# PRELIMINARY DRAFT

# Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and the Federal Rules of Evidence

## Request For Comment

## Comments are Sought on Amendments to:

| | |
|---|---|
| Appellate Rules | 32, 35, and 40; and Appendix on Length Limits |
| Bankruptcy Rules | Restyled Rules Parts VII-IX; Rules 1007, 4004, 5009, 7001, 9006; new Rule 8023.1; and Official Form 410A |
| Civil Rule | 12 |
| Evidence Rules | 611, 613, 801, 804, and 1006 |

Written Comments Due by
February 16, 2023

UNITED STATES COURTS

Prepared by the
Committee on Rules of Practice and Procedure
Judicial Conference of the United States

AUGUST 2022

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



# M E M O R A N D U M

TO: The Bench, Bar, and Public

FROM: Honorable John D. Bates, Chair
Committee on Rules of Practice and Procedure

DATE: August 15, 2022

RE: Request for Comments on Proposed Amendments to Federal Rules and Forms

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The Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee) has approved for publication for public comment the following proposed amendments to existing rules and forms, as well as one new rule:

- Appellate Rules 32, 35, 40, and Appendix on Length Limits
- Bankruptcy Restyled Rules Parts VII to IX; Rules 1007, 4004, 5009, 7001, 9006, and proposed new Rule 8023.1
- Official Bankruptcy Form 410A
- Civil Rule 12
- Evidence Rules 611, 613, 801, 804, and 1006

The proposals, supporting materials, and instructions on submitting written comments are posted on the Judiciary's website at:

https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment

## Opportunity to Submit Written Comments

Comments concerning the proposals must be submitted electronically no later than **February 16, 2023**. Please note that comments are part of the official record and publicly available.

## Opportunity to Appear at Public Hearings

On the following dates, the advisory committees will conduct public hearings on the proposals either virtually or in person:

- Appellate Rules on October 13, 2022 and January 5, 2023;
- Bankruptcy Rules on January 6, 2023 and January 13, 2023;
- Civil Rules on October 12, 2022 and January 5, 2023; and
- Evidence Rules on January 20, 2023 and January 27, 2023.

If you wish to appear and present testimony regarding a proposed rule or form, you must notify the office of Rules Committee Staff **at least 30 days before the scheduled hearing** by emailing RulesCommittee_Secretary@ao.uscourts.gov. Hearings are subject to cancellation due to lack of requests to testify.

At this time, the Standing Committee has only approved the proposals for publication and comment. After the public comment period closes, all comments will be carefully considered by the relevant advisory committee as part of its consideration of whether to proceed with a proposal.

Under the Rules Enabling Act, 28 U.S.C. §§ 2072-2077, if any of the published proposals are later approved, with or without revision, by the relevant advisory committee, the next steps are approval by the Standing Committee and the Judicial Conference, and then adoption by the Supreme Court. If adopted by the Court and transmitted to Congress by May 1, 2024, absent congressional action, the proposals would take effect on December 1, 2024.

If you have questions about the rulemaking process or pending rules amendments, please contact the Rules Committee Staff at 202-502-1820 or visit https://www.uscourts.gov/rules-policies.

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**APPENDIX:**

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

**JOHN D. BATES**
CHAIR

**CHAIRS OF ADVISORY COMMITTEES**

**JAY S. BYBEE**
APPELLATE RULES

**DENNIS R. DOW**
BANKRUPTCY RULES

**ROBERT M. DOW, JR.**
CIVIL RULES

**RAYMOND M. KETHLEDGE**
CRIMINAL RULES

**PATRICK J. SCHILTZ**
EVIDENCE RULES

# MEMORANDUM

**TO:** Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

**FROM:** Judge Jay Bybee Chair
Advisory Committee on Appellate Rules

**RE:** Report of the Advisory Committee on Appellate Rules

**DATE:** December 8, 2021

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## I. Introduction

The Advisory Committee on the Appellate Rules met on Thursday, October 7, 2021, via Teams. The draft minutes from the meeting are attached to this report.

The Committee seeks approval for publication of a consolidation of Rule 35 and Rule 40, dealing with rehearing, along with conforming amendments to Rule 32 and the Appendix of Length Limits. (Part II of this report.)

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## II. Action Item for Approval for Publication

### Consolidation of Rules 35 and 40—Rehearing (18-AP-A)

For several years, the Advisory Committee has been considering a comprehensive revision of Rules 35 and 40. (June 2018 Standing Committee Agenda Book starting at page 84). Rule 35 addresses hearing and rehearing en banc, and Rule 40 addresses panel rehearing.

Under the current Rules, a lawyer must consider both Rule 35 and Rule 40 when petitioning for rehearing. Litigants frequently request both panel rehearing and rehearing en banc, and while a litigant seeking only panel rehearing need only rely on Rule 40, it would be necessary even in that instance to check both Rules. Reconciling the differences between the two current rules while combining petitions for panel rehearing and rehearing en banc in one rule would provide clear guidance.

