Part  
71 VIII rules to be served by the clerk of the appellate court  
72 ~~shall~~must, at or before the time of filing, be served on all other  
73 parties to the appeal by the party making the filing or a person  
74 acting for that party. Service on a party represented by counsel  
75 ~~shall~~must be made on counsel.

76 (c) MANNER OF SERVICE.

77 (1) Service ~~must be made electronically if feasible~~  
78 ~~and permitted by local procedure. If not, service~~ may be made by  
79 any of the following methods:

80 (A) personal, including delivery to a  
81 responsible person at the office of counsel;

82 (B) mail; ~~or~~

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

85 ~~(D) electronic means, if the party being~~  
86 ~~served consents in writing, or as otherwise permitted or required~~  
87 ~~by applicable local procedure.~~

88 (2) ~~If authorized by local rule, a party may use the~~  
89 ~~appellate court's transmission equipment to make the electronic~~  
90 ~~service under Rule 8011(c)(1)(D):~~

91 ~~—————(3) When it is reasonable, considering such factors~~  
92 ~~as the immediacy of the relief sought, distance, and cost, service~~  
93 ~~on a party shall~~ must be by a manner at least as expeditious as the  
94 manner used to file the document with the appellate court. ~~Service~~  
95 ~~by electronic means shall be used when feasible and otherwise~~  
96 ~~permitted:~~

97 (34) Service by mail or by commercial carrier is  
98 complete on mailing or delivery to the carrier. Service by  
99 electronic means is complete on transmission, unless the party  
100 making service receives notice that the document was not  
101 transmitted successfully to the party attempted to be served.

102 (d) PROOF OF SERVICE.

103 (1) Documents presented for filing shall must  
104 contain either:

105 (A) an acknowledgment of service by the  
106 person served; or

107 (B) proof of service in the form of a  
108 statement by the person who made service certifying:

109 (i) the date and manner of service;

110 (ii) the names of the persons served;

111 and

112 (iii) for each person served, the mail  
113 or electronic address, facsimile number, or the address of the place  
114 of delivery, as appropriate for the manner of service.

115 (2) The clerk of the appellate court may permit  
116 documents to be filed without acknowledgment or proof of service  
117 at the time of filing, but ~~shall~~ must require the acknowledgment or  
118 proof of service to be filed promptly thereafter.

119 (3) When a brief or appendix is filed by mailing,  
120 delivery, or electronic transmission in accordance with Rule  
121 8011(a)(2)(B), the proof of service ~~shall~~ must also state the date  
122 and manner by which the document was filed.

123 (e) SIGNATURE. If filed electronically, every motion,  
124 response, reply, brief, or submission authorized by these Part VIII  
125 rules ~~shall~~ must include the electronic signature of the person filing  
126 the document or, if the person is represented, the electronic  
127 signature of counsel. The electronic signature ~~shall~~ must be  
128 provided by electronic means that are consistent with any technical  
129 standards that the Judicial Conference of the United States  
130 establishes. If filed in paper form, every motion, response, reply,  
131 brief, or submission authorized by these rules ~~shall~~ must be signed



132 by the person filing the document or, if the person is represented,  
133 by counsel.

### COMMITTEE NOTE

This rule is derived from former Rule 8008 and F.R. App. P. 25. It adopts some of the additional details of the appellate rule, and it provides greater recognition of the possibility of electronic filing and service.

Subdivision (a) governs the filing of documents in the appellate court. Consistent with other provisions of these Part VIII rules, subdivision (a)(2) requires electronic filing of documents, including briefs and appendices, unless the appellate court's procedures permit or require ~~filing by mail or personal~~ **other methods of delivery to the court**. An electronic filing is timely if it is received by the clerk of the appellate court within the time fixed for filing. No paper copies need be submitted when documents are filed electronically, unless the appellate court requires them.

~~Subdivision (a)(4) provides that the clerk of the appellate court may not refuse to accept a document for filing solely because its form does not comply with these rules or any local rule or practice. The appellate court may, however, direct the correction of any deficiency in any document that does not conform to the requirements of these rules or applicable local rule, and may prescribe such other relief as the court deems appropriate.~~

Subdivision (a)(5) clarifies that Rule 9037, which requires redaction of certain personally identifying information, applies to documents filed in the appellate court.

Subdivisions (b) and (c) address the service of documents in the appellate court. Except for documents that the clerk of the appellate court must serve, a party ~~who that~~ makes a filing must serve copies of the document on all other parties to the appeal. Service on represented parties must be made on counsel. The methods of service are listed in subdivision (c). Electronic service is **required when feasible and authorized upon a party who** ~~has consented to that type of service in writing or when permitted or required~~ by the appellate court.

Subdivision (d) retains the former rule's provisions regarding proof of service of a document filed in the appellate court. In addition it provides that, when service is made electronically, a certificate of service must state

the mail or electronic address or facsimile number to which service was made.

Subdivision (e) is a new provision that requires an electronic signature of counsel or an unrepresented filer for documents that are filed electronically in the appellate court. The method of providing an electronic signature may be specified by a local court rule that is consistent with any standards established by the Judicial Conference of the United States. Paper copies of documents filed in the appellate court must bear an actual signature of counsel or the filer. **By requiring a signature, subdivision (e) ensures that a readily identifiable attorney or party takes responsibility for every document that is filed.**

**Rule 8012. Corporate Disclosure Statement**

1 (a) WHO ~~SHALL~~**MUST** FILE. Any nongovernmental  
2 corporate party to ~~an appeal shall a proceeding in the appellate~~  
3 ~~court must file in the appellate court~~ a statement that identifies any  
4 parent corporation and any publicly held corporation that owns  
5 10% or more of its stock or states that there is no such corporation.

6 (b) TIME FOR FILING; SUPPLEMENTAL FILING. A  
7 party ~~shall~~**must** file the statement prescribed by subdivision (a)  
8 with its principal brief or upon filing a motion, response, petition,  
9 or answer in the appellate court, whichever occurs first, unless a  
10 local rule requires earlier filing. Even if the statement has already  
11 been filed, the party’s principal brief ~~shall~~**must** include a statement  
12 before the table of contents. A party ~~shall~~**must** supplement its  
13 statement whenever the information that ~~shall~~**must** be disclosed  
14 under subdivision (a) changes.

**COMMITTEE NOTE**

This rule is derived from F.R. App. P. 26.1. It requires the filing of corporate disclosure statements and supplemental statements in order to assist appellate court judges in determining whether they have interests that should cause recusal. If filed separately from a brief, motion, response, petition, or answer, the statement must be filed and served in accordance with Rule 8011. Under Rule 8015(a)(7)(B)(iii), the corporate disclosure statement is not included in calculating applicable word-count limitations.

### Rule 8013. Motions; Intervention

1 (a) CONTENTS OF MOTION; RESPONSE; REPLY.

2 (1) *Application for Relief.* A request for an order  
3 or other relief, ~~including an extraordinary writ, shall must~~ be made  
4 by filing with the clerk of the appellate court a motion for that  
5 order or relief, with proof of service on all other parties to the  
6 appeal.

7 (2) *Contents of a Motion.*

8 (A) *Grounds and relief sought.* A motion  
9 ~~shall~~ must state with particularity, ~~in a single document,~~ the  
10 grounds for the motion, ~~and the order or~~ relief sought, ~~and the legal~~  
11 ~~argument necessary to support it.~~

12 (B) *Motion to expedite appeal.* A motion to  
13 expedite the consideration of an appeal ~~shall~~ must explain why  
14 expedition is warranted and what circumstances justify the  
15 appellate court considering the appeal ahead of other matters. If a  
16 motion to expedite is granted, the appellate court may accelerate  
17 the transmission of the record, the deadline for filing briefs and  
18 other documents, oral argument, and resolution of the appeal.  
19 Under appropriate circumstances, a motion to expedite the  
20 consideration of an appeal may be filed as an emergency motion  
21 under Rule 8013(d).

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(C) *Accompanying documents.*

(i) Any affidavit, ~~declaration, brief,~~  
or other document necessary to support a motion ~~shall~~ must be  
served and filed with the motion.

(ii) An affidavit ~~or declaration~~  
~~shall~~ must contain only factual information, not legal argument.

(iii) A motion seeking substantive  
relief from a judgment, order, or decree of a bankruptcy court  
~~shall~~ must include a copy of the bankruptcy court's order, and any  
accompanying opinion, as a separate exhibit.

(D) *Documents not required.* Neither a  
notice of motion nor a proposed order is required.

(3) *Response and Reply; Time to File.* Unless the  
appellate court shortens or extends the time to file, any party to the  
appeal may file a response to the motion within seven days after  
service of the motion. The movant may file a reply to a response  
within seven days after service of the response. A reply ~~shall~~ must  
be limited to matters addressed by the response.

(b) DETERMINATION OF A MOTION FOR A  
PROCEDURAL ORDER. Notwithstanding Rule 8013(a)(3), the  
appellate court may act on a motion for a procedural order,  
including a motion under Rule 9006(b) or (c), at any time without

44 awaiting a response. Any party affected by such action may move  
45 for reconsideration, vacation, or modification of the action within  
46 seven days after service of the procedural order.

47 (c) ORAL ARGUMENT. A motion will be decided  
48 without oral argument unless the appellate court orders otherwise.

49 (d) EMERGENCY MOTION.

50 (1) Whenever a movant requests expedited action  
51 on a motion on the ground that, to avoid irreparable harm, relief is  
52 needed in less time than would normally be required for the  
53 appellate court to receive and consider a response, the word  
54 “Emergency” ~~shall~~ must precede the title of the motion.

55 (2) The emergency motion ~~shall~~ must

56 (A) be accompanied by an affidavit ~~or~~  
57 ~~declaration~~ setting forth the nature of the emergency;

58 (B) state whether all grounds advanced in  
59 support of it were submitted to the bankruptcy ~~judge~~ court and, if  
60 any grounds relied on were not submitted, why the motion should  
61 not be remanded for reconsideration by the bankruptcy ~~judge~~  
62 ~~court~~;

63 (C) include, when known, the email  
64 addresses, office addresses, and telephone numbers of moving and  
65 opposing counsel; and

66 (D) be served as prescribed by Rule 8011.

67 (3) Before filing an emergency motion, the movant  
68 ~~shall~~ must make every practicable effort to notify opposing counsel  
69 in time for counsel to respond to the motion. The affidavit ~~or~~  
70 ~~declaration~~ accompanying the emergency motion ~~shall~~ must also  
71 state when and how opposing counsel was notified, or, if opposing  
72 counsel was not notified, why it was impracticable to do so.

73 (e) POWER OF A SINGLE BAP JUDGE TO  
74 ENTERTAIN A MOTION.

75 (1) A single judge of a BAP may grant or deny any  
76 request for relief that under these rules may properly be sought by  
77 motion, except that a single judge may not dismiss or otherwise  
78 decide an appeal, deny a motion for leave to appeal, or deny a  
79 motion for a stay pending appeal if denial would result in mootness  
80 of the appeal.

81 (2) The BAP may review the action of a single  
82 judge, either on its own motion or on the motion of a party.

83 (f) ~~FORMAT~~ OF DOCUMENTS; PAGE LIMITS;  
84 ~~NUMBER OF COPIES~~.

85 (1) *Format of Paper Document*. Rules  
86 ~~27(d)(1)(A)-(E) and 32(a)(1)-(6)~~ F.R. App. P. ~~applies~~ in the

87 appellate court to a paper version of a motion, response, or reply,  
88 or brief that is permitted or required to be filed.

89 (2) *Format of Electronically Filed Document.* A  
90 motion, response, or reply, or brief filed electronically shall must  
91 comply with the requirements made applicable to a paper copy  
92 under (1) regarding covers, line spacing, margins, typeface, and  
93 type styles. It shall must also comply with the length requirements  
94 under (3).

95 (3) *Page Limits.* ~~Unless the appellate court permits~~  
96 ~~or directs otherwise, the following page limits apply:~~

97 \_\_\_\_\_ (A) A motion or a response to a motion  
98 shall must not exceed 10 20 pages, exclusive of the corporate  
99 disclosure statement and accompanying documents authorized by  
100 Rule 8013(a)(2)(C), unless the appellate court permits or directs  
101 otherwise.;

102 \_\_\_\_\_ (B) a A reply to a response shall must not  
103 exceed 510 pages.;

104 (C) a brief in support of a motion or in  
105 support of a response to a motion shall not exceed 20 pages,  
106 exclusive of accompanying documents authorized by Rule  
107 8013(a)(2)(C); and



108 ~~(D) a brief in support of a reply shall not~~  
109 ~~exceed 10 pages.~~

110 (4) *Copies*. Copies ~~shall~~ must be provided as  
111 required by Rule 8011(a)(2)(E).

112 (g) INTERVENTION. Unless a statute provides another  
113 method, ~~anyone person who wants seeking~~ to intervene in an  
114 appeal pending in the appellate court ~~shall~~ must file a motion for  
115 leave to intervene with the clerk of the appellate court and serve a  
116 copy on all parties to the appeal. The motion, or other notice of  
117 intervention authorized by statute, ~~shall~~ must be filed within 30  
118 days after the appeal is docketed. ~~and shall~~ The motion must  
119 contain a concise statement of the movant's interest and ground for  
120 intervention; ~~whether the movant sought to intervene in the~~  
121 ~~bankruptcy court, and if not, the reasons for not doing so; and why~~  
122 ~~participation as an amicus curiae would not adequately protect the~~  
123 ~~movant's interests.~~

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## COMMITTEE NOTE

Rule 8013 is derived from current Rule 8011 and F.R. App. P. 15(d); ~~and 27, and 32(a)~~. It adopts many of the provisions of the appellate rules that specify the form and page limits of motions and ~~-accompanying related~~ documents, while also adapting those requirements for the context of electronic filing. In addition, it prescribes the procedure for seeking to intervene in the appellate court.

Subdivision (a) retains much of the content of former Rule 8011(a) regarding the contents of a motion, response, and reply. It also specifies the documents that may accompany a motion. Unlike ~~the former rule, F.R. App. P. 27, which bars the filing of briefs supporting or in response to a motion,~~ subdivision (a) ~~does not allow separate briefs. continues the bankruptcy appellate practice of permitting briefs in support of a motion, a response to a motion, and a reply~~ It adopts the practice of F.R. App. P. 27(a)(2) and requires the moving party to include the legal arguments supporting a motion with the motion itself in a single document.

Subdivision (a)(2)(B) clarifies procedures for a motion to expedite the consideration of an appeal. This motion seeks to expedite the time for the disposition of the appeal as a whole, whereas an emergency motion – which is addressed by subdivision (d) – typically involves an urgent request for relief short of disposing of the entire appeal (for example, an emergency request for a stay pending appeal to prevent imminent mootness). In appropriate cases – such as when there is an urgent need to resolve the appeal quickly to prevent harm to a party – a motion to expedite the consideration of an appeal may be filed as an emergency motion.