At the June 2021 meeting of the Standing Committee, the Advisory Committee sought permission to publish a proposed amendment that abrogates Rule 35 and unites the two rules under Rule 40. The Committee sought to achieve the clarity and user-friendliness of unification while avoiding unnecessary changes. Members of the Standing Committee expressed support but raised concerns about some of the provisions. In many instances, the only defense offered was that the provision at issue already appeared in the existing rules and that the Advisory Committee was trying to minimize changes. The Standing Committee decided to remand the matter to the Advisory Committee with instructions to take a freer hand in clarifying and simplifying the language of the existing rules. Having done so, the Advisory Committee now seeks publication of a revised version of the proposal. (See Appendix for the full text.)

The fundamental feature of the proposed amendment remains the same. It revises Rule 40 to govern all petitions for rehearing (and the rare initial hearing en banc), but in keeping with a suggestion at the June Standing Committee meeting, Rule 35 is described as transferred to Rule 40 rather than abrogated. So, too, the fundamental structure remains the same.

- Rule 40(a) provides that a party may petition for panel rehearing, rehearing en banc, or both. It also states the general requirement of filing a single document.

- Rule 40(b) sets forth the required content for each kind of petition for rehearing, drawn from existing Rule 35(b)(1) and existing Rule 40(a)(2).

- Rule 40(c) describes when rehearing en banc may be ordered and the applicable voting protocols, drawn from existing Rule 35(a) and (f). It also reiterates clearly that a court may act sua sponte.

- Rule 40(d) brings together in one place uniform provisions governing matters such as the time to file, form, and length, drawn from existing Rule 35(b), (c), (d), and existing Rule 40(a), (b), and (d). It adds that any amendment to a decision restarts the clock for seeking rehearing.

- Rule 40(e) clarifies for litigants some of the actions a court that grants rehearing might take by clarifying the language of existing Rule 40(a)(4) and extending these provisions to rehearing en banc.

- Rule 40(f) provides that a petition for rehearing en banc does not limit a panel's authority to take action described in Rule 40(e).

- Rule 40(g) deals with initial hearing en banc, drawn from existing Rule 35.

The Standing Committee raised several particular concerns about language in the current rule that was carried over in the proposed amendment presented in June.

One concern was that the provision governing the required content of a petition for rehearing en banc lumps together (1) conflict with a Supreme Court decision and (2) conflict with a decision of the court to which the petition is addressed, while leaving ambiguous whether the required statement that "consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions" applies to both situations. Some thought that the only sensible reading is that the uniformity statement applies only to the intra-circuit conflict situation. *See* current Rule 35(b)(1)(A).

The provision governing the required content of a petition for rehearing en banc also lumps together (1) questions of exceptional importance and (2) inter-circuit conflict, treating the latter as an example of the former. *See* current Rule 35(b)(1)(B).

Another concern was a mismatch between the statements required in a petition for rehearing en banc and the circumstances which justify rehearing en banc. While the former specifically includes conflict with the Supreme Court, the latter does not—unless one treats conflict with the Supreme Court as a situation requiring consideration by the en banc court to secure and maintain uniformity of the court's decisions. *See* current Rule 35(a).

In addition, a member of the Standing Committee suggested that the time to seek initial hearing en banc should be earlier than the due date of the appellee's brief. *See* current Rule 35(c).

The Advisory Committee changed the proposed amendment to address these concerns.

First, four separate grounds for seeking rehearing en banc are now listed separately, so that a petition for rehearing en banc would have to begin with a statement that:

> (A) the panel decision conflicts with a decision of the court to which the petition is addressed (with citation to the conflicting case or cases) and the full court's consideration is therefore necessary to secure or maintain uniformity of the court's decisions;
>
> (B) the panel decision conflicts with a decision of the United States Supreme Court (with citation to the conflicting case or cases);
>
> (C) the panel decision conflicts with an authoritative decision of another United States court of appeals (with citation to the conflicting case or cases); or
>
> (D) the proceeding involves one or more questions of exceptional importance, each concisely stated.

Proposed Rule 40(b)(2). That is, intra-circuit conflicts, conflicts with the Supreme Court, inter-circuit conflicts, and questions of exceptional importance are treated as separate grounds for seeking rehearing en banc.

Second, to align the grounds for granting rehearing en banc with the grounds for seeking rehearing en banc, the provision governing when rehearing en banc may be ordered simply cross-references the provision governing the grounds on which it may be sought: "Ordinarily, rehearing en banc will not be ordered unless one of the criteria in Rule 40(b)(2)(A)–(D) is met."

Freed from a perceived imperative to minimize changes, the current proposal has also been more extensively polished by the style consultants.

In addition, the proposal includes conforming amendments to Rule 32(g) and the Appendix of Length Limits.

* * * * *

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
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EVIDENCE RULES

# MEMORANDUM

**TO:** Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

**FROM:** Judge Jay Bybee, Chair
Advisory Committee on Appellate Rules

**RE:** Report of the Advisory Committee on Appellate Rules

**DATE:** May 13, 2022

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## I. Introduction

The Advisory Committee on Appellate Rules met on Wednesday, March 30, 2022, in San Diego, California. The draft minutes from the meeting are attached to this report.

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The Advisory Committee also seeks publication of a minor change to the Appendix of Length Limits. (Part III of this report.)

* * * * *

## III. Action Item for Approval for Publication

### Appendix on Length Limits (18-AP-A)

At its last meeting in January 2022, the Standing Committee approved proposed amendments to Rules 35 and 40, along with conforming amendments to Rule 32(g) and the Appendix of Length Limits, for publication. These proposed amendments are scheduled to be published in August 2022.

Subsequently, the Advisory Committee learned that one additional conforming amendment should be made to the Appendix of Length Limits. As approved in January, the proposed amendment to the Appendix of Length Limits would change the table that lists the document types and applicable limits, but it would not change the bullet points prior to the table.

The third bullet point currently reads:

* * *

○ For the limits in Rules 5, 21, 27, 35, and 40:

* * *

Given the proposal to transfer the content of Rule 35 to Rule 40, the reference to Rule 35 should be deleted. This bullet point should be amended as follows:

* * *

○ For the limits in Rules 5, 21, 27, ~~35,~~ and 40:

* * *

This correction can be made before publication if the Standing Committee approves.

* * * * *

**PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE[1]**

**Rule 32. Form of Briefs, Appendices, and Other Papers**

* * * * *

**(g) Certificate of Compliance.**

(1) **Briefs and Papers That Require a Certificate.** A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), ~~35(b)(2)(A),~~ or ~~40(b)(1)~~ 40(d)(3)(A)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The person preparing the certificate may rely

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

on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

(2) **Acceptable Form.** Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

**Committee Note**

Changes to subdivision (g) reflect the consolidation of Rules 35 and 40.

**PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE**[1]

**Rule 35.** ~~**En Banc Determination**~~
(Transferred to Rule 40)

~~**(a) When Hearing or Rehearing En Banc May Be Ordered.** A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:~~

~~(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or~~

~~(2) the proceeding involves a question of exceptional importance.~~

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

~~**(b) Petition for Hearing or Rehearing En Banc.** A party may petition for a hearing or rehearing en banc.~~

~~(1) The petition must begin with a statement that either:~~

~~(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or~~

~~(B) the proceeding involves one or more questions of~~

~~exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.~~

~~(2) Except by the court's permission:~~

~~(A) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and~~

~~(B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.~~

~~(3) For purposes of the limits in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.~~

~~**(c) Time for Petition for Hearing or Rehearing En Banc.** A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be~~

~~filed within the time prescribed by Rule 40 for filing a petition for rehearing.~~

~~**(d) Number of Copies.** The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.~~

~~**(e) Response.** No response may be filed to a petition for an en banc consideration unless the court orders a response. The length limits in Rule 35(b)(2) apply to a response.~~

~~**(f) Call for a Vote.** A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.~~

**Committee Note**

For the convenience of parties and counsel, the amendment addresses panel rehearing and rehearing en banc together in a single rule, consolidating what had been separate, overlapping, and duplicative provisions of Rule 35 (hearing and rehearing en banc) and Rule 40 (panel rehearing). The contents of Rule 35 are transferred to

Rule 40, which is expanded to address both panel rehearing and en banc determination.

**PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE**[1]

**Rule 40. ~~Petition for~~ Panel Rehearing~~;~~ En Banc Determination**

**(a) ~~Time to File; Contents; Response; Action by the Court if Granted.~~ A Party's Options.** A party may seek rehearing of a decision through a petition for panel rehearing, a petition for rehearing en banc, or both. Unless a local rule provides otherwise, a party seeking both forms of rehearing must file the petitions as a single document. Panel rehearing is the ordinary means of reconsidering a panel decision; rehearing en banc is not favored.

~~(1) **Time.** Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days~~

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

~~after entry of judgment. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:~~

~~(A) the United States;~~

~~(B) a United States agency;~~

~~(C) a United States officer or employee sued in an official capacity; or~~

~~(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf including all instances in which the United States represents that person when the court~~

~~of appeals' judgment is entered or files the petition for that person.~~

~~(2) **Contents.** The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.~~

~~(3) **Response.** Unless the court requests, no response to a petition for panel rehearing is permitted. Ordinarily, rehearing will not be granted in the absence of such a request. If a response is requested, the requirements of Rule 40(b) apply to the response.~~

~~(4) **Action by the Court.** If a petition for panel rehearing is granted, the court may do any of the following:~~

~~(A) make a final disposition of the case without reargument;~~

~~(B) restore the case to the calendar for reargument or resubmission; or~~

~~(C) issue any other appropriate order.~~

**(b)** ~~**Form of Petition; Length.**~~ **Content of a Petition.** ~~The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Except by the court's permission:~~

(1) ~~a petition for panel rehearing produced using a computer must not exceed 3,900 words; and~~ **Petition for Panel Rehearing.** A petition for panel rehearing must:

(A) state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended; and

(B) argue in support of the petition.

(2) ~~a handwritten or typewritten petition for panel rehearing must not exceed 15 pages.~~ **Petition for Rehearing En Banc.** A petition for rehearing en banc must begin with a statement that:

(A) the panel decision conflicts with a decision of the court to which the petition is addressed (with citation to the conflicting case or cases) and the full court's consideration is therefore necessary to secure or maintain uniformity of the court's decisions;

(B) the panel decision conflicts with a decision of the United States Supreme Court (with citation to the conflicting case or cases);

(C) the panel decision conflicts with an authoritative decision of another

United States court of appeals (with citation to the conflicting case or cases); or

(D) the proceeding involves one or more questions of exceptional importance, each concisely stated.