Subdivision (b) retains the substance of former Rule 8011(b). It authorizes the appellate court to act on a motion for a procedural order without awaiting a response to the motion. It specifies that a party seeking reconsideration, vacation, or modification of the order must file such a motion within seven days after service of the order.

Subdivision (c) continues the practice of former Rule 8011(c) and F.R. App. P. 27(e) of dispensing with oral argument of motions in the appellate court unless the court orders otherwise.

Subdivision (d), which carries forward the content of former rule 8011(d), governs emergency motions that the appellate court may rule on without awaiting a response when necessary to prevent irreparable harm. A party seeking expedited action on a motion in the appellate court must explain the nature of the emergency, whether all grounds in support of the

motion were first presented to the bankruptcy court, and, if not, why a remand for reconsideration should not be ordered. The moving party must also explain the steps taken to notify opposing counsel in advance of filing the emergency motion and, if counsel was not notified, why it was impracticable to do so.

Subdivision (e), like former Rule 8011(e) and similar to F.R. App. P. 27(c), authorizes a single BAP judge to rule on certain motions. This authority, however, does not extend to issuing rulings that would dispose of the appeal. For that reason the rule now prohibits a single BAP judge from denying a motion for a stay pending appeal when the effect of that ruling would be to require dismissal of the appeal as moot. A ruling by a single judge is subject to review by the BAP.

Subdivision (f) incorporates by reference the formatting and appearance requirements of F.R. App. P. 27(d)(1) ~~and 32(a)~~. When paper copies of the listed documents are filed, they must comply with the specified requirements of the Federal Rules of Appellate Procedure regarding reproduction, covers, binding, appearance, and format. When these documents are filed electronically, they must comply with the relevant requirements of the appellate rules regarding covers and format. Subdivision (f) also specifies page limits for motions, **responses, and replies and related documents**, which was a matter not addressed by former Rule 8011.

Subdivision (g) clarifies the procedures for seeking to intervene in a case that has been appealed. It **is based on** ~~adopts the provisions of~~ F.R. App. P. 15(d). The former Part VIII rules did not address intervention.

**Rule 8014. Briefs**

1           (a) APPELLANT’S BRIEF. The appellant’s brief  
2 ~~shall~~ must contain under appropriate headings and in the order here  
3 indicated:

4                   (1) a corporate disclosure statement, if required by  
5 Rule 8012;

6                   (2) a table of contents, with page references;

7                   (3) a table of authorities listing cases alphabetically  
8 arranged, statutes, and other authorities cited, with references to  
9 the pages of the brief where they are cited;

10                  (4) a jurisdictional statement, including:

11                           (A) the basis for the bankruptcy court’s  
12 subject matter jurisdiction, with citations to applicable statutory  
13 provisions and a brief discussion of the relevant facts establishing  
14 jurisdiction;

15                           (B) the basis for the appellate court’s  
16 jurisdiction, with citations to applicable statutory provisions and a  
17 brief discussion of the relevant facts establishing jurisdiction;

18                           (C) the filing dates establishing the  
19 timeliness of the appeal; and

20 (D) an assertion that the appeal is from a  
21 final judgment, order, or decree, or information establishing the  
22 appellate court’s jurisdiction on another basis;

23 (5) a statement of the issues presented and, for each  
24 issue, the applicable standard of appellate review;

25 (6) a concise statement of the case, which shall  
26 contain a brief discussion of the nature of the case and setting out  
27 the facts relevant to the issues presented on appeal and identifying  
28 the rulings presented for review, including the course of the  
29 proceedings and the disposition in the bankruptcy court, with  
30 appropriate references to the record;

31 (7) an argument, which may be preceded by a  
32 summary, and which shall must contain the appellant’s contentions  
33 with respect to the issues presented, and the reasons supporting  
34 those contentions therefor, with citations to the authorities;  
35 statutes, and parts of the record relied on;

36 (8) a short conclusion stating the precise relief  
37 sought; and

38 (9) the certificate of compliance, if required by  
39 Rule 8015(a)(7) or (b).

40 (b) APPELLEE’S BRIEF. The appellee’s brief shall must  
41 conform to the requirements of Rule 8014 (a)(1)-(7) and (9),

42 except that none of the following need appear unless the appellee  
43 is dissatisfied with the appellant's statement:

44 (1) the jurisdictional statement;

45 (2) the statement of the issues and the applicable  
46 standard of appellate review **for each issue**; and

47 (3) the statement of the case.

48 (c) REPLY BRIEF. The appellant may file a brief in reply  
49 to the appellee's brief. A reply brief ~~shall~~**must** contain a table of  
50 contents, with page references, and a table of authorities listing  
51 cases alphabetically arranged, statutes, and other authorities, with  
52 references to the pages of the reply brief where they are cited.

53 ~~(d) NO FURTHER BRIEFS. Unless the appellate court~~  
54 ~~permits, no further briefs shall be filed.~~

55 ~~(e) REFERENCES TO PARTIES. In briefs and at oral~~  
56 ~~argument, counsel should minimize use of the terms "appellant"~~  
57 ~~and "appellee." To make briefs clear, counsel should use the~~  
58 ~~parties' actual names or the designations used in the bankruptcy~~  
59 ~~court, such as "the debtor" or "the trustee."~~

60 ~~(f) REFERENCES TO THE RECORD. References to the~~  
61 ~~parts of the record contained in the appendix filed with the~~  
62 ~~appellant's brief shall be to pages of the appendix.~~

63                    ~~(g)~~ STATUTES, RULES, REGULATIONS, OR  
64                    SIMILAR AUTHORITY. If determination of the issues presented  
65                    requires reference to the Code or other statutes, rules, regulations,  
66                    or similar authority, relevant parts thereof ~~shall~~ **must** be set out in  
67                    the brief or in an addendum.

68                    ~~(eh)~~ BRIEFS IN A CASE INVOLVING MULTIPLE  
69                    APPELLANTS OR APPELLEES. In a case involving more than  
70                    one appellant or appellee, including consolidated cases, any  
71                    number of appellants or appellees may join in a brief, and any  
72                    party may adopt by reference a part of another's brief. Parties may  
73                    also join in reply briefs.

74                    ~~(fi)~~ SUBMISSION OF SUPPLEMENTAL  
75                    AUTHORITIES. If pertinent and significant authorities come to a  
76                    party's attention after the party's brief has been filed, or after oral  
77                    argument but before a decision, the party may promptly advise the  
78                    clerk of the appellate court by a signed submission setting forth the  
79                    citations. The submission, which ~~shall~~ **must** also be transmitted to  
80                    the other parties to the appeal, ~~shall~~ **must** state the reasons for the  
81                    supplemental citations, referring either to the pertinent page of a  
82                    brief or to a point argued orally. The body of the submission  
83                    ~~shall~~ **must** not exceed 350 words. Any response ~~shall~~ **must** be made

84            ~~within seven days unless otherwise ordered by the court promptly~~  
85            and ~~shall~~ must be similarly limited.

### COMMITTEE NOTE

Rule 8014 is derived from former Rule 8010(a) and (b) and F.R. App. P. 28. Adopting much of the content of Rule 28, it provides greater detail regarding appellate briefs than former Rule 8010 contained.

Subdivision (a) prescribes the content and structure of the appellant's brief. It largely follows former Rule 8010(a)(1), but, in order to ensure national uniformity, it eliminates the provision of authority for an appellate court to alter these requirements. Implementing Rule 8012, subdivision (a)(1) directs the placement of a corporate disclosure statement, when required to be filed, at the beginning of an appellant's brief. Subdivision (a)(9) is also new. It implements the requirement under Rule 8015(a)(7) and (b) for the filing of a certificate of compliance with the limit on the number of words or lines allowed to be in a brief.

Subdivisions (b) carries forward the provisions of former Rule 8010(a)(2).

Subdivisions (c) ~~is and (d) are~~ derived from F.R. App. P. 28(c). ~~They~~ It explicitly authorizes an appellant to file a reply brief, which filing will generally complete the parties' briefing process.

~~Subdivisions (e) and (f) are derived from F.R. App. P. 28 (d) and (e). Because Rule 8018, unlike F.R. App. P. 30(c), does not authorize a deferred filing of the appendix, subdivision (f) of this rule does not include provisions concerning references to the record when the appendix is prepared after the briefs are filed.~~

Subdivision (~~dg~~) is similar to former Rule 8010(b), but it is reworded to reflect the likelihood that briefs will generally be filed electronically rather than in paper form.

Subdivision (e) is new. It adopts the provisions of F.R. App. P. 28 (i), which allow multiple parties to join in a brief and any party to adopt by reference portions of another party's brief.

Subdivision (~~fh~~) largely adopts the procedures of F.R. App. P 28(j) with respect to the filing of supplemental authorities with the appellate



court after a brief has been filed or after oral argument. The supplemental submission must comply with the signature requirements of Rule 8011(e).

**Rule 8015. Form of Briefs, Appendices, and Other Papers.**

1 (a) PAPER COPIES OF BRIEFS. If a paper copy of a  
2 brief may or must be filed, the following requirements apply:

3 (1) *Reproduction.*

4 (A) A brief may be reproduced by any  
5 process that yields a clear black image on light paper. The paper  
6 ~~shall~~must be opaque and unglazed. Only one side of the paper  
7 may be used.

8 (B) Text ~~shall~~must be reproduced with a  
9 clarity that equals or exceeds the output of a laser printer.

10 (C) Photographs, illustrations, and tables  
11 may be reproduced by any method that results in a good copy of  
12 the original. A glossy finish is acceptable if the original is glossy.

13 (2) *Cover.* ~~Except for filings by unrepresented~~  
14 ~~parties, the cover of the appellant's brief shall be blue; the~~  
15 ~~appellee's, red, an intervenor's or amicus curiae's, green, any~~  
16 ~~reply brief, gray, and any supplemental brief, tan.~~ The front cover  
17 of a brief ~~shall~~must contain:

18 (A) the number of the case centered at the  
19 top;

20 (B) the name of the court;

21 (C) the title of the case as prescribed by  
22 Rule 8003(d)(2) or 8004(c)(2);

23 (D) the nature of the proceeding and the  
24 name of the court below;

25 (E) the title of the brief, identifying the  
26 party or parties for whom the brief is filed; and

27 (F) the name, office address, telephone  
28 number, and email address of counsel representing the party for  
29 whom the brief is filed.

30 (3) *Binding*. The brief ~~shall~~ must be bound in any  
31 manner that is secure, does not obscure the text, permits the brief  
32 to lie reasonably flat when open, and is easy to scan.

33 (4) *Paper Size, Line Spacing, and Margins*. The  
34 brief ~~shall~~ must be on 8½ by 11 inch paper. The text ~~shall~~ must be  
35 double-spaced, but quotations more than two lines long may be  
36 indented and single-spaced. Headings and footnotes may be  
37 single-spaced. Margins ~~shall~~ must be at least one inch on all four  
38 sides. Page numbers may be placed in the margins, but no text  
39 may appear there.

40 (5) *Typeface*. Either a proportionally spaced or  
41 monospaced face may be used.

42 (A) A proportionally spaced face ~~shall~~must  
43 include serifs, but sans-serif type may be used in headings and  
44 captions. A proportionally spaced face ~~shall~~must be 14-point or  
45 larger.

46 (B) A monospaced face may not contain  
47 more than 10½ characters per inch.

48 (6) *Type Styles.* A brief ~~shall~~must be set in plain,  
49 roman style, although italics or boldface may be used for  
50 emphasis. Case names ~~shall~~must be italicized or underlined.

51 (7) *Length.*

52 (A) *Page limitation.* A principal brief ~~of~~  
53 ~~the appellant or appellee shall~~must not exceed 30 pages, or a reply  
54 brief 15 pages, unless it complies with (B) and (C).

55 (B) *Type-volume limitation.*

56 (i) A principal brief of the appellant  
57 or appellee is acceptable if:

- 58 • it contains no more than  
59 14,000 words; or  
60 • it uses a monospaced face  
61 and contains no more than 1,300 lines of text.

62 (ii) A reply brief is acceptable if it  
63 contains no more than half of the type volume specified in (i).

64 (iii) Headings, footnotes, and  
65 quotations count toward the word and line limitations. The  
66 corporate disclosure statement, table of contents, table of citations,  
67 statement with respect to oral argument, any addendum containing  
68 statutes, rules, or regulations, and any certificates of counsel do not  
69 count toward the limitation.

70 (C) *Certificate of Compliance.*

71 (i) A brief submitted under Rule  
72 8015(a)(7)(B) ~~shall~~ must include a certificate signed by the  
73 attorney, or an unrepresented party, that the brief complies with the  
74 type-volume limitation. The person preparing the certificate may  
75 rely on the word or line count of the word-processing system used  
76 to prepare the brief. The certificate ~~shall~~ must state either:

- 77 • the number of words in the
- 78 brief; or
- 79 • the number of lines of
- 80 monospaced type in the brief.

81 (ii) A certificate of compliance that  
82 conforms substantially to the appropriate Official Form ~~shall~~ must  
83 be regarded as sufficient to meet the requirements of (i).

84 (b) ELECTRONICALLY FILED BRIEFS. A brief that is  
85 filed electronically ~~shall~~ must comply with (a), other than (a)(1)

86 and (a)(3), the color requirements of (a)(2), and the paper  
87 requirement of (a)(4).

88 (c) PAPER COPIES OF APPENDICES. If a paper copy  
89 of an appendix may or must be filed, it ~~shall~~must comply with  
90 Rule 801~~54~~(a)(1), (2), (3), and (4), with the following exceptions:

91 (1) The cover of a separately bound appendix  
92 ~~shall~~must be white.

93 (2) An appendix may include a legible photocopy  
94 of any document found in the record or of a printed decision.

95 (3) When necessary to facilitate inclusion of odd-  
96 sized documents such as technical drawings, an appendix may be a  
97 size other than 8½ by 11 inches, and need not lie reasonably flat  
98 when opened.

99 (d) ELECTRONICALLY FILED APPENDICES. An  
100 appendix that is filed electronically ~~shall~~must comply with Rule  
101 801~~54~~(a)(2) and (4), other than ~~the color requirements of (a)(2)~~  
102 ~~and~~the paper requirement of (a)(4).

103 (e) OTHER DOCUMENTS.

104 (1) Motion. The form of a motion, response, or  
105 reply is governed by Rule 8013(f).

106 (2) Paper Copies of Other Documents. If a paper  
107 copy of any other document may or must be filed, other than a

108 submission under Rule 8014(i), it ~~shall~~must comply with Rule  
109 8015(a), with the following exceptions:

110 (A) A cover is not necessary if the caption  
111 and signature page of the paper together contain the information  
112 required by Rule 8015(a)(2). If a cover is used, it ~~shall~~must be  
113 white.

114 (B)- Rule 8015(a)(7) does not apply.

115 (3) Other Documents that Are Electronically Filed.

116 Any other document that is filed electronically, other than a  
117 submission under Rule 8014(i), ~~shall~~must comply with the  
118 appearance requirements under (2).