**(c) When Rehearing En Banc May Be Ordered.** On their own or in response to a party's petition, a majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be reheard en banc. Unless a judge calls for a vote, a vote need not be taken to determine whether the case will be so reheard. Rehearing en banc is not favored and ordinarily will be allowed only if one of the criteria in Rule 40(b)(2)(A)-(D) is met.

**(d) Time to File; Form; Length; Response; Oral Argument.**

(1) **Time.** Unless the time is shortened or extended by order or local rule, any petition for panel rehearing or rehearing en banc must be filed within 14 days after judgment is entered—or, if the panel later amends its decision (on rehearing or otherwise), within 14 days after the amended decision is entered. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment or of an amended decision if one of the parties is:

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the court of appeals' judgment is entered or files that person's petition.

(2) **Form of the Petition.** The petition must comply in form with Rule 32.

Copies must be filed and served as Rule 31 prescribes, except that the number of filed copies may be prescribed by local rule or altered by order in a particular case.

(3) **Length.** Unless the court or a local rule allows otherwise, the petition (or a single document containing a petition for panel rehearing and a petition for rehearing en banc) must not exceed:

(A) 3,900 words if produced using a computer; or

(B) 15 pages if handwritten or typewritten.

(4) **Response.** Unless the court so requests, no response to the petition is permitted. Ordinarily, the petition

will not be granted without such a request. If a response is requested, the requirements of Rule 40(d)(2)-(3) apply to the response.

(5) **Oral Argument.** Oral argument on whether to grant the petition is not permitted.

**(e) If a Petition is Granted.** If a petition for panel rehearing or rehearing en banc is granted, the court may:

(1) dispose of the case without further briefing or argument;

(2) order additional briefing or argument; or

(3) issue any other appropriate order.

**(f) Panel's Authority After a Petition for Rehearing En Banc.** The filing of a petition for rehearing en banc does not limit the

panel's authority to take action described in Rule 40(e).

**(g) Initial Hearing En Banc**. On its own or in response to a party's petition, a court may hear an appeal or other proceeding initially en banc. A party's petition must be filed no later than the date when its principal brief is due. The provisions of Rule 40(b)(2), (c), and (d)(2)-(5) apply to an initial hearing en banc. But initial hearing en banc is not favored and ordinarily will not be ordered.

**Committee Note**

For the convenience of parties and counsel, the amendment addresses panel rehearing and rehearing en banc together in a single rule, consolidating what had been separate, overlapping, and duplicative provisions of Rule 35 (hearing and rehearing en banc) and Rule 40 (panel rehearing). The contents of Rule 35 are transferred to Rule 40, which is expanded to address both panel rehearing and en banc determination.

**Subdivision (a).** The amendment makes clear that parties may seek panel rehearing, rehearing en banc, or both. It emphasizes that rehearing en banc is not favored and that

rehearing by the panel is the ordinary means of reconsidering a panel decision. This description of panel rehearing is by no means designed to encourage petitions for panel rehearing or to suggest that they should in any way be routine, but merely to stress the extraordinary nature of rehearing en banc. Furthermore, the amendment's discussion of rehearing petitions is not intended to diminish the court's existing power to order rehearing sua sponte, without any petition having been filed. The amendment also preserves a party's ability to seek both forms of rehearing, requiring that both petitions be filed as a single document, but preserving the court's power (previously found in Rule 35(b)(3)) to provide otherwise by local rule.

**Subdivision (b).** Panel rehearing and rehearing en banc are designed to deal with different circumstances. The amendment clarifies the distinction by contrasting the required content of a petition for panel rehearing (preserved from Rule 40(a)(2)) with that of a petition for rehearing en banc (preserved from Rule 35(b)(1)).

**Subdivision (c).** The amendment preserves the existing criteria and voting protocols for ordering rehearing en banc, including that no vote need be taken unless a judge calls for a vote (previously found in Rule 35(a) and (f)).

**Subdivision (d)**. The amendment establishes uniform time, form, and length requirements for petitions for panel rehearing and rehearing en banc, as well as uniform provisions for responses to the petition and oral argument.

*Time*. The amended Rule 40(d)(1) preserves the existing time limit, after the initial entry of judgment, for filing a petition for panel rehearing (previously found in Rule 40(a)(1)) or a petition for rehearing en banc (previously found in Rule 35(c)). It adds new language extending the

same time limit to a petition filed after a panel amends its decision, on rehearing or otherwise.

*Form of the Petition*. The amended Rule 40(d)(2) preserves the existing form, service, and filing requirements for a petition for panel rehearing (previously found in Rule 40(b)), and it extends these same requirements to a petition for rehearing en banc. The amended rule also preserves the court's existing power (previously found in Rule 35(d)) to determine the required number of copies of a petition for rehearing en banc by local rule or by order in a particular case, and it extends this power to petitions for panel rehearing.

*Length*. The amended Rule 40(d)(3) preserves the existing length requirements for a petition for panel rehearing (previously found in Rule 40(b)) and for a petition for rehearing en banc (previously found in Rule 35(b)(2)). It also preserves the court's power (previously found in Rule 35(b)(3)) to provide by local rule for other length limits on combined petitions filed as a single document, and it extends this authority to petitions generally.