119 (f) LOCAL VARIATION. Every appellate court  
120 ~~shall~~must accept documents that comply with the applicable  
121 requirements of this rule. By local rule or order in a particular  
122 case, an appellate court may accept documents that do not meet all  
123 of the requirements of this rule.

#### COMMITTEE NOTE

This rule is derived primarily from Fed. R. App. P. 32. Former Rule 8010(c) prescribed page limits for principal briefs and reply briefs. Those limits are now addressed by subdivision (a)(7) of this rule. In addition, the rule incorporates the considerable detail of Appellate Rule 32 regarding the appearance and format of briefs, appendices, and other documents, along with new provisions that apply when those documents are filed electronically.

Subdivision (a) prescribes the form requirements for briefs that are filed in paper form. It incorporates Fed. R. App. P. 32(a) in all respects except the following: Rule 8015(a)(2) **does not prescribe the colors of brief covers**; (a)(2)(F) requires the cover of a brief to include counsel’s email address; (a)(3) requires that a brief be bound in a way that facilitates scanning of the document; and cross-references to the appropriate bankruptcy rule are substituted for references to other Federal Rules of Appellate Procedure.

Subdivision (a)(7) decreases the page limits that were permitted by former Rule 8010(c) – from 50 to 30 pages for a principal brief and from 25 to 15 for a reply brief – to achieve consistency with Fed. R. App. P. 32(a)(7). It also permits the limits on the length of a brief to be measured by a word or line count, as an alternative to a page limit. By adopting the same limits on brief length that are imposed by the Federal Rules of Appellate Procedure, the amendment seeks to prevent a party whose case is eventually appealed to the court of appeals from having to substantially reduce the length of its brief at that appellate level.

Subdivision (b) adapts for briefs that are electronically filed subdivision (a)’s form requirements. With the use of electronic filing, the method of reproduction, **color of covers**, method of binding, and use of paper become irrelevant. Information required on the cover, formatting requirements, and limits on brief length remain the same, however.

Subdivisions (c) and (d) prescribe the form requirements for appendices. Subdivision (c), applicable to appendices in paper form, is derived from Fed. R. App. P. 32(b), and subdivision (d) adapts those requirements for appendices that are electronically filed.

Subdivision (e), which is based on Fed. R. App. P. 32(c), addresses the form required for documents – in paper form or electronically filed – that are not otherwise covered by these rules.

Subdivision (f), like Fed. R. App. P. 32(e), is intended to provide assurance to lawyers and parties that compliance with the form requirements of this rule will allow a brief or other document to be accepted by any appellate court. A court may, however, by local rule or by order in a particular case choose to accept briefs and documents that do not comply with all of this rule’s requirements.

Under Rule 8011(e), all briefs and other submissions must be signed by the party filing the document or, if represented, by counsel. If the



document is filed electronically, an electronic signature must be provided in accordance with Rule 8011(e).

**Rule 8016. Cross-Appeals**

1 (a) APPLICABILITY. This rule applies to a case in which  
2 a cross-appeal is filed. Rules 8014(a)-(d), 8015(a)(2),  
3 8015(a)(7)(A)-(B), and 8018(a) do not apply to such a case, except  
4 as otherwise provided in this rule.

5 (b) DESIGNATION OF APPELLANT. The party who  
6 files a notice of appeal first is the appellant for purposes of this  
7 rule and Rules 8018(b) and 8019. If notices are filed on the same  
8 day, the plaintiff, petitioner, applicant, or movant in the proceeding  
9 below is the appellant. These designations may be modified by the  
10 parties' agreement or by court order.

11 (c) BRIEFS. In a case involving a cross-appeal:

12 (1) *Appellant's Principal Brief.* The appellant  
13 ~~shall~~must file a principal brief in the appeal. That brief ~~shall~~must  
14 comply with Rule 8014(a).

15 (2) *Appellee's Principal and Response Brief.* The  
16 appellee ~~shall~~must file a principal brief in the cross-appeal and  
17 ~~shall~~must, in the same brief, respond to the principal brief in the  
18 appeal. That brief ~~shall~~must comply with Rule 8014(a), except  
19 that the brief need not include a statement of the case ~~or a~~  
20 ~~statement of the facts~~ unless the appellee is dissatisfied with the  
21 appellant's statement.

22                                   (3) *Appellant’s Response and Reply Brief.* The  
23 appellant ~~shall~~must file a brief that responds to the principal brief  
24 in the cross-appeal and may, in the same brief, reply to the  
25 response in the appeal. That brief ~~shall~~must comply with Rule  
26 8014(a)(2)-(7) and (9), except that none of the following need  
27 appear unless the appellant is dissatisfied with the appellee’s  
28 statement in the cross-appeal:

- 29                                   (A) the jurisdictional statement;
- 30                                   (B) the statement of the issues and the  
31 applicable standard of appellate review ~~for each issue~~; and
- 32                                   (C) the statement of the case.

33                                   (4) *Appellee’s Reply Brief.* The appellee may file a  
34 brief in reply to the response in the cross-appeal. That brief  
35 ~~shall~~must comply with Rule 8014(a)(2)-(3) and (9) and ~~shall~~must  
36 be limited to the issues presented by the cross-appeal.

37                                   ~~(5) No Further Briefs. Unless the appellate court~~  
38 ~~permits, no further briefs shall be filed in a case involving a cross-~~  
39 ~~appeal.~~

40                                   (d) COVER. ~~If a paper copy may or must be filed, except~~  
41 ~~for filings by unrepresented parties, the cover of the appellant’s~~  
42 ~~principal brief shall be blue; the appellee’s principal and response~~  
43 ~~brief, red; the appellant’s response and reply brief, yellow;~~

44 ~~the appellee's reply brief, gray; an intervenor's or amicus curiae's~~  
45 ~~brief, green; and any supplemental brief, tan.~~ The front cover of a  
46 brief ~~shall~~ must contain the information required by Rule  
47 8015(a)(2).

48 (e) LENGTH.

49 (1) *Page Limitation.* Unless it complies with (2)  
50 and (3), the appellant's principal brief ~~shall~~ must not exceed 30  
51 pages; the appellee's principal and response brief, 35 pages; the  
52 appellant's response and reply brief, 30 pages; and the appellee's  
53 ~~reply~~ brief, 15 pages.

54 (2) *Type-Volume Limitation.*

55 (A) The appellant's principal brief or the  
56 appellant's response and reply brief is acceptable if:

57 (i) it contains no more than 14,000  
58 words; or

59 (ii) it uses a monospaced face and  
60 contains no more than 1,300 lines of text.

61 (B) The appellee's principal and response  
62 brief is acceptable if:

63 (i) it contains no more than 16,500  
64 words; or

65 (ii) it uses a monospaced face and  
66 contains no more than 1,500 lines of text.

67 (C) The appellee's reply brief is acceptable  
68 if it contains no more than half of the type volume specified in (A).

69 (3) *Certificate of Compliance*. A brief submitted  
70 either electronically or in paper form under (2) ~~shall~~must comply  
71 with Rule 8015(a)(7)(C).

72 (f) TIME TO SERVE AND FILE A BRIEF. Briefs  
73 ~~shall~~must be served and filed as follows:

74 (1) The appellant ~~shall~~must serve and file its  
75 principal brief within 30 days after the docketing of the notice of  
76 transmission of the record or notice of availability of the record  
77 pursuant to Rule 8010(b)(3).

78 (2) The appellee ~~shall~~must serve and file its  
79 principal and response brief within 30 days after service of the  
80 appellant's principal brief.

81 (3) The appellant ~~shall~~must serve and file its  
82 response and reply brief within 30 days after service of the  
83 appellee's principal and response brief.

84 (4) The appellee ~~shall~~must file its reply brief within  
85 14 days after service of the appellant's response and reply brief, or

86           seven days before scheduled argument, whichever is earlier, unless  
87           the appellate court, for good cause, allows a later filing.

88                         (5) If an appellant or appellee fails to file a  
89           principal brief within the time provided by this rule, or within an  
90           extended time authorized by the appellate court, the appeal or  
91           cross-appeal may be dismissed. An appellee who fails to file a  
92           responsive brief will not be heard at oral argument on the appeal,  
93           and an appellant who fails to file a responsive brief will not be  
94           heard at oral argument on the cross-appeal unless the appellate  
95           court grants permission.

#### **COMMITTEE NOTE**

This rule is modeled on F.R. App. P. 28.1. It governs the timing, content, length, filing, and service of briefs in bankruptcy cases in which there is a cross-appeal. The former Part VIII rules did not separately address the topic of cross-appeals.

Subdivision (b) prescribes which party is designated the appellant when there is a cross-appeal. Generally, the first to file a notice of appeal will be the appellant.

Subdivision (c) specifies the briefs that are permitted to be filed by the appellant and the appellee. Because of the dual role of the parties to the appeal and cross-appeal, each party is permitted to file a principal brief and a response to the opposing party's brief, as well as a reply brief. For the appellee, the principal brief in the cross-appeal and the response in the appeal are combined into a single brief. The appellant, on the other hand, initially files a principal brief in the appeal and later files a response to the appellee's principal brief in the cross-appeal, along with a reply brief in the appeal. The final brief that may be filed is the appellee's reply brief in the cross-appeal.

Subdivision (d) ~~adopts the provisions of F.R. App. P. 28.1(d) for covers of briefs that are filed in paper form in cases in which there is a cross-appeal~~ prescribes the information that must be provided in the cover of a brief.

Subdivision (e), which prescribes page limits for briefs, is ~~adopted~~ **adapted** from F.R. App. P. 28.1(e). It applies to briefs that are filed electronically, as well as those filed in paper form. Like Rule 8015(a)(7), it imposes limits measured either by number of pages or number of words or lines of text.

Subdivision (f) governs the time for filing briefs in cases in which there is a cross-appeal. It adopts the provisions of F.R. App. P. 28.1(f). It further authorizes the dismissal of an appeal or cross-appeal if the appellant or cross-appellant fails to timely file a principal brief, and it denies oral argument to a party who fails to file a responsive brief; unless the appellate court orders otherwise.

**Rule 8017. Brief of an Amicus Curiae**

1 (a) WHEN PERMITTED. The United States or its officers  
2 or agencies, or a State, Territory, or Commonwealth, ~~or the~~  
3 ~~District of Columbia~~ may file an amicus-curiae brief without the  
4 consent of the parties or leave of court. Any other amicus curiae  
5 may file a brief only by leave of court or if the brief states that all  
6 parties have consented to its filing. On its own motion, and with  
7 notice to all parties to an appeal, the appellate court may request a  
8 brief by an amicus curiae.

9 (b) MOTION FOR LEAVE TO FILE. The motion  
10 ~~shall~~must be accompanied by the proposed brief and state:

- 11 (1) the movant’s interest; and
- 12 (2) the reason why an amicus brief is desirable and  
13 why the matters asserted are relevant to the disposition of the  
14 appeal.

15 (c) CONTENT AND FORM. An amicus brief ~~shall~~must  
16 comply with Rule 8015. In addition to the requirements of Rule  
17 8015, the cover of an amicus brief ~~that may or must be filed in~~  
18 ~~paper form shall~~must identify the party or parties supported and  
19 indicate whether the brief supports affirmance or reversal. If an  
20 amicus curiae is a corporation, the brief ~~shall~~must include a  
21 disclosure statement like that required by Rule 8012. An amicus



22 brief need not comply with Rule 8014, but ~~shall~~ must include the  
23 following:

24 (1) a table of contents, with page references;

25 (2) a table of authorities listing cases alphabetically  
26 arranged, statutes, and other authorities, with references to the  
27 pages of the brief where they are cited;

28 (3) a concise statement of the identity of the amicus  
29 curiae, its interest in the case, and the source of its authority to file;

30 (4) unless the amicus curiae is one listed in the first  
31 sentence of Rule 8017(a), a statement that indicates:

32 (A) whether a party's counsel authored the  
33 brief in whole or in part;

34 (B) whether a party or a party's counsel  
35 contributed money that was intended to fund preparation or  
36 submission of the brief; and

37 (C) the name of any person other than the  
38 amicus curiae, its members, or its counsel who contributed money  
39 that was intended to fund preparation or submission of the brief;

40 (5) an argument, which may be preceded by a  
41 summary and need not include a statement of the applicable  
42 standard of review; and

43 (6) a certificate of compliance, if required by Rule  
44 8015(a)(7)(C) ~~or; 8015(b), or 8016(e)(3).~~

45 (d) LENGTH. Except by the court's permission, an  
46 amicus brief ~~shall~~must be no more than one-half the maximum  
47 length authorized by these rules for a party's principal brief. If the  
48 court grants a party permission to file a longer brief, that extension  
49 does not affect the length of an amicus brief.

50 (e) TIME FOR FILING. An amicus curiae ~~shall~~must file  
51 its brief, accompanied by a motion for filing when necessary, no  
52 later than seven days after the principal brief of the party being  
53 supported is -filed. If an amicus curiae does not support either  
54 party, it ~~shall~~must file its -brief no later than seven days after the  
55 appellant's ~~principal~~ principal brief is filed. A court may grant leave for  
56 later filing, specifying the time within which an opposing party  
57 may answer.

58 (f) REPLY BRIEF. Except by the court's permission, an  
59 amicus curiae ~~shall~~may not file a reply brief.

60 (g) ORAL ARGUMENT. Except by the court's  
61 permission, an amicus curiae ~~shall~~may not participate in oral  
62 argument.

63 (h) SUBMISSION OF SUPPLEMENTAL  
64 AUTHORITIES. If pertinent and significant authorities come to

65 the attention of an amicus curiae after its brief has been filed, or  
66 after oral argument but before a decision, the amicus curiae may  
67 promptly advise the clerk of the appellate court by a signed  
68 submission setting forth the citations. The submission, which  
69 ~~shall~~ **must** also be transmitted to the other parties to the appeal,  
70 ~~shall~~ **must** state the reasons for the supplemental citations, referring  
71 either to the pertinent page of a brief or to a point argued orally.  
72 The body of the submission ~~shall~~ **must** not exceed 350 words. Any  
73 response ~~shall~~ **must** be made ~~promptly within seven days unless~~  
74 ~~otherwise ordered by the court~~ and ~~shall~~ **must** be similarly limited.

#### COMMITTEE NOTE

This rule is derived from F.R. App. P. 29. The former Part VIII rules did not address the participation by an amicus curiae in a bankruptcy appeal.

Subdivision (a) adopts the provisions of F.R. App. P. 29(a). In addition, it authorizes the court on its own motion – with notice to the parties – to request the filing of a brief by an amicus curiae.

Subdivisions (b)-(g) adopt F.R. App. P. 29(b)-(g).

Subdivision (h) provides authority for an amicus curiae to submit supplemental citations, just as Rule 8014(i) authorizes a party to do.

**Rule 8018. Serving and Filing Briefs; Appendices**

1 (a) TIME TO SERVE AND FILE A BRIEF. Unless the  
2 appellate court by order excuses the filing of briefs or specifies  
3 different time limits:

4 (1) The appellant ~~shall~~must serve and file a brief  
5 within 30 days after the docketing of the notice of transmission of  
6 the record or notice of availability of the record pursuant to Rule  
7 8010(b)(3).

8 (2) The appellee ~~shall~~must serve and file a brief  
9 within 30 days after service of the appellant’s brief.

10 (3) The appellant may serve and file a reply brief  
11 within 14 days after service of the appellee’s brief, or ~~three seven~~  
12 days before scheduled argument, whichever is earlier, unless the  
13 appellate court, for good cause, allows a later filing.

14 (4) If an appellant fails to file a brief within the  
15 time provided by this rule, or within an extended time authorized  
16 by the appellate court, the appeal may be dismissed. An appellee  
17 who fails to file a brief will not be heard at oral argument unless  
18 the appellate court grants permission.

19 (5) If the appellate court has a mediation procedure  
20 applicable to bankruptcy appeals, the clerk of the appellate court  
21 ~~shall~~must notify the parties promptly after docketing the appeal

22 what effect the mediation procedure has on the time for filing  
23 briefs in the appeal and the requirements of the mediation  
24 procedure.

25 (b) DUTY TO SERVE AND FILE APPENDIX TO  
26 BRIEF

27 (1) Subject to Rules 8009(d) and 8018(e), the  
28 appellant or cross-appellant ~~shall~~must serve and file with its  
29 principal brief excerpts of the record as an appendix, which  
30 ~~shall~~must include the following:

31 (A) the relevant entries in the bankruptcy  
32 docket;

33 (B) the complaint and answer or other  
34 equivalent filings;

35 (C) the judgment, order, or decree from  
36 which the appeal is taken;

37 (D) any other orders, pleadings, jury  
38 instructions, findings, conclusions, or opinions relevant to the  
39 appeal;

40 (E) the notice of appeal; and

41 (F) any relevant transcript or portion  
42 thereof.

43 (2) The appellee or cross-appellee may also serve  
44 and file with its brief an appendix that contains material required  
45 to be included by the appellant or cross-appellant, or relevant to  
46 the appeal or cross-appeal, but omitted by appellant or cross-  
47 appellant.

48 (c) FORMAT OF APPENDIX. The appendix ~~shall~~must  
49 begin with a table of contents identifying the page at which each  
50 part begins. The relevant docket entries ~~shall~~must follow the table  
51 of contents. Other parts of the record ~~shall~~must follow  
52 chronologically. When pages from the transcript of proceedings  
53 are placed in the appendix, the transcript page numbers ~~shall~~must  
54 be shown in brackets immediately before the included pages.  
55 Omissions in the text of documents or of the transcript ~~shall~~must  
56 be indicated by asterisks. Immaterial formal matters, such as  
57 captions, subscriptions, acknowledgments, and the like, ~~shall~~must  
58 be omitted.

59 (d) APPENDIX EXHIBITS. Exhibits designated for  
60 inclusion in the appendix may be reproduced in a separate volume  
61 or volumes, suitably indexed.

62 (e) APPEAL ON THE ORIGINAL RECORD WITHOUT  
63 AN APPENDIX. The appellate court may, either by rule for all  
64 cases or classes of cases or by order in a particular case, dispense

65 with the appendix and permit an appeal to proceed on the original  
66 record, with the submission of any relevant parts of the record that  
67 the appellate court orders the parties to file.

### COMMITTEE NOTE

This rule is derived from former Rule 8009 and F. R. App. P. 30 and 31. Like former Rule 8009, it addresses the timing of serving and filing briefs and appendices, as well as the content and format of appendices. It retains the bankruptcy practice of permitting the appellee to file its own appendix, rather than requiring the appellant to include in the appendix it files matters designated by the appellee.

Subdivision (a) prescribes the time for serving and filing briefs, other than in a case in which there are cross-appeals. When cross-appeals are taken, Rule 8016(f) governs the time for serving and filing briefs. Subdivision (a) of this rule retains the provision of former Rule 8009 that allows the appellate court to dispense with briefing or to provide different time periods than the ones specified by this rule. It increases some of the time periods for filing briefs from the periods prescribed by the former rule, while still retaining shorter time periods than some provided by F.R. App. P. 31(a). The time for filing the appellant's brief is expanded from 14 to 30 days after the docketing of the notice of the transmission of the record or notice of the availability of the record. That triggering event is equivalent to the docketing of the appeal under former Rule 8007. Appellate Rule 31(a)(1), by contrast, provides the appellant 40 days after the record is filed to file its brief. The shorter time period for bankruptcy appeals reflects the frequent need for greater expedition in the resolution of bankruptcy appeals, while still providing the appellant a more realistic time period to prepare its brief than the former rule provided.

Subdivision (a)(2) similarly expands the time period for filing the appellee's brief from 14 to 30 days after the service of the appellant's brief. This period is the same as the period provided by F.R. App. 31(a)(1).

Subdivision (a)(3) retains the 14-day time period for filing a reply brief that the former rule prescribed, but it qualifies that period to ensure that the final brief is filed at least seven days before oral argument.

Subdivision (a)(4) is new. Based on F.R. App. P. 31(c), it provides for actions that may be taken – dismissal of the appeal or denial of

participation in oral argument – if the appellant or appellee fails to file its brief.

Subdivision (a)(5) is also new. If an appellate court has a mediation procedure that is applicable to bankruptcy appeals, the clerk of the appellate court must advise the parties – promptly after the docketing of the appeal – that such a procedure applies, what its requirements are, and how the procedure affects that timing of the filing of briefs in the appeal.

Subdivisions (b) and (c) govern the content and format of the appendix to a brief. Subdivision (b) is similar to former Rule 8009(b), and subdivision (c) is derived from F.R. App. P. 30(d).

Subdivision (d), which addresses the inclusion of exhibits in the appendix, is derived from F.R. App. P. 30(e).

Rule 8011 governs the methods of filing and serving briefs and appendices. It prescribes the number of copies of paper documents that must be filed and authorizes the appellate court to require the submission of paper copies of documents that are filed electronically.



**Rule 8019. Oral Argument**

1           (a) PARTY’S STATEMENT. Any party may file, or an  
2           appellate court may require, a statement explaining why oral  
3           argument should, or need not, be ~~allowed~~ permitted.

4           (b) PRESUMPTION OF ORAL ARGUMENT AND  
5           EXCEPTIONS. Oral argument ~~shall~~ must be allowed in every case  
6           unless the district judge or all of the BAP judges assigned to hear  
7           the appeal ~~appellate court~~ determines, after examination of the  
8           briefs and record, that oral argument is unnecessary for any of the  
9           following reasons:

- 10                       (1) the appeal is frivolous;
- 11                       (2) the dispositive issue or issues have been  
12           authoritatively decided; or
- 13                       (3) the facts and legal arguments are adequately  
14           presented in the briefs and record and the decisional process would  
15           not be significantly aided by oral argument.

16           (c) NOTICE OF ARGUMENT; POSTPONEMENT. The  
17           appellate court ~~shall~~ must advise all parties of the date, time, and  
18           place for oral argument, and the time allowed for each side. A  
19           motion to postpone the argument or to allow longer argument  
20           ~~shall~~ must be filed reasonably in advance of the hearing date.

21 (d) ORDER AND CONTENTS OF ARGUMENT. The  
22 appellant opens and concludes the argument. Counsel ~~shall~~must  
23 not read at length from briefs, the record, or authorities.

24 (e) CROSS-APPEALS AND SEPARATE APPEALS. If  
25 there is a cross-appeal, Rule 8016(b) determines which party is the  
26 appellant and which is the appellee for the purposes of oral  
27 argument. Unless the appellate court directs otherwise, a cross-  
28 appeal or separate appeal ~~shall~~must be argued when the initial  
29 appeal is argued. Separate parties should avoid duplicative  
30 argument.

31 (f) NONAPPEARANCE OF A PARTY. If the appellee  
32 fails to appear for argument, the appellate court may hear  
33 appellant's argument. If the appellant fails to appear for argument,  
34 the appellate court may hear the appellee's argument. If neither  
35 party appears, the case will be decided on the briefs, unless the  
36 appellate court orders otherwise.

37 (g) SUBMISSION ON BRIEFS. The parties may agree to  
38 submit a case for decision on the briefs, but the appellate court  
39 may direct that the case be argued.

40 (h) USE OF PHYSICAL EXHIBITS AT ARGUMENT;  
41 REMOVAL. Counsel intending to use physical exhibits other than  
42 documents at the argument ~~shall~~must arrange to place them in the

43 courtroom on the day of the argument before the court convenes.  
44 After the argument, counsel ~~shall~~ must remove the exhibits from  
45 the courtroom, unless the appellate court directs otherwise. The  
46 clerk may destroy or dispose of the exhibits if counsel does not  
47 reclaim them within a reasonable time after the clerk gives notice  
48 to remove them.

### COMMITTEE NOTE

This rule generally retains the provisions of former Rule 8012 and adds much of the additional detail of F.R. App. P. 34. By incorporating the more detailed provisions of the appellate rule, Rule 8019 promotes national uniformity regarding oral argument in bankruptcy appeals.

Subdivision (a), like F.R. App. P. 34(a)(1), now allows a party to submit a statement explaining why there is no need for oral argument. Former Rule 8012 authorized only statements about why oral argument should be allowed. **Subdivision (a) also now allows an appellate court to require the parties to submit a statement regarding the need for oral argument.**

Subdivision (b) retains the reasons set forth in former Rule 8012 for the appellate court to conclude that oral argument is not needed.

The remainder of this rule adopts the provisions of F.R. App. P. 34(b)-(g), with one exception. Rather than requiring the appellate court to hear appellant's argument if the appellee does not appear, subdivision (e) authorizes the appellate court to go forward with the argument in the appellee's absence. Should the court decide, however, to postpone the oral argument in that situation, it would be authorized to do so.

**Rule 8020. ~~Disposition of Appeal;~~ Weight Accorded  
Bankruptcy Judge’s Findings of Fact and Conclusions of Law**

1                   ~~(a) DISPOSITION OF APPEAL. The appellate court may~~  
2                   ~~affirm, modify, vacate, or reverse a bankruptcy judge's judgment,~~  
3                   ~~order, or decree, or remand with instructions for further~~  
4                   ~~proceedings.~~

5                   ~~———— (b) ACCORDED WEIGHT.~~ Findings of fact, whether  
6                   based on oral or documentary evidence, ~~shall~~**must** not be set aside  
7                   unless clearly erroneous, and due regard ~~shall~~**must** be given to the  
8                   opportunity of the bankruptcy judge to assess the credibility of the  
9                   witnesses. Questions of law are subject to de novo review. A  
10                  matter committed to the discretion of the bankruptcy judge is  
11                  reviewed for abuse of discretion unless the bankruptcy judge  
12                  applied an incorrect standard of law. ~~Any matter may be reviewed~~  
13                  ~~for clear error.~~

**COMMITTEE NOTE**

This rule is derived from former Rule 8013. It specifies ~~the possible actions that the appellate court may take in ruling on an appeal and~~ the appropriate standards of appellate review. It does not apply to ~~the a~~ a district court’s review of a bankruptcy judge’s proposed findings of fact and conclusions of law in a non-core matter under 28 U.S.C. § 157(c)(1). Proposed findings of fact and conclusions of law as to which a party has timely and specifically objected are subject to the provisions of Rule 9033 and the review that it prescribes.

**Rule 8021. Frivolous Appeals and Other Misconduct Damages and Costs for Frivolous Appeal**

1           (a) FRIVOLOUS APPEALS. If the appellate court  
2 determines that an appeal from a judgment, order, or decree of a  
3 bankruptcy ~~judge court~~ is frivolous, it may, after a separately filed  
4 motion or notice from the court and reasonable opportunity to  
5 respond, award just damages and single or double costs to the  
6 appellee. ~~The relief authorized by this rule does not limit any  
7 other relief or power available to the appellate court.~~

8           (b) OTHER MISCONDUCT. An appellate court may  
9 discipline an attorney or party appearing before it for other  
10 misconduct, including failure to comply with a court order. First,  
11 however, the court must afford the attorney or party reasonable  
12 notice, opportunity to show cause to the contrary, and, if requested,  
13 a hearing.

**COMMITTEE NOTE**

This rule is derived from F.R. App. P. 38 and 46(c). ~~The second sentence is added to clarify that the authority conferred by this rule does not affect the appellate court's exercise of any inherent or other authority over the conduct of parties or counsel. Authorization for sanctions for conduct other than taking frivolous appeals is extended to parties as well as their counsel.~~

**Rule 8022. Costs**

1 (a) AGAINST WHOM ASSESSED. The following rules  
2 apply unless the law provides or the appellate court orders  
3 otherwise:

4 (1) if an appeal is dismissed ~~other than as provided~~  
5 ~~in Rule 8024~~, costs are taxed against the appellant, unless the  
6 parties agree otherwise;

7 (2) if a judgment, order, or decree is affirmed, costs  
8 are taxed against the appellant;

9 (3) if a judgment, order, or decree is reversed, costs  
10 are taxed against the appellee;

11 (4) if a judgment, order, or decree is affirmed or  
12 reversed in part, modified, or vacated, costs are taxed only as the  
13 court orders.

14 (b) COSTS FOR AND AGAINST THE UNITED  
15 STATES. Costs for or against the United States, its agency, or  
16 officer may be assessed under (a) only if authorized by law.

17 (c) COSTS TAXABLE ON APPEAL. The bankruptcy  
18 clerk ~~shall~~ must tax the following costs in favor of the party entitled  
19 to costs under this rule:

20 (1) costs incurred in the production of any required  
21 copies of a brief, appendix, exhibit, or the record;

- 22 (2) costs incurred in the preparation and  
23 transmission of the record;
- 24 (3) the cost of the reporter's transcript if necessary  
25 for the determination of the appeal;
- 26 (4) premiums paid for supersedeas bonds or other  
27 bonds to preserve rights pending appeal; and
- 28 (5) the fee for filing the notice of appeal.
- 29 (d) RATES. Each appellate court ~~shall~~must, by local rule,  
30 fix the maximum rate for taxing the cost of producing ~~any~~ required  
31 copies of a brief, appendix, exhibit, or the record. The rate  
32 ~~shall~~must not exceed that generally charged for such work in the  
33 area where the office of the clerk of the appellate court is located  
34 and should encourage economical methods of copying.
- 35 (e) BILL OF COSTS; OBJECTIONS. A party who wants  
36 costs taxed ~~shall~~must, within 14 days after entry of judgment on  
37 appeal, file with the clerk of the appellate court, with proof of  
38 service, an itemized and verified bill of costs. Objections  
39 ~~shall~~must be filed within 14 days after service of the bill of costs,  
40 unless the court extends the time. The clerk of the appellate court  
41 ~~shall~~must prepare and certify an itemized statement of costs.