*Response*. The amended Rule 40(d)(4) preserves the existing requirements for a response to a petition for panel rehearing (previously found in Rule 40(a)(3)) or to a petition for rehearing en banc (previously found in Rule 35(e)). Unsolicited responses to rehearing petitions remain prohibited, and the length and form requirements for petitions and responses remain identical. The amended rule also extends to rehearing en banc the existing statement (previously found in Rule 40(a)(3)) that a petition for panel rehearing will ordinarily not be granted without a request for a response. The use of the word "ordinarily" recognizes that there may be circumstances where the need for rehearing is sufficiently clear to the court that no response is needed. But

before granting rehearing without requesting a response, the court should consider that a response might raise points relevant to whether rehearing is warranted or appropriate that could otherwise be overlooked. For example, a responding party may point out that an argument raised in a rehearing petition had been waived or forfeited, or it might point to other relevant aspects of the record that had not previously been brought specifically to the court's attention.

*Oral argument*. The amended Rule 40(d)(5) extends to rehearing en banc the existing prohibition (previously found in Rule 40(a)(2)) on oral argument on whether to grant a petition for panel rehearing.

**Subdivision (e)**. The amendment clarifies the existing provisions empowering a court to act after granting a petition for panel rehearing (previously found in Rule 40(a)(4)), extending these provisions to rehearing en banc as well. The amended language alerts counsel that, if a petition is granted, the court might call for additional briefing or argument, or it might decide the case without additional briefing or argument. *Cf.* Supreme Court Rule 16.1 (advising counsel that an order disposing of a petition for certiorari "may be a summary disposition on the merits").

**Subdivision (f)**. The amendment adds a new provision concerning the authority of a panel to act while a petition for rehearing en banc is pending.

Sometimes, a panel may conclude that it can fix the problem identified in a petition for rehearing en banc by, for example, amending its decision. The amendment makes clear that the panel is free to do so, and that the filing of a petition for rehearing en banc does not limit the panel's authority.

A party, however, may not agree that the panel's action has fixed the problem, or a party may think that the panel has created a new problem. If the panel amends its decision while a petition for rehearing en banc is pending, the en banc petition remains pending until its disposition by the court, and the amended Rule 40(d)(1) specifies the time during which a new rehearing petition may be filed from the amended decision. In some cases, however, there may be reasons not to allow further delay. In such cases, the court might shorten the time for filing a new petition under the amended Rule 40(d)(1), or it might shorten the time for issuance of the mandate or might order the immediate issuance of the mandate under Rule 41. In addition, in some cases, it may be clear that any additional petition for panel rehearing would be futile and would serve only to delay the proceedings. In such cases, the court might use Rule 2 to suspend the ability to file a new petition for panel rehearing. Before doing so, however, the court ought to consider the difficulty of predicting what a party filing a new petition might say.

**Subdivision (g)**. The amended Rule 40 largely preserves the existing requirements concerning the rarely invoked initial hearing en banc (previously found in Rule 35). The time for filing a petition for initial hearing en banc (previously found in Rule 35(c)) is shortened, for an appellant, to the time for filing its principal brief. The other requirements and voting protocols, which were identical as to hearing and rehearing en banc, are incorporated by reference. The amendment adds new language to remind parties that initial hearing en banc is not favored and ordinarily will not be ordered.

**Appendix:**
**Length Limits Stated in the**
**Federal Rules of Appellate Procedure**

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 32(f).
- If you use a word limit or a line limit (other than the word limit in Rule 28(j)), you must file the certificate required by Rule 32(g).
- For the limits in Rules 5, 21, 27, ~~35,~~ and 40:

* * * * *

| | Rule | Document type | Word limit | Page limit | Line limit |
|---|---|---|---|---|---|
| | | | | | |

* * * * *

| | | | | | |
|---|---|---|---|---|---|
| **Rehearing and en banc filings** | ~~35(b)(2) & 40(b)~~<br><br>40(d)(3) | • Petition for initial hearing en banc<br>• Petition for panel rehearing; petition for rehearing en banc<br>• Response if requested by the court | 3,900 | 15 | Not applicable |

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EVIDENCE RULES

# MEMORANDUM

**TO:** Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

**FROM:** Honorable Dennis R. Dow, Chair
Advisory Committee on Bankruptcy Rules

**RE:** Report of the Advisory Committee on Bankruptcy Rules

**DATE:** December 6, 2021

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## I. Introduction

The Advisory Committee on Bankruptcy Rules met by videoconference on September 14, 2021. The draft minutes of that meeting are attached.

At the meeting, the Advisory Committee voted to seek publication for comment of an amendment to Rule 7001 to exclude certain demands to recover estate property from the list of adversary proceedings. Part II of this report presents that action item.

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## II. Action Item

**Item for Publication**

**The Advisory Committee recommends that an amendment to Rule 7001 (Scope of Rules of Part VII) be published for public comment in August 2022.** The text of the proposed rule amendment appears in the appendix to this report.

As we reported at the June 2021 meeting, the Supreme Court decided in *City of Chicago v. Fulton,* 141 S. Ct. 585 (2021), that a creditor's continued retention of estate property that it acquired prior to bankruptcy does not violate the automatic stay under § 362(a)(3). In so ruling, the Court found that a contrary reading of § 362(a)(3) would render largely superfluous § 542(a)'s provisions for the turnover of estate property from third parties. In a concurring opinion, Justice Sotomayor noted that under current procedures turnover proceedings "can be quite slow" because they must be pursued by an adversary proceeding. She addressed the importance to a chapter 13 debtor of promptly regaining possession of a seized car so that the debtor can travel to work and continue to earn money to fund his or her plan, and she stated that "[i]t is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned."