#### COMMITTEE NOTE

This rule is derived from former Rule 8014 and F.R. App. P. 39. It retains the former rule's authorization for taxing appellate costs against the losing party and its specification of the costs that may be taxed. Taxable costs do not include attorney's fees. The rule also incorporates some of the additional details regarding the taxing of costs contained in F.R. App. P. 39. Consistent with former Rule 8014, all costs are taxed by the clerk of the bankruptcy court. Subdivision (b) is added to clarify that additional authority is required for the taxation of costs by or against federal governmental parties.



**Rule 8023. Motion for Rehearing.**

1           (a) TIME TO FILE; CONTENTS; ANSWER; ACTION  
2 BY THE APPELLATE COURT.

3           (1) *Time.* Unless the time is shortened or extended  
4 by order or local rule, any motion for rehearing by the appellate  
5 court ~~shall~~must be filed within 14 days after entry of judgment on  
6 appeal.

7           (2) *Contents.* The motion ~~shall~~must state with  
8 particularity each point of law or fact that the movant believes the  
9 appellate court has overlooked or misapprehended and ~~shall~~must  
10 argue in support of the motion. Oral argument is not permitted.

11           (3) *Answer.* Unless the appellate court requests, no  
12 answer to a motion for rehearing is permitted. But ordinarily,  
13 rehearing will not be granted in the absence of such a request.

14           (4) *Action by the Appellate Court.* If a motion for  
15 rehearing is granted, the appellate court may do any of the  
16 following:

17                           (A) make a final disposition of the appeal  
18 without reargument;

19                           (B) restore the case to the calendar for  
20 reargument or resubmission; or

21                           (C) issue any other appropriate order.

22 (b) FORM OF MOTION; LENGTH. The motion  
23 ~~shall~~must comply in form with Rule 8015(a)(1)-(6) and 8015(b).  
24 Copies ~~shall~~must be served and filed as provided by Rule 8011.  
25 Unless the appellate court by local rule or order provides  
26 otherwise, a motion for rehearing ~~shall~~must not exceed 15 pages.

#### COMMITTEE NOTE

This rule is derived from former Rule 8015 and F.R. App. P. 40. It deletes the provision of former Rule 8015 regarding the time for appeal to the court of appeals because the matter is addressed by F.R. App. P. 6(b)(2)(A)(i).

## Rule 8024. Voluntary Dismissal

1           ~~(a) DISMISSAL IN THE BANKRUPTCY COURT. If an~~  
2           ~~appeal has not been docketed in the appellate court, the appeal may~~  
3           ~~be dismissed by the bankruptcy court on the filing of a stipulation~~  
4           ~~for dismissal signed by all the parties, or on motion and notice by~~  
5           ~~the appellant.~~

6           ~~—— (b) DISMISSAL IN THE APPELLATE COURT. If an~~  
7           ~~appeal has been docketed in the appellate court, and the parties to~~  
8           ~~the an~~ appeal sign and file with the clerk of the appellate court an  
9           agreement that the appeal be dismissed and pay any court costs or  
10          fees that may be due, the clerk of the appellate court ~~shall~~**must**  
11          enter an order dismissing the appeal. An appeal may also be  
12          dismissed on the appellant's motion on terms and conditions fixed  
13          by the appellate court.

### COMMITTEE NOTE

This rule is derived from former Rule 8001(c), which was adapted from F.R. App. P. 42. ~~Unlike the former rule, this rule does not address dismissals by the bankruptcy court prior to the docketing of the appeal. Under Rules 8003(d) and 8004(c), docketing occurs upon the appellate court clerk's receipt of the notice of appeal, so it is unlikely that a voluntary dismissal will be sought between the time the notice of appeal is filed and the appeal is docketed.~~

~~The rule~~**It** retains the requirement of the former rule that the clerk of the appellate court **must** dismiss an appeal upon the parties' agreement that the appeal be dismissed and their payment of any required costs or fees. ~~The bankruptcy and appellate courts continues to have discretion to dismiss an appeal under the circumstances specified in the rule on an appellant's~~

**motion.** Nothing in the rule prohibits an appellate court from dismissing an appeal for other reasons authorized by law, such as the failure to prosecute an appeal.

## Rule 8025. Duties of Clerk on Disposition of Appeal

- 1 (a) ENTRY OF JUDGMENT ON APPEAL. ~~Unless the~~  
2 ~~appellate court by local rule provides otherwise, t~~The clerk of the  
3 appellate court ~~shall~~must prepare, sign, and enter ~~the~~ judgment  
4 following receipt of the opinion of the appellate court or, if there is  
5 no opinion, following the instruction of the appellate court. The  
6 notation of a judgment in the docket constitutes entry of judgment.
- 7 (b) NOTICE OF AN ORDER OR JUDGMENT; RETURN  
8 OF RECORD. Immediately upon the entry of a judgment or order,  
9 the clerk of the appellate court ~~shall~~must transmit a notice of the  
10 entry to each party to the appeal, to the United States trustee, and  
11 to the bankruptcy clerk, together with a copy of any opinion  
12 respecting the judgment or order, and ~~shall~~must make a note of the  
13 transmission in the docket. If any original documents were  
14 transmitted as the record on appeal, they ~~shall~~must be returned to  
15 the bankruptcy clerk on disposition of the appeal.

### COMMITTEE NOTE

This rule is derived from former Rule 8016, which was adapted from F.R. App. P. 36 and 45 (c) and (d). The rule is reworded to reflect that often the record will not be physically transmitted to the appellate court and thus there will be no documents to return to the bankruptcy clerk. Other changes to the former rule are stylistic.

**Rule 8026. Stay of Appellate Court Judgment**

1 (a) AUTOMATIC STAY OF JUDGMENT ON APPEAL.

2 Unless the appellate court orders otherwise, its judgment is stayed  
3 for 14 days after entry of the judgment.

4 (b) STAY PENDING APPEAL TO THE COURT OF  
5 APPEALS.

6 (1) On motion and notice to the parties to the  
7 appeal, the appellate court may stay its judgment pending an  
8 appeal to the court of appeals.

9 (2) The stay ~~shall~~ must not extend beyond 30 days  
10 after the entry of the judgment of the appellate court unless the  
11 period is extended for cause shown.

12 (3) If before the expiration of a stay entered  
13 pursuant to this subdivision there is an appeal to the court of  
14 appeals by the party who obtained the stay, the stay continues until  
15 final disposition by the court of appeals.

16 (4) A bond or other security may be required as a  
17 condition of the grant or continuation of a stay of the judgment.

18 (5) A bond or other security may be required if a  
19 trustee obtains a stay, but a bond or security may not be required if  
20 a stay is obtained by the United States or its officer or agency or at

21 the direction of any department of the Government of the United  
22 States.

23 (c) AUTOMATIC STAY OF ORDER, JUDGMENT, OR  
24 DECREE OF BANKRUPTCY COURT. If the appellate court  
25 enters a judgment affirming an order, judgment, or decree of the  
26 bankruptcy court, a stay of the appellate court's judgment  
27 automatically stays the bankruptcy court's order, judgment, or  
28 decree for the duration **and to the extent** of the stay, ~~unless~~  
29 ~~otherwise ordered.~~

30 (d) POWER OF COURT OF APPEALS NOT LIMITED.  
31 This rule does not limit the power of a court of appeals or any of  
32 its judges to do the following:

- 33 (1) stay a judgment pending appeal;  
34 (2) stay proceedings during the pendency of an  
35 appeal;  
36 (3) suspend, modify, restore, vacate, or grant a stay  
37 or an injunction during the pendency of an appeal; or  
38 (4) make any order appropriate to preserve the  
39 status quo or the effectiveness of any judgment to be entered.

### COMMITTEE NOTE

This rule is derived from former Rule 8017. Most of the changes to the former rule are stylistic. Subdivision (c) is new. It provides **generally** for the automatic stay of a bankruptcy court order, judgment,

or decree that is affirmed on appeal ~~if to the extent that and for as long as~~  
the appellate court judgment is stayed, ~~even if the bankruptcy court's~~  
~~ruling itself was not stayed.~~



**Rule 8027. Rules by Courts of Appeals and District Courts;  
Procedure When There is No Controlling Law**

1 (a) LOCAL RULES BY COURTS OF APPEALS AND  
2 DISTRICT COURTS.

3 (1) ~~Courts of appeals for circuits~~ Circuit councils  
4 that have authorized a BAP pursuant to 28 U.S.C. § 158(b) ~~and~~  
5 ~~district courts~~ may make and amend rules governing practice and  
6 procedure for appeals from judgments, orders, or decrees of  
7 bankruptcy ~~judges courts~~ to the BAP ~~or district court~~. ~~District~~  
8 ~~courts may make and amend rules governing practice and~~  
9 ~~procedure for appeals from judgments, orders, or decrees of~~  
10 ~~bankruptcy courts to the district court~~. Local rules ~~shall~~ must be  
11 consistent with, but not duplicative of, Acts of Congress and these  
12 Part VIII rules.

13 (2) Local rules ~~shall~~ must conform to any uniform  
14 numbering system prescribed by the Judicial Conference of the  
15 United States. ~~Rule 83 F.R.Civ.P. and Rule 47 F.R.App. P.~~  
16 ~~respectively govern the procedure for making and amending rules~~  
17 ~~to govern appeals in district courts and BAPs.~~

18 (3) A local rule imposing a requirement of form  
19 ~~shall~~ must not be enforced in a way that causes a party to lose any  
20 right because of a nonwillful failure to comply.

21 (b) PROCEDURE WHEN THERE IS NO

22 CONTROLLING LAW.

23 (1) A district judge or BAP may regulate practice  
24 in any manner consistent with federal law, these Rules, the Official  
25 Forms, and local rules ~~of the circuit council or the district court.~~

26 (2) No sanction or other disadvantage ~~shall~~ **must** be  
27 imposed for noncompliance with any requirement not in federal  
28 law, applicable federal rules, the Official Forms, or ~~the~~ local rules  
29 ~~of the circuit council or district court~~ unless the alleged violator  
30 has been furnished in the particular case with actual notice of the  
31 requirement.

#### COMMITTEE NOTE

This rule is derived from former Rule 8018. ~~Unlike the former rule, this rule does not specify the procedure that circuit councils and district courts must follow in adopting local rules for bankruptcy appeals. They may follow their general rulemaking procedures.~~ The other changes to the former rule are primarily stylistic.

~~Subdivision (a)(2) recognizes the authority given courts of appeals under F.R. App. P. 47 to promulgate local rules. Some courts of appeals have delegated rule-making authority to the BAP within the circuit to make and amend local rules governing practice and procedure before the BAP. [Is this correct?]~~

### **Rule 8028. Suspension of Rules in Part VIII**

1           In the interest of expediting decision or for other cause in a  
2           particular case, the appellate court may suspend the requirements  
3           or provisions of the rules in Part VIII, except Rules 8001, 8002,  
4           8003, 8004, 8005, 8006, 8007, 8012, 8020, 8021, 8025, 8026,  
5           8027, and 8028.

### **COMMITTEE NOTE**

This rule is derived from former Rule 8019 and F.R. App. P. 2. In order to promote uniformity of practice and compliance with statutory authority, the rule includes a more extensive list of requirements that may not be suspended than either the former rule or the Rules of Appellate Procedure provide. Rules that may not be suspended are those governing the following:

- scope of the rules and definitions;
- time for filing a notice of appeal;
- taking an appeal as of right;
- taking an appeal by leave;
- election to have appeal heard by district court instead of BAP;
- certification of direct appeal to court of appeals;
- stay pending appeal;
- corporate disclosure statement;
- ~~disposition of appeals and~~ weight to be accorded bankruptcy judge's findings of fact and conclusions of law;
- sanctions for frivolous appeals **and other misconduct**;
- clerk's duties on disposition of appeal;
- stay of appellate court's judgment;
- local rules; and
- suspension of Part VIII rules.



# TAB 10A



## MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON ATTORNEY CONDUCT AND HEALTHCARE ISSUES

RE: SUGGESTION FOR NATIONAL ADMISSION RULE FOR PRACTICE IN BANKRUPTCY COURTS

DATE: AUGUST 31, 2011

The States' Association of Bankruptcy Attorneys ("SABA") submitted suggestion 10-BK-M. The group proposed a bankruptcy rule that would permit an attorney who is admitted to practice in any U.S. bankruptcy court, and is in good standing in all jurisdictions in which he or she is a member of the bar, to practice in one or more cases in any other bankruptcy court, subject to certain conditions. Once admitted under this rule, a lawyer would also be able to appear in the district court for any appeals in the case or if the reference is withdrawn. Government attorneys would not be required to associate with local counsel for these representations.

At the spring 2011 meeting, the Advisory Committee referred the suggestion to this Subcommittee. It discussed the suggestion during a conference call on July 28.

### SABA's Arguments in Support of the Suggestion

SABA expressed concern about the patchwork of local rules governing the appearance of government attorneys in districts in which they are not otherwise admitted. It noted that most districts allow federal government attorneys to appear without special permission but that the rules vary widely with respect to counsel for other governmental bodies. Some districts are equally lenient for all government counsel, and some have few admission requirements for any

attorneys. SABA's proposal, however, was prompted by the districts that have requirements that it considers to be "difficult, time-consuming, and/or expensive processes for admission," as well as the requirement in many districts that a government attorney (like private attorneys admitted pro hac vice) retain local counsel.

SABA made four arguments in support of its proposed national bankruptcy rule. First, it noted the unique aspects of bankruptcy practice that it believes make a national admission rule particularly appropriate. Non-debtor parties can be forced to participate in bankruptcy cases outside their own states based on the debtor's choice of the venue in which to file its bankruptcy case. SABA asserted that these parties should not be forced to comply with burdensome procedures and incur additional costs in order to exercise their rights and to retain their current counsel. Burdensome admission requirements for counsel can prevent out-of-state parties from participating in critical proceedings at the outset of the case, such as hearings on first-day orders.

SABA analogized to the transfer of cases by the Judicial Panel on Multidistrict Litigation ("JPML"), which may require parties to litigate issues in a distant forum. JPML Rule 1.4 allows any member in good standing of the bar of any U.S. district court to practice before the JPML and to continue to represent a client in any district court to which a case is transferred. Association with local counsel in the transferee district is not required. SABA argued that a similar rule is appropriate for bankruptcy.

Second, SABA emphasized the special impact that burdensome admission requirements have on governmental entities. Typically governments are involuntary creditors without control over where their debtors live or hold their collateral. As a result, state and local governments have to appear in cases throughout the country, and, unlike the federal government, they do not



have attorneys in every state. Often adding to the burden, SABA argued, are cumbersome internal procedures for obtaining funds for payment of appearance fees.

Third, SABA argued for the elimination of local counsel requirements for governmental entities. Again, state procedures – such as bidding and billing requirements – often make it difficult to retain local counsel in a timely manner. Furthermore, in the current fiscal climate, states and local governments may not have sufficient funds to hire a second and unneeded lawyer. These governments, stated SABA, would still retain local counsel when that expertise is needed, but local counsel should not be required in every case.