Acting on Justice Sotomayor's comment, 45 law professors submitted a suggestion (21-BK-B) for rule amendments that would allow turnover proceedings to be brought by motion rather than by adversary proceeding. They offered specific language for the amendment of several rules. The National Bankruptcy Conference submitted a suggestion (21-BK-J) that is generally supportive of the law professors' suggestion. The law professors suggested "an expansion beyond chapter 13 to allow turnover actions by motion in all circumstances," but members of the Advisory Committee at the spring 2021 meeting expressed support for a narrower approach than was suggested. Among the comments were those of the Department of Justice representatives, who said that the government would be concerned with a broad rule applicable to all types of property, including funds held by the government, especially if the government had only seven days to respond.

Rule 7001(1) provides that, subject to a few listed exceptions, "a proceeding to recover money or property" is an adversary proceeding, governed by the Part VII rules. Despite this provision, it was reported that some bankruptcy courts allow turnover of money or property to be sought by motion, rather than by the filing of a complaint initiating an adversary proceeding. The Advisory Committee was interested in determining the content and scope of any such local rules as part of its consideration of the appropriate scope of any amendment to Rule 7001(1).

The Subcommittee on Consumer Issues surveyed bankruptcy clerks and chapter 13 trustees to determine the nature and extent of such local practices. The responses revealed that ten or so districts allow turnover to be sought by motion under certain circumstances. A few have local rules expressly allowing such motions, while others have rules or practices that merely refer to "turnover motions" without specifically authorizing them. In some districts turnover motions are limited to chapter 13 cases or to specific types of property, and in some the respondent to a turnover motion can demand that an adversary proceeding be brought.

In arriving at its recommendation to the Advisory Committee on how best to amend the rules to allow more expeditious turnover proceedings, the Subcommittee considered the nature of the concerns expressed by Justice Sotomayor, the concerns motivating the local court practices that deviate from Rule 7001(1), and comments by clerks and trustees. All members agreed that having to wait a hundred days on average to get a car needed to commute to work to earn money to fund a chapter 13 plan is not desirable.

The Subcommittee discussed several possible limiting principles of a rule allowing turnover to be sought by motion. They included allowing turnover by motion only in chapter 13 cases, the situation most frequently cited as giving rise to concerns. Subcommittee members, however, thought that the need for the urgent turnover of property could exist in other types of cases, so that it would be better to limit the proposed amendment to cases involving individual debtors rather than just chapter 13 cases. The Subcommittee also agreed that the procedure should be used only when turnover is sought under § 542(a)—that is, efforts to obtain "property that the trustee may use, sell, or lease under section 363 . . . or the debtor may exempt under section 522." That limitation would still require adversary proceedings for the turnover of debts under § 542(b), turnover of records by an attorney or accountant under § 542(e), and turnover of property by a custodian under § 543.

The Subcommittee then considered whether the rule should further limit the types of property for which turnover could be sought by motion. Several possibilities were discussed, and the Subcommittee concluded that any such limitation should be one that is easily discernible, because the type of procedure needed to initiate a turnover proceeding should not depend on an uncertain factual determination. Members concluded that adoption of a motion procedure is most appropriate for the turnover of tangible personal property.

Although the law professors suggested creating a new rule that would provide a national procedure for turnover motions, the Subcommittee concluded that an amendment to Rule 7001 is sufficient to implement the proposal. Rule 9014 (Contested Matters) would apply, and courts could use their own procedures for motion practice. Should a particular turnover proceeding require more detailed procedure, a court under Rule 9014(c) could order the application of the full range of Part VII rules.

After discussion, the Advisory Committee accepted the Subcommittee's recommendation that an amendment to Rule 7001(1)—creating an exception for "a proceeding by an individual debtor to recover tangible personal property under § 542(a)"—be approved for publication.

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



# MEMORANDUM

**TO:** Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

**FROM:** Hon. Dennis R. Dow, Chair
Advisory Committee on Bankruptcy Rules

**RE:** Report of the Advisory Committee on Bankruptcy Rules

**DATE:** May 10, 2022

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## I. Introduction

The Advisory Committee on Bankruptcy Rules met by videoconference on March 31, 2022. The draft minutes of that meeting are attached.

At the meeting, the Advisory Committee gave its final approval to rule and form amendments that were published for comment last August. * * * * * The Advisory Committee also voted to seek publication for comment of (1) amendments to Parts VII, VIII, and IX of the Bankruptcy Rules—the final installment of the restyling project; (2) amendments to Rule 1007(b)(7) (Schedules, Statements, and Other Documents Required) and conforming amendments to six other rules; (3) a new Rule 8023.1 (Substitution of Parties); and (4) amendments to Official Form 410A (Mortgage Proof of Claim Attachment).

Part II of this report presents those action items * * * * *.

Part II is organized as follows:

* * * * *

B. Items for Publication

- Restyled Parts VII, VIII, and IX;
- Rule 1007(b)(7) and conforming amendments to Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2);
- Rule 8023.1; and
- Official Form 410A.