Finally, SABA argued that relief from restrictive admission requirements is especially appropriate for government counsel because they are not seeking pecuniary gain or additional business when they appear out of state. They will not be attempting to use more lenient admission standards as a way to expand their practices into other states or to avoid the control of the courts.

#### SABA's Proposed Rule

SABA drafted a proposed amendment to Rule 9010 (Representation and Appearances; Powers of Attorney), which would add three new subdivisions:

(d) Any attorney who is admitted to practice before any bankruptcy court of the United States and is a member in good standing in all jurisdictions in which he or she is a member of the bar shall be entitled to practice in one or more cases in any bankruptcy court of the United States upon the following conditions:

(1) On or before the first time the attorney appears in court or files a pleading, he or she files with the clerk of the court a Certificate of Admissibility in a form to be prescribed by the Director of the Administrative Office for the United States Court[s], signed under penalty of perjury, which attests to his or her compliance with the requirements of this paragraph and his or her understanding that he or she has read and is subject to all local rules of the court;

(2) The Certificate of Admissibility shall further provide that the attorney understands and agrees that appearance in the bankruptcy court will

subject the attorney to the disciplinary authority of the court to the same extent as if the attorney had been admitted on a motion *pro hac vice*; and

(3) Notwithstanding the foregoing, nothing herein will preclude a bankruptcy court from requiring that counsel who reside, have an office in, or appear regularly and substantially in multiple cases within the bankruptcy district be admitted to the local bar before being allowed to practice in the bankruptcy court.

(e) Any attorney who is admitted to the bankruptcy court under these provisions shall also be entitled to appear in the district court under the same conditions in appeals of any decisions rendered by the bankruptcy court, or in matters withdrawn from the bankruptcy court, by filing an updated Certificate of Admissibility with or before his or her first such appearance or filing of a pleading in the district court.

(f) Any attorney regularly employed by a governmental unit shall not be subject to any local counsel requirements prescribed in local rules of the bankruptcy or district courts when appearing on behalf of that governmental unit in the circumstances described in paragraphs (d) and (e).

SABA suggested that the rule be adopted as written. Alternatively, it suggested that the Rule be made applicable only to government attorneys.

#### The Subcommittee's Consideration of the Suggestion

Members of the Subcommittee thought that the SABA suggestion raised interesting issues and presented some persuasive arguments regarding the difficulties that state and local government attorneys face when they are required to participate in an out-of-state bankruptcy case. Although the suggestion proposed a national admission rule applicable to all attorneys, the Subcommittee focused primarily on the alternative proposal that is limited to government attorneys. It found that SABA had made a strong case that these lawyers are especially affected by strict admission requirements and local counsel rules.

The Subcommittee, however, questioned whether the matters raised by SABA are ones appropriately addressed by the Bankruptcy Rules Committee. The ideas of a national federal bar or national admission standards for bankruptcy have been advocated for many years without

success. *See, e.g.*, NATIONAL BANKRUPTCY REVIEW COMMISSION, BANKRUPTCY: THE NEXT TWENTY YEARS 843 (1997) (proposing a national admission to practice rule for bankruptcy courts). And while SABA noted that the JPML has adopted an approach similar to the one it suggested, the JPML rule is of limited applicability. The Civil Rules Committee just published a proposed amendment to Rule 45 that would allow a lawyer for a subpoenaed witness to represent that client in a district in which the lawyer is not admitted if a dispute is transferred to the home court district for resolution. Members of the Subcommittee expressed interest in seeing whether this proposal proves to be controversial. It was noted that a member of the Standing Committee stated at the June 2011 meeting that the committee has traditionally been reluctant to override local admission requirements.

The Subcommittee observed that, even if the proposed rule is limited to government attorneys, it is still much broader than either of the rules just discussed. The JPML rule is limited to pretrial proceedings, and the proposed Rule 45 amendment would apply only to certain subpoena disputes. SABA's proposed rule also raises the complication of affecting both bankruptcy and district court admission requirements. While bankruptcy courts in some districts have their own admission requirements, other bankruptcy courts either adopt as their own or rely on the district court's rule. The Subcommittee was reluctant to recommend that the Advisory Committee unilaterally put forward a rule that would override both bankruptcy and district court admission rules.

The Subcommittee therefore suggested that consideration be given to methods of addressing SABA's concerns other than through a national bankruptcy rule. One such method, as SABA noted in connection with appearances of attorneys representing the United States,

would be by local rulemaking. A possible aid in such an effort would be the drafting of a proposed local rule by the Advisory Committee.

Holly Sellers of the Rules Committee Support Office has agreed to undertake a survey of local rules to ascertain how many bankruptcy and district courts have special admission provisions for United States government attorneys and also to determine whether there was any organized effort to accomplish the adoption of those provisions. Ms. Sellers's report, which will be circulated separately prior to the fall Advisory Committee meeting, may assist the Committee in deciding whether and how it wants to proceed further with SABA's suggestion.

**TAB 10B**



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON ATTORNEY CONDUCT AND HEALTHCARE  
ISSUES

RE: SUGGESTION FOR RULE ON THE SELECTION OF COUNSEL TO  
CREDITORS' COMMITTEES

DATE: AUGUST 22, 2011

Judge Thomas Waldrep, a Bankruptcy Judge for the Middle District of North Carolina, has submitted a suggestion (10-BK-N) for a new rule to provide greater transparency in the process for retaining counsel to creditors' committees. The mischief his suggestion seeks to prevent is the practice by some lawyers (who have no prior relationship with any creditor) of seeking appointment as committee counsel through the use of surrogates who solicit the proxies of creditors. The suggestion does not outline a specific proposal for amending the Bankruptcy Rules but rather highlights *In re Universal Building Products*, a recent decision denying an application to retain committee counsel due to that sort of misconduct. 2010 WL 4642046 (Bankr. D. Del. Nov. 4, 2010). Judge Waldrep's suggestion was referred to the Subcommittee on Attorney Conduct and Healthcare Issues, which discussed the matter during its July 28, 2011, conference call. After providing some background on the *Universal Building Products* case, this memorandum discusses several factors—including institutional considerations about the role of the United States Trustee Program—that the Subcommittee weighed in its discussion. Although Judge Waldrep's suggestion raises an issue of real concern, the Subcommittee recommends awaiting the U.S. Trustee Program's further study of appropriate responses to *Universal Building Products*.

### *In re Universal Building Products*

The practice of attorneys' soliciting creditors in order to be appointed as committee counsel was discussed at length by Judge Mary Walrath in *Universal Building Products*. In that case, the debtors' largest creditors included a number of Asian suppliers. After the debtors filed a voluntary Chapter 11 petition, the U.S. Trustee held an organizational meeting to gauge whether sufficient creditor interest existed for a committee of unsecured creditors. Finding sufficient interest, the U.S. Trustee formed the committee, which then selected two law firms (from ten vying for appointment) as committee counsel.

It later emerged, however, that the formation of the committee and the selection of committee counsel had been influenced by a Dr. Liu, a businessman who often consulted with Asian creditors seeking to collect accounts receivable in the United States. The two firms that were later selected as committee counsel had encouraged Dr. Liu to contact the debtors' biggest Asian creditors to seek their proxy so that he could represent those creditors at the committee formation meeting. The firms had a prior relationship with Dr. Liu but no prior relationship with the creditors he contacted. The firms went so far as to forward the telephone numbers for one of the largest creditors to Dr. Liu and to provide advice to Dr. Liu (and, through him, the creditors) on the bankruptcy process. That advice included whether the creditors could assert twenty-day administrative expense claims under Code § 503(b)(9) against the debtors for goods in transit. Dr. Liu succeeded in securing the proxies of two of the biggest creditors. Because of concern that the U.S. Trustee would not allow Dr. Liu to act as proxy for both creditors, the firms recommended a "reliable" person to do so for one of the creditors. Once the committee was formed, it hired Dr. Liu (on counsel's recommendation) to serve as a translator.



When the committee applied to the bankruptcy court for appointment of the two firms as committee counsel, Judge Walrath denied the application based on objections by the debtors and the U.S. Trustee. The objectors opposed the appointment on the grounds that: (i) the proposed committee counsel had violated the professional responsibility rules restricting attorney solicitation of clients; (ii) the proposed counsel, by providing legal advice to some of the creditors that was contrary to the interests of the general unsecured creditors represented by the committee, were not “disinterested” under Code §§ 1103 and 328; and (iii) the proposed counsel failed to disclose adequately under Rule 2014(a) of the Federal Rules of Bankruptcy Procedure their connections with Dr. Liu and the creditors who agreed to give him their proxy. Although Judge Walrath disagreed with the argument that proposed counsel were not disinterested,<sup>1</sup> she agreed that counsel had violated the professional responsibility rules by soliciting clients and had failed to satisfy the disclosure requirements for professionals seeking to be retained by a committee.

Judge Walrath’s conclusion about the rules of professional responsibility warrants brief mention. Under Rule 7.3 of the Delaware Rules of Professional Responsibility,

A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted: (1) is a lawyer; or (2) has a family, close personal, or prior professional relationship with the lawyer.

Because the comments to Rule 7.3<sup>2</sup> make clear that using a surrogate to solicit clients is also prohibited if a direct solicitation would be prohibited, Dr. Liu’s role did not shield the firms from

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<sup>1</sup> Judge Walrath concluded that, even if committee counsel had represented the creditors as a result of the advice provided to Dr. Liu, the representation would pose only a potential conflict insufficient for disqualification.

<sup>2</sup> The Delaware rule is identical to Rule 7.3 of the Model Rules of Professional Conduct, from which Judge Walrath drew the explanatory comments.

violating the ethical restrictions. Judge Walrath also rejected counsel's argument that their activities were protected by the First Amendment.

Judge Walrath's discussion of the disclosure argument bears more directly on the Bankruptcy Rules. Rule 2014(a) provides:

The application [of any professional person seeking retention by the debtor or committee] shall be accompanied by a verified statement of the person to be employed setting forth the 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 office of the United States trustee.

In particular, Judge Walrath concluded that the firms failed, on their original retention applications, to disclose fully two circumstances: (i) their support of Dr. Liu's efforts to obtain proxies from creditors to attend the committee formation meeting, and (ii) the fact that counsel had provided creditors with legal advice, through Dr. Liu, about pursuing administrative expense claims.

### **Judge Waldrep's Suggestion**

Judge Waldrep's suggestion presents three main issues. The first is whether *Universal Building Products* is an isolated example of misbehavior or is instead evidence of more widespread practices that demand attention. If it indicates more widespread practices, the second issue is what type of rulemaking is appropriate. The third issue is whether it would be better to defer to the U.S. Trustee Program to take responsive action in light of the special role played by that agency in the formation of creditors' committees.

#### *1. How common are these practices?*

It is only one case, but *Universal Building Products* may indicate a much broader problem. Although the caselaw does not reveal any recent reported cases like *Universal Building Products*, the circumstances point to the conclusion that these practices are not isolated

occurrences of misconduct by attorneys unaware of their ethical obligations in the bankruptcy context. The bankruptcy in *Universal Building Products* was a sizeable Chapter 11 case with sophisticated committee counsel (one was a prominent Washington firm and the other Delaware local counsel with an active practice before the bankruptcy court there) and not lawyers unfamiliar with the bankruptcy process. Although Judge Walrath did not reach a conclusion on the allegation, the objectors contended that committee counsel had engaged in similar actions in a number of other bankruptcy cases. But the misconduct was not limited to committee counsel. In fact, committee counsel argued in their defense that other firms had engaged in the same practices. Dr. Liu testified that a total of five law firms had contacted him to help solicit creditors. Even counsel for the debtors (who objected to the retention applications along with the U.S. Trustee) had approached Dr. Liu at a creditors' organizational meeting in another case to get his support for their appointment as committee counsel in that case.

Another sign that *Universal Building Products* may represent more widespread practices is that the type of misconduct at issue is hard to detect. Judge Waldrep makes this point in submitting his suggestion. Creditors who are being solicited may not be lawyers and may not be familiar with the bankruptcy process. They may not realize that anything improper is occurring, and are therefore unlikely to bring misconduct to light. Judge Waldrep believes that other lawyers in the process who do suspect that misconduct is occurring fail to report it to the court for fear of losing out on lucrative work as local counsel.

Finally, commentators reacting to *Universal Building Products* seem to accept that the conduct involved is not unheard of. A recent summary of the case published by the ABI's Ethics and Professional Compensation Committee, although critical of the opinion, acknowledges that the case accurately reflects practices that are familiar to experienced bankruptcy attorneys. *See*

Scott F. Gautier, In re Universal Building Products: *A Comment on Ethics in Committee Solicitation*, ABI Ethics and Professional Compensation Committee Newsletter, February 2011.

## 2. *What rulemaking is appropriate?*

The second issue is more complicated. The attorney ethics rules already prohibit the solicitation that occurred in *Universal Building Products*, as Judge Walrath's opinion demonstrates. Perhaps there is little more for the Bankruptcy Rules to do if lawyers are violating the rules of professional responsibility. On the other hand, the attorney conduct in *Universal Building Products* should be discouraged not only because of ethical concerns but also because the conduct distorts the process of creditors' committee formation. If creditors wish to form and join a committee with the sole goal of assuring the retention of their preferred counsel and not to fulfill the responsibilities of the committee, the committee will be less effective in representing unsecured creditors and monitoring the conduct of the case (and of committee counsel). That concern goes beyond whether the lawyer acted within the bounds of the ethics rules in connection with forming the committee. For example, the rules of professional responsibility would not prohibit solicitation of creditors with whom a lawyer has a prior professional relationship. Nevertheless, ethically permissible solicitation—if undisclosed—could lead to the same dysfunction in the formation and operation of the committee.

Relatedly, the obligation to disclose under Rule 2014 does not apply solely to lawyers. The rule speaks to all professionals seeking retention by the debtor or committee. It would be just as improper for a financial adviser that seeks to be retained by a committee to manipulate the process of forming the committee without disclosing that conduct on its application for

appointment. That suggests that the focus of any rulemaking by the Rules Committee should be the disclosure requirements under Rule 2014.

It could be argued that Rule 2014 is already sufficiently broad to cover the kind of misconduct in *Universal Building Products*. After all, Judge Walrath's decision rested in part on the lawyers' failure to make adequate disclosure under that rule of the circumstances leading to the committee's selection of counsel. And courts have been unforgiving when enforcing Rule 2014. See, e.g., *United States v. Gellene*, 182 F.3d 578, 588 (7th Cir. 1999) ("The disclosure requirements [under Rule 2014] apply to all professionals and are not discretionary. The professionals cannot pick and choose which connections are irrelevant or trivial." (internal quotation marks omitted)); see also *In re Crivello*, 134 F.3d 831, 839 (7th Cir. 1998) ("[A] bankruptcy court should punish a willful failure to disclose connections under [Rule 2014] as severely as an attempt to put forth a fraud on the court."). At the same time, the very generality of Rule 2014 may mislead counsel or other professionals into believing that disclosure may also be made at a high level of generality. Counsel in *Universal Building Products* disclosed that they had a prior relationship with Dir. Liu in other cases in which he acted for a creditor or served as a translator for a creditors' committee. But the retention application did not (at least initially) include details about Dr. Liu's role in soliciting creditor interest in a committee or the support by counsel for Dr. Liu's efforts.