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## B. Items for Publication

**The Advisory Committee recommends that the following rule and form amendments be published for public comment in August 2022.** The rules and forms in this group appear in Bankruptcy Appendix B.

**Action Item 8. Restyled Parts VII, VIII, and IX.** The Advisory Committee seeks publication of the restyled versions of the rules in Parts VII, VIII, and IX of the Federal Rules of Bankruptcy Procedure, which reflect many hours of work by the style consultants, the reporters, and the Restyling Subcommittee. This is the final group of restyled rules for publication.

**Action Item 9. Rule 1007(b)(7) (Lists, Schedules, Statements, and Other Documents; Time Limits) and conforming amendments to Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3), and 9006(c)(2).** The amendments to Rule 1007(b)(7) would eliminate the requirement that the debtor file a statement on Official Form 423 and make filing of the certificate of debtor education provided by the approved provider of the course the exclusive means of establishing satisfaction of the requirement for discharge that a debtor has taken a postpetition course in personal financial management. The amendments would also eliminate the requirement that a debtor who has been excused from taking such a course file a form so stating. The six other rules that referred to a "statement" required by Rule 1007(b)(7) would also be amended to refer to a "certificate."

**Action Item 10. Rule 8023.1 (Substitution of Parties).** The Advisory Committee seeks publication of a new rule on Substitution of Parties, modeled on Fed. R. App. P. 43. Neither FRAP 43 nor Fed. R. Civ. P. 25 is applicable to parties in bankruptcy appeals to the district court or bankruptcy appellate panel, and this new rule is intended to fill that gap.

**Action Item 11. Official Form 410A (Mortgage Proof of Claim Attachment).** The proposed amendments are to Part 3 (Arrearage as of Date of the Petition) of Official Form 410A and would replace the first line (which currently asks for "Principal & Interest") with two lines,

one for "Principal" and one for "Interest." The amendments put the burden on the claim holder to identify the elements of its claim.

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

**Rule 1007. Lists, Schedules, Statements, and Other Documents; Time to File[2]**

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(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS.

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(7) *Personal Financial-Management Course.* Unless an approved provider has notified the court that the debtor has completed a course in personal financial management after filing the petition or the debtor is not required to complete one as a condition to discharge, an individual debtor in a

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

[2] The changes indicated are to the restyled version of Rule 1007, not yet in effect, which is included in the June 2021 Agenda Book of the Committee on Rules of Practice and Procedures on uscourts.gov.

Chapter 7 or Chapter 13 case—or in a Chapter 11 case in which § 1141(d)(3) applies—must file a ~~statement that such a course has been completed (Form 423)~~ certificate of course completion issued by the provider.

* * * * *

(c) TIME TO FILE.

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(4) *Financial-Management Course.* Unless the court extends the time to file, an individual debtor must file the ~~statement~~ certificate required by (b)(7) as follows:

(A) in a Chapter 7 case, within 60 days after the first date set for the meeting of creditors under § 341; and

(B) in a Chapter 11 or Chapter 13 case, before the last payment is made under

the plan or before a motion for a discharge is filed under§ 1141(d)(5)(B) or § 1328(b).

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**Committee Note**

Rule 1007(b)(7) is amended in two ways. First, language is added to make the rule inapplicable to debtors who are not required to complete an instructional course concerning personal financial management as a condition to discharge. *See* § 727(a)(11), § 1328(g)(2), § 1141(d)(3)(C). Second, the rule is amended to require an individual debtor who has completed an instructional course concerning personal financial management to file the certificate of course completion (often called a Certificate of Debtor Education) issued by the approved provider of that course in lieu of filing an Official Form, if the provider has not notified the court that the debtor has completed the course.

The amendment to Rule 1007(c)(4) reflects the amendment to Rule 1007(b)(7) described above.

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

**Rule 4004. Granting or Denying a Discharge[2]**

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(c) GRANTING A DISCHARGE.

(1) *Chapter 7.* In a Chapter 7 case, when the times to object to discharge and to file a motion to dismiss the case under Rule 1017(e) expire, the court must promptly grant the discharge—except under these circumstances:

* * * * *

(H) the debtor has not filed a ~~statement~~ certificate showing that a course on personal financial

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

[2] The changes indicated are to the restyled version of Rule 4004, not yet in effect, which is included in the June 2021 Agenda Book of the Committee on Rules of Practice and Procedures on uscourts.gov.

management has been completed—if such a ~~statement~~ certificate is required by Rule 1007(b)(7);

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(4) *Individual Chapter 11 or Chapter 13 Case.* In a Chapter 11 case in which the debtor is an individual—or a Chapter 13 case—the court must not grant a discharge if the debtor has not filed a ~~statement~~ certificate required by Rule 1007(b)(7).

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**Committee Note**

The amendments to Rule 4004(c)(1)(H) and (c)(4) reflect the amendment to Rule 1007(b)(7) that replaces the requirement for submission of a statement showing that the debtor has completed a course on personal financial management with the requirement that the debtor provide the certificate of course completion issued by the approved provider of that course.