### 3. *Should the Advisory Committee defer to the U.S. Trustee Program?*

The third issue is whether the problems highlighted by *Universal Building Products* should be left to the U.S. Trustee Program to address in the first instance. The U.S. Trustee generally controls the formation of creditors' committees under Code § 1102(a), and the U.S.

Trustee Program may have a better sense whether a serious problem exists and what steps could be taken to address it. Judge Walrath directed the final portion of her opinion to the U.S. Trustee and urged that office to consider implementing procedures to reduce the likelihood of undue influence on the decision of a committee to hire professionals. She recommended, for example, that creditors be kept in a room separate from prospective professionals (who are not representing a client eligible to serve on the committee) before the committee formation meeting. She also recommended that the questionnaire sent to prospective committee members be amended to include questions about solicitation by anyone in connection with the case. Although the Executive Office of the U.S. Trustee has not issued any formal policy changes in response to *Universal Building Products*, it appears that some of the regional offices have taken responsive action in the wake of the case.

The circumstances of *Universal Building Products* would ordinarily merit immediate discussion of responsive rulemaking by the Advisory Committee. Given the role of the U.S. Trustee Program in overseeing creditors' committees, however, the Subcommittee recommends that the Advisory Committee await further study by the Executive Office of the U.S. Trustee. If that agency suggests the adoption of amendments to the Bankruptcy Rules—or suggests that no amendments are called for—their suggestion will be helpful to the Advisory Committee's further consideration of the issue. The Subcommittee has been advised that the agency is prepared to give a preliminary report on what steps they have taken, or will take, in response to Judge Walrath's opinion in time for the Advisory Committee's September meeting.

# TABS 11-20





Subcommittee on Technology and Cross Border Insolvency  
Stern v. Marshall  
IRS allocation of internet services  
Suggestions 11-BK-C, 11-BK-D, 11-BK-E, and 11-BK-F  
Bankruptcy-related legislation  
Section 521(i)  
*Bull Pen*

Items 11 - 20 will be oral reports.



# TAB 21



**Bankruptcy Rules Tracking Docket (By Rule or Form Number)**

**8/31/11**

<b>Suggestion</b>	<b>Docket No., Source &amp; Date</b>	<b>Status Pending Further Action</b>	<b>Tentative Effective Date</b>
<p><b>Rule 1004.2 (new)</b> Chapter 15 rule</p>	<p>Suggestion 05-BK-B Judge Samuel Bufford 1/20/06</p> <p>Committee proposal</p>	<p>3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised rule 9/06 - Committee approved for publication 3/07 - Publication deferred for further study 6/07 - Subcommittee discussed 9/07 - Committee approved for publication, held in bull pen 2/08 - Subcommittee discussed 3/08 - Committee approved for publication 6/08 - Standing Committee approved publication 8/08 - Published for comment 1/09 - Subcommittee drafted revised rule 3/09 - Committee approved revised rule for republication 6/09 - Standing Committee approved republication 8/09 - Republished for comment 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference approved 4/11 - Supreme Court approved</p>	<p>12/1/11</p>

<p><b>Rule 1007(c)</b> Conform to deadline in (a)(2) to file a list of creditors in an involuntary case</p>	<p>Committee proposal  Suggestion 10-BK-L Susan Ivancsics, Court Services Admin, Northern District of Indiana</p>	<p>9/10 - Committee approved as technical amendment, Reporter to draft Committee Note 6/11 - Standing Committee approved as technical amendment 9/11 - Judicial Conference agenda</p>	<p>12/1/12</p>
<p><b>Rule 1007(b)(7)</b> Allow financial management course provider to file Form 23</p>	<p>Suggestion 09-BK-I Dana C. McWay on behalf of the Next Generation Bankruptcy CM/ECF Clerk's Office Functional Requirements Group</p>	<p>4/10 - Committee considered, referred to Subcommittee on Consumer Issues 8/10 - Subcommittee considered 9/10 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment</p>	<p>12/1/13</p>
<p><b>Rule 1007, Exhibit D to Official Form 1</b> Amendment of 11 U.S.C. 109(h)(1) by Bankruptcy Technical Corrections Act</p>	<p>David Sime Clerk, District of Utah</p>	<p>7/11 - Discussed by Consumer and Forms subcommittees 9/11 - Committee agenda</p>	
<p><b>Rule 1014</b> Cases filed in different districts by a debtor and certain affiliates</p>	<p>Suggestion 10-BK-J Judge Linda Riegle</p>	<p>4/11- Committee discussed, referred to Business Subcommittee 6/11, 8/11 - Subcommittee discussed 9/11 - Committee agenda</p>	

<p><b>Rule 2003</b>  Procedure for holding open § 341 meetings to give chapter 13 debtors more time to file tax returns</p>	<p>Suggestion 08-BK-L  Judge Keith Lundin</p>	<p>1/09 - Subcommittee on Consumer Issues discussed  3/09 - Committee approved for publication  6/09 - Standing Committee approved for publication  8/09 - Published for comment  2/10 - Consumer Subcommittee considered comments  4/10 - Committee approved  6/10 - Standing Committee approved  9/10 - Judicial Conference approved  4/11 - Supreme Court approved</p>	<p>12/1/11</p>
<p><b>Rule 2015(a)(3)</b>  Correct reference to 11 U.S.C. § 704(a)(8).</p>	<p>William Redden, Clerk  Eastern District of Virginia</p>	<p>3/11 - Referred to Chair and Reporter  4/11 - Committee approved as technical amendment  6/11 - Standing Committee approved as technical amendment  9/11 - Judicial Conference agenda</p>	<p>12/1/12</p>

<p><b>Rule 2019</b> Repeal the rule as unnecessary</p>	<p>Suggestion 07-BK-G Loan Syndication and Trading Association, Securities Industry and Financial Markets Association</p>	<p>3/08 - Committee discussed, Chair directed the Assistant Reporter to prepare a review of the case law on Rule 2019 10/08 - Committee discussed, referred to Subcommittee on Business Issues 12/08, 2/09 - Subcommittee prepared revised rule 3/09 - Committee approved revised rule for publication 6/09 - Standing Committee approved for publication 8/09 - Published for comment 2/10 - Public hearing 2/10 - Business Subcommittee considered comments 4/10 - Committee approved revised amendments 6/10 - Standing Committee approved 9/10 - Judicial Conference approved 4/11 - Supreme Court approved</p>	<p>12/1/11</p>
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<p><b>Rules 3001(c), 3002.1 (new)</b>  Disclosure of postpetition mortgage fees, changes in payment amount, procedure after debtor has completed chapter 13 plan payments</p>	<p>Committee proposal</p>	<p>5/08 - Subcommittee on Consumer Issues discussed  10/08 - Committee considered  12/08 - Consumer Subcommittee prepared revised rules  3/09 - Committee approved revised rules for publication  6/09 - Standing Committee approved for publication  8/09 - Published for comment  2/10 - Public hearing  2/10 - Consumer Subcommittee considered comments  4/10 - Committee approved revised amendments  6/10 - Standing Committee approved  9/10 - Judicial Conference approved  4/11 - Supreme Court approved</p>	<p>12/1/11</p>
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<p><b>Rule 3001, Official Form 10</b> Facilitate identification of stale claims and inadequately documented claims filed after bulk transfer of consumer debts</p>	<p>Suggestion 08-BK-J Judge A. Thomas Small</p>	<p>1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved amendment to Rule 3001(c)(1) for publication with mortgage amendments to Rules 3001, 3002.1 (see above); certification approved, added to pending amendments to Form 10 6/09 - Standing Committee approved for publication 8/09 - Published for comment 2/10 - Public hearing 2/10 - Consumer Subcommittee considered comments 4/10 - Committee approved republication of revised Rule 3001 and publication of Form 10 with certification 6/10 - Standing Committee approved publication 8/10 - Published for comment 2/11 - Public hearing 2/11 - Subcommittee considered comments 4/11 - Committee approved as revised 6/11 - Standing Committee approved 9/11 - Judicial Conference agenda</p>	<p>12/1/12 Rule 3001  12/1/11 Form 10</p>
<p><b>Rule 3001(c)</b> Discrepancy between the rule and paragraph 7 of instructions for Form 10</p>	<p>Comment 10-BK-02 Linda Spaight AO US Courts, BCAD</p>	<p>3/11 – Forms Subcommittee considered 4/11 - Committee approved as a technical amendment 6/11 - Standing Committee approved as a technical amendment 9/11 - Judicial Conference agenda</p>	<p>12/1/12</p>

<p><b>Rule 3002(a)</b> Require secured creditors to file proofs of claim</p>	<p>Suggestion (11-BK-B) Judge A. Benjamin Goldgar</p>	<p>7/11 - Consumer Subcommittee discussed 9/11 - Committee agenda</p>	
<p><b>Rule 3007(a)</b> Disposition of objections to claims by negative notice</p>	<p>Suggestion 09-BK-H Judge Margaret Dee McGarrity on behalf of the Bankruptcy Judges Advisory Group</p>	<p>1/10 - Subcommittee on Consumer Issues considered 4/10 - Committee discussed, referred to Subcommittee on Consumer issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Subcommittee on Consumer issues 12/10 - Subcommittee considered 4/11 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment</p>	<p>12/1/13</p>
<p><b>Rule 3007(a)</b> Clarify service requirements for objections to claims</p>	<p>Suggestion (09-BK-N) Judge Michael E. Romero on behalf of the Bankruptcy Judges Advisory Group</p>	<p>4/10 - Committee discussed, referred to Subcommittee on Consumer issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Subcommittee on Consumer issues 12/10 - Subcommittee considered 4/11 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment</p>	<p>12/1/13</p>
<p><b>Rule 4004(c)(1)(J)</b> Hearing on reaffirmation agreement</p>	<p>Suggestion 10-BK-K Judge Paul Mannes</p>	<p>4/11 - Committee discussed, referred to Consumer Subcommittee 7/11 - Subcommittee discussed 9/11 - Committee agenda</p>	

<p><b>Rules 4004(d), 7001(4)</b>  Classification of proceedings to object to or revoke discharge as adversary proceedings; objections to revoke discharge in gap period</p>	<p>Suggestion 08-BK-E  Judge Frank Easterbrook</p> <p>Zedan v. Habas, 529 F.3d 398 (7th Cir. 2008)</p>	<p>10/08 - Committee considered, Rule 4004 gap period issues referred to Subcommittee on Consumer Issues, no further action on classification  12/08, 1/09 - Subcommittee prepared revised gap period rule  3/09 - Committee approved revised gap rule for publication  6/09 - Standing Committee approved for publication  8/09 - Published for comment  2/10 - Comments considered by Consumer Subcommittee  4/10 - Committee approved Rule 4004 gap period amendment  6/10 - Standing Committee approved  9/10 - Judicial Conference approved  4/11 - Supreme Court approved</p>	<p>12/1/11</p>
<p><b>Rule 5009(b)</b>  Conform rule to amendment to Rule 1007(b)(7)</p>	<p>Committee Proposal (technical amendment)</p>	<p>12/10 - Considered by Consumer Subcommittee  4/11 - Committee approved publication  6/11 - Standing Committee approved publication  8/11 - Published for comment</p>	<p>12/1/13</p>

<p><b>Rule 6003</b> Issuance of orders during 20-day cooling off period</p>	<p>Suggestion 08-BK-D Bankruptcy Judges Advisory Group</p>	<p>3/08 - Committee discussed 8/08 - Subcommittee on Attorney Conduct and Health Care discussed 10/08 - Committee approved for publication 1/09 - Standing Committee approved for publication 8/09 - Published for comment 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference approved 4/11 - Supreme Court approved</p>	<p>12/1/11</p>
<p><b>Rules 7004(e), 7012, 9006(f)</b> Provide that the deadline for responding to a summons runs from the date of service, not the date of issuance</p>	<p>Suggestion 11-BK-F Chief Judge Peter W. Bowie</p>	<p>9/11 - Committee agenda</p>	
<p><b>Rules 7016, 8001</b> Permit parties to agree that their appellate options will be limited to no more than one appeal or to no appeal at all</p>	<p>Suggestion 11-BK-E Judge A. Thomas Small</p>	<p>9/11 - Committee agenda</p>	

<p><b>Rules 7054(b)</b> Time provisions</p>	<p>Committee proposal</p>	<p>10/09 - Committee approved changing 5 days to 7 days, deferred 1-day provision 11/09 - BJAG recommended changing 1 day to 7 days 2/10 - Subcommittee on Business Issues considered 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for comment 2/11 - One comment 4/11 - Committee approved 6/11 - Standing Committee approved 9/11 - Judicial Conference agenda</p>	<p>12/1/12</p>
<p><b>Rule 7054</b> Finding that there is a gap in the procedure for requesting allowance of attorney's fees in adversary proceedings</p>	<p>Charlie Y, Inc., v. Carey B.A.P. 9th Cir. (Mar. 4, 2011)</p>	<p>4/11 - Committee discussed. Referred to Consumer and Business Subcommittees 7/11 - Consumer Subcommittee discussed 7/11 - Business Subcommittee discussed 9/11 - Committee agenda</p>	
<p><b>Rule 7056, Civil Rule 56</b> Timing of summary judgment motions in contested matters and adversary proceedings after civil rule amended</p>	<p>Judge Wedoff</p>	<p>3/09 - Committee discussed 10/09 - Committee considered, referred to Subcommittee on Consumer Issues 2/10 - Note in newsletters for bankruptcy judges and clerks 3/10 - Subcommittee considered 4/10 - Committee approved for publication (see Rule 7054(b) above)</p>	<p>12/1/12</p>

<p><b>Rules 8001 - 8020</b> Revise Part VIII of the rules to more closely follow the Appellate Rules</p>	<p>Eric Brunstad</p>	<p>3/08 - Referred to Privacy, Public Access and Appeals Subcommittee 5/08 - Subcommittee discussed 8/08 - Subcommittee discussed 10/08 - Committee discussed 3/09 - Open meeting of Subcommittee on Privacy, Public Access, and Appeals 3/09 - Committee discussed 6/09 - Subcommittee discussed comments at open meeting 9/09 - Subcommittee discussed comments at 2<sup>nd</sup> open meeting 10/09 - Report to committee 12/09 - Revised draft incorporated comments at 2<sup>nd</sup> open meeting 2/10 - Subcommittee considered 4/10 - Committee received progress report 8/10, 9/10 - Subcommittee calls 9/10 - Report on Committee agenda 12/10, 2/11 - Subcommittee calls 4/11 - Discussed during joint meeting with Appellate Rules Committee 7/11 - Drafting group reviewed and revised the draft 9/11 - Committee agenda</p>	
<p><b>Rule 8006</b> Premature filing of appellant's designation of items in the record on appeal</p>	<p>John Shaffer</p>	<p>12/07 - Subcommittee on Privacy, Public Access, and Appeals discussed 2/08 - Considered by subcommittee 3/08 - Committee took no action with the understanding that the issue could be addressed as part of a comprehensive review of the Part VIII rules</p>	

<p><b>Rules 8007.1 (new), 9023, 9024</b> Indicative rulings</p>	<p>Committee proposal</p>	<p>8/08 - Subcommittee on Privacy, Public Access, and Appeals discussed 10/08 - Committee tentatively approved new Rule 8007.1 and Rule 9024 amendment for publication 3/09 - Rules 8007.1 and 9024 assigned to the Bull Pen</p>	
<p><b>Rule 9006(d)</b> Delete as superfluous, not properly located in the Rules, and may create confusion</p> <p><b>Rules 9013, 9014</b></p>	<p>Suggestion 10-BK-D Judge Raymond T. Lyons</p> <p>Committee proposal</p>	<p>8/10 - Considered by the Subcommittee on Business Issues 9/10 - Committee approved amendments to Rules 9006, 9013, 9014 6/11 - Standing Committee approved publication 8/11 - Published for comment</p>	<p>12/1/13</p>
<p><b>Rule 9016</b> Impact of proposed amendments to Civil Rules 37 and 45</p>	<p>Committee proposal</p>	<p>4/11 - Committee discussed, deferred until after civil rules are published 8/11 - Rules 37 and 45 published 9/11 - Bull Pen</p>	
<p><b>Bankruptcy Rules</b> Impact of decision in Stern v. Marshall, 131 S. Ct. 2594 (2011)</p>	<p>Committee proposal</p>	<p>9/11 - Committee agenda</p>	



<p><b>New Rule</b> Automatic dismissal under § 521(i)</p>	<p>Suggestion 06-BK-011 Judge Marvin Isgur</p> <p>Suggestion 06-BK-020 National Association of Consumer Bankruptcy Attorneys</p>	<p>6/07 - Subcommittee on Consumer Issues discussed 9/07 - Committee discussed 2/08 - Considered by Consumer Subcommittee 3/08 - Committee discussed 10/08, 3/09, 10/09 - Committee discussed, Reporter to continue monitoring 4/10, 9/10, 4/11, 9/11 - Committee reports</p>	
<p><b>New Rule, New Form</b> Applications for allowance of administrative expenses</p>	<p>Suggestion 09-BK-J Judge William Stone, Jr.</p>	<p>4/10 - Committee considered, referred to Subcommittee on Business Issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Business Subcommittee 3/11 - Subcommittee discussed 4/11 - Committee discussed 6/11 - Subcommittee discussed 9/11 - Committee agenda</p>	
<p><b>New Rule</b> Reports by trusts under § 524(g)</p>	<p>Suggestion 10-BK-H Institute for Legal Reform, an affiliate of the U.S. Chamber of Commerce</p>	<p>3/11 - Business Subcommittee discussed 4/11 - Committee discussed 6/11, 8/11 - Subcommittee discussed 9/11 - Committee agenda</p>	
<p><b>New Rule</b> Provide more clarity in the selection for creditors' committees and to discourage unethical behavior by counsel</p>	<p>Suggestion 10-BK-N Judge Thomas W. Waldrep, Jr.</p>	<p>4/11 - Committee discussed, referred to Attorney Conduct Subcommittee 7/11 - Subcommittee discussed 9/11 - Committee agenda</p>	

<b>New Rule</b> Publication of notice of the sale of estate assets	Suggestion 10-BK-F Douglas M. Neistat	3/11 - Business Subcommittee discussed 4/11 - Committee discussed, referred to AO Bankruptcy Judges Advisory Group (BJAG)	
<b>New Rule</b> Admission to practice and local counsel requirements for governmental entities	Suggestion 10-BK-M States' Association of Bankruptcy Attorneys	4/11 - Committee discussed, referred to Attorney Conduct Subcommittee 7/11 - Subcommittee discussed 9/11 - Committee agenda	
<b>New Rule</b> Eliminate unneeded regular mailings in bankruptcy cases	Suggestion 11-BK-A David Andersen	4/11 - Committee discussed, referred to BJAG and CM/ECF Next/Gen Project	
<b>All Official Forms</b> Add a bar code indicating the form number	Suggestion 10-BK-E Scooter LeMay IT Director, Middle District of Alabama	2/11 - Forms Subcommittee considered 4/11 - Committee discussed, referred to NextGen	
<b>Official Form 1</b> Conform to Rule 1004.2 (technical amendment)	Committee Proposal	7/10 - Subcommittee on Forms considered 8/10 - Committee approved, referred to Forms Subcommittee for final review 2/11 - Subcommittee reviewed 6/11 - Standing Committee approved as technical amendment 9/11 - Judicial Conference agenda	12/1/11

<p><b>Official Form 6C</b> Extent of claimed exemption, <i>Schwab v. Reilly</i>, 130 S. Ct. 2652 (2010),</p>	<p>Judge Eugene Wedoff</p>	<p>7/09 - Subcommittee on Consumer Issues considered 10/09 - Committee discussed 4/10 - Committee discussed 6/10 - Supreme Court decision 8/10 - Consumer and Forms Subcommittees considered 9/10 - Committee considered, referred to Consumer, Forms Subcommittees 10/10 - Subcommittees considered 4/11 - Committee approved 4-column version for publication 6/11 - Standing Committee approved publication 8/11 - Published for comment</p>	<p>12/1/12</p>
<p><b>Official Form 7</b> Revise definition of an “insider”</p>	<p>Suggestion 10-BK-I Aaron Cahn</p>	<p>2/11 - Subcommittee on Forms considered 4/11 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment</p>	
<p><b>Official Form 9(A - I)</b> Conform to Rule 2003(e) amendment, fix typos</p>	<p>Committee Proposal</p>	<p>7/10 - Subcommittee on Forms considered 9/10 - Committee approved as technical amendment, referred to Forms Subcommittee for final review 2/11 - Subcommittees reviewed 6/11 - Standing Committee approved as technical amendment 9/11 - Judicial Conference agenda</p>	<p>12/1/11</p>

<p><b>Official Form 10, Rule 3001</b> Inconsistency on attachment of original papers, highlight the word “redacted”</p>	<p>Committee proposal  Suggestion 10-BK-C Terese Buthod, Clerk, Eastern District of Oklahoma</p>	<p>7/09 - Subcommittee on Forms considered 10/09 - Committee considered 3/10 - Forms Subcommittee considered 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for comment 2/11 - Forms Subcommittee considered comments 4/11 - Committee approved 6/11 - Standing Committee approved 9/11 - Judicial Conference agenda</p>	<p>12/1/11</p>
<p><b>Official Form 10, Rule 3001</b> Revise Form 10 certification to deter stale claims</p>	<p>Suggestion 08-BK-J Judge A. Thomas Small  Committee proposal</p>	<p>1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved revised certification, added to pending amendments to Form 10 (see above)</p>	<p>12/1/11</p>
<p><b>Official Form 10</b> Use of pronouns</p>	<p>Committee proposal</p>	<p>10/09 - Referred to Subcommittee on Forms and included in pending amendments to Form 10 (see above)</p>	<p>12/1/11</p>
<p><b>Official Form 10</b> Interest rate for secured tax claims</p>	<p>Christopher Kohn</p>	<p>7/09 - Subcommittee on Forms considered 10/09 - Committee approved variable interest rate language to be included in revised Form 10 (see above)</p>	<p>12/1/11</p>

<b>Official Form 10</b> Space for claim identifier	Suggestion 09-BK-K George Stevenson, chapter 13 trustee	7/09 - Subcommittee on Forms considered 3/10 - Subcommittee on Consumer Issues considered revised suggestion 4/10 - Committee approved for publication as part of Form 10 amendments (see above)	12/1/11
<b>Official Form 10</b> Add space for a date stamp	Suggestion 10-BK-B Rena Myers, case administrator, Eastern District of Tennessee	3/10 - Subcommittee on Consumer Issues considered revised suggestion 4/10 - Committee approved for publication as part of Form 10 amendments (see above)	12/1/11
<b>Official Form 10</b> Add reminder in Box 7 to file new forms	Committee proposal	4/11 - Committee approved, deferred for Rule 3001 amendments in 2012 9/11 - Held in Bull Pen	12/1/12
<b>Official Form 10</b> provide a space for designating the amount of a general unsecured claim	Suggestion 11-BK-D Sabrina L. McKinney	9/11 - Committee agenda	

<p><b>Official Forms 10(Attach. A), 10(Suppl. 1) 10(Suppl. 2)</b> New forms to address problems related to home mortgage claims</p>	<p>Suggestion 08-BK-K Judges Isgur, Magner, and Bohm</p>	<p>3/09 - Committee discussed, referred to Subcommittee on Forms 8/09 - Court posts revised forms after public comment 7/09 - Subcommittee considered 10/09 - Committee discussed, referred to Forms subcommittee 12/09 - Judge Isgur testified 3/10 - Subcommittee considered draft forms 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for comment 2/11 - Public hearing 2/11 - Subcommittee considered 4/11 - Committee approved Form 10(Attach.A), Committee approved Form 10(Suppl.1) and Form 10 (Suppl.2) as revised 6/11 - Standing Committee approved 9/11 - Judicial Conference agenda</p>	<p>12/1/11</p>
<p><b>Official Forms 10(Attach. A) 10(Suppl. 1) 10(Suppl. 2)</b> How to gather input on new mortgage forms, the desirability of including a complete loan history</p>	<p>Committee proposal</p>	<p>7/11 - Consumer and Forms subcommittees discussed 9/11 - Committee agenda</p>	

<p><b>Official Forms 22A, 22C</b> Deducting IRS car ownership expense for a car owned outright, <i>Ransom v. FIA Card Servs.</i>, 131 S. Ct. 716 (2011)</p>	<p>Mark Redmiles, EOUST</p>	<p>2/11 - Forms Subcommittee considered 4/11 - Committee discussed, proposed change not approved</p>	
<p><b>Official Forms 22A, 22C</b> Deducting telecommunications expenses by debtor who is not self-employed</p>	<p>William J. Neild Comment 09-BK-032</p>	<p>4/10 - Committee discussed, referred to Subcommittee on Consumer Issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Forms Subcommittee 2/11 - Subcommittee considered 4/11 - Committee approved, referred to Forms Subcommittee for final review 2/11 - Subcommittee reviewed 6/11 - Standing Committee approved for publication 8/11 - Published for comment</p>	<p>12/1/12</p>
<p><b>Official Form 22A, Interim Rule 1007-I</b> Exclusion from means test for Reservists and members of National Guard - Pub. L. 110-438 ends on 12.18.11</p>	<p>Carl Barnes, Best Case</p>	<p>4/11 - Committee discussed, wait to see if the exclusion is extended 7/11 - Forms Subcommittee discussed 9/11 - Committee agenda</p>	

<p><b>Official Forms 22A, 22C</b> Change in IRS allocation of internet services in National Standards and Local Standards</p>	<p>Mark Redmiles</p>	<p>9/11 - Committee agenda</p>	
<p><b>Official Forms 22A, 22C</b> Allow below-median income debtors to file shortened versions of the forms</p>	<p>Suggestion 11-BK-C Wendell J. Sherk</p>	<p>9/11 - Committee agenda</p>	
<p><b>Official Form 22C</b> Calculation of projected disposable income under § 1325(b)(1), <i>Hamilton v. Lanning</i>, 130 S. Ct. 2464 (2010)</p>	<p>Judge Eugene Wedoff</p>	<p>4/10 - Committee discussed 6/10 - Supreme Court decision 8/10 - Consumer and Forms Subcommittees considered 9/10 - Committee approved, referred to Consumer, Forms Subcommittees for final review 2/11 - Subcommittees reviewed 6/11 - Standing Committee approved publication 8/11 - Published for comment</p>	<p>12/1/12</p>
<p><b>Official Form 23</b> Conform to amendment to Rule 1007(b)(7)</p>	<p>Committee proposal</p>	<p>9/10 - Committee discussed, referred to Forms Subcommittee for final review 2/11 - Subcommittee reviewed 4/11 - Held in the Bullpen</p>	<p>12/1/13</p>



<p><b>Official Form 25A</b> Change effective date from 11 business days after entry of confirmation</p>	<p>Committee proposal</p>	<p>10/09 - Referred to Subcommittee on Business Issues 2/10 - Subcommittee considered 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for comment 2/11 - No comments 4/11 - Committee approved 6/11 - Standing Committee approved 9/11 - Judicial Conference agenda</p>	<p>12/1/11</p>
<p><b>New Form</b> Form chapter 13 plan</p>	<p>Suggestion 10-BK-G Judge Margaret Mahoney</p> <p>Comment 10-BK-M States' Association of Bankruptcy Attorneys (SABA)</p>	<p>2/11 - Consumer and Forms Subcommittees discussed 4/11 - Assigned to Forms Subcommittee, with direction to present a proposal for advancing the recommendation at the September meeting 6/11 - Working group appointed 6/11, 8/11 - Working group discussed 8/11 - Judge Wedoff requested information on local model chapter 13 plans 9/11 - Committee agenda</p>	
<p><b>Director's Form 240A/B(Alt.)</b> Conform to Bankruptcy Technical Corrections Act of 2010</p>	<p>Committee Proposal</p>	<p>9/10 - Committee approved 2/11 - Forms Subcommittee reviewed 4/11 - Held in Bullpen</p>	<p>12/1/11</p>

<p><b>Official Forms</b>  Alternatives to paper-based format for forms; renumber Official Forms</p>	<p>Judge James D. Walker, Jr.   Comment 06-BK-011  Judge Marvin Isgur   Patricia Ketchum</p>	<p>9/06 - Committee will coordinate a study with the Administrative Office  8/07 - Discussion of how to organize the study  9/07 - Committee discussed and authorized chair to create group  1/08 - Organizational meeting for Forms Modernization Project  2008 /2009/2010/2011 - Forms Modernization Project continues work, meetings in January, June  9/10 - Statement of Financial Affairs drafting session  9/10 - Progress report on agenda  10/10 - Form 22 drafting session  4/11 – Progress report  9/11 - New individual forms on committee agenda</p>	
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# TABS 22-24



Future meetings  
New business  
Adjourn

Items 22 – 24 will be oral reports.



## March 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7	8	9	10
11 Daylight Saving Begins Spring Forward	12	13	14	15	16	17 St. Patrick's Day
18	19	20 Spring Begins	21	22	23	24
25	26	27	28	29	30	31
February 2012	Printfree.com Printable Calendars Federal Holidays in Red					April 2012





# October 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8 Columbus Day Thanksgiving Canada	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31 Halloween			
September 2012	Printfree.com Printable Calendars Federal Holidays in Red					November 2012