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

**Rule 5009. Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied**[2]

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(b) CHAPTER 7 OR 13—NOTICE OF A FAILURE TO FILE A ~~STATEMENT ABOUT COMPLETING~~ CERTIFICATE OF COMPLETION FOR A COURSE ON PERSONAL FINANCIAL MANAGMENT. This subdivision (b) applies if an individual debtor in a Chapter 7 or 13 case is required to file a ~~statement~~ certificate under Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a). The clerk must promptly notify the

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

[2] The changes indicated are to the restyled version of Rule 5009, not yet in effect, which is included in the June 2021 Agenda Book of the Committee on Rules of Practice and Procedures on uscourts.gov.

debtor that the case will be closed without entering a discharge unless the ~~statement~~ certificate is filed within the time prescribed by Rule 1007(c).

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**Committee Note**

The amendments to Rule 5009(b) reflect the amendment to Rule 1007(b)(7) that replaces the requirement for submission of a statement showing that the debtor has completed a course on personal financial management with the requirement that the debtor provide the certificate of course completion issued by the approved provider of that course.

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

**Rule 7001. Types of Adversary Proceedings[2]**

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

(a) a proceeding to recover money or property—except a proceeding to compel the debtor to deliver property to the trustee, a proceeding by an individual debtor to recover tangible personal property under § 542(a), or a proceeding under § 554(b), § 725, Rule 2017, or Rule 6002;

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

[2] The changes indicated are to the restyled version of Rule 7001, not yet in effect, which is included elsewhere in this Preliminary Draft.

**Committee Note**

Paragraph (a) is amended to create an exception for certain turnover proceedings under § 542(a) of the Code. An individual debtor may need to obtain the prompt return from a third party of tangible personal property—such as an automobile or tools of the trade—in order to produce income to fund a plan or to regain the use of property that may be exempted. As noted by Justice Sotomayor in her concurrence in *City of Chicago v. Fulton*, 141 S. Ct. 585, 592-95 (2021), the more formal procedures applicable to adversary proceedings can be too time-consuming in such a situation. Instead, the debtor can now proceed by motion to require turnover of such property under § 542(a), and the procedures of Rule 9014 will apply. In an appropriate case, however, Rule 9014(c) allows the court to order that additional provisions of Part VII of the rules will apply to the matter.

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

**Rule 8023.1.**[2] **Substitution of Parties**

(a) DEATH OF A PARTY.

(1) *After a Notice of Appeal Is Filed.* If a party dies after a notice of appeal has been filed or while a proceeding is pending on appeal in the district court or BAP, the decedent's personal representative may be substituted as a party on motion filed with that court's clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 8011. If the decedent has no representative, any party may suggest the

[1] New material is underlined in red.

[2] Fed. R. App. P. 43 immediately follows the rule on voluntary dismissal, which in Part VIII of the bankruptcy rules appears as Fed. R. Bankr. P. 8023.

death on the record, and the appellate court may then direct appropriate proceedings.

(2) *Before a Notice of Appeal Is Filed—Potential Appellant.* If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative—or, if there is no personal representative, the decedent's attorney of record—may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 8023.1(a)(1).

(3) *Before a Notice of Appeal Is Filed—Potential Appellee.* If a party against whom an appeal may be taken dies after entry of a judgment or order in the bankruptcy court, but before a notice of appeal is filed, an appellant may proceed as if the death had not

occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 8023.1(a)(1).

(b) SUBSTITUTION FOR A REASON OTHER THAN DEATH. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 8023.1(a) applies.

(c) PUBLIC OFFICER: IDENTIFICATION; SUBSTITUTION.

(1) *Identification of a Party.* A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the appellate court may require the public officer's name to be added.

(2) *Automatic Substitution of an Officeholder.* When a public officer who is a

party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. Subject to Rule 2012, the public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the parties' substantial rights may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

**Committee Note**

Rule 8023.1 is derived from Fed. R. App. P. 43 and governs substitution of parties upon death or for any other reason in appeals to the district court or bankruptcy appellate panel from a judgment, order or decree of a bankruptcy court.

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

**Rule 9006. Computing and Extending Time; Motions**[2]

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(b) EXTENDING TIME.

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(3) *Extensions Governed by Other Rules.* The court may extend the time to:

* * * * *

(B) file the ~~statement~~ certificate required by Rule 1007(b)(7), and the schedules and statements in a small business case under § 1116(3)—but only as permitted by Rule 1007(c).

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

[2] The changes indicated are to the restyled version of Rule 9006, not yet in effect, which is included elsewhere in this Preliminary Draft.

(c) REDUCING TIME LIMITS.

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(2) *When Not Permitted.* The court may not reduce the time to act under Rule 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2) or (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, or 9033(b). Also, the court may not, under Rule 1007(c), reduce the time to file the ~~statement~~ certificate required by Rule 1007(b)(7).

**Committee Note**

The amendments to Rules 9006(b)(3)(B) and (c)(2) reflect the amendment to Rule 1007(b)(7) that replaces the requirement for submission of a statement showing that the debtor has completed a course on personal financial management with the requirement that the debtor provide the certificate of course completion issued by the approved provider of that course.

# Bankruptcy Rules Restyling

## 7000 Series

## Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

[The Committee Note to Rule 1001 is included here for reference for purposes of publication. It will not be included in the final rule.

**Committee Note to Rule 1001**

The Bankruptcy Rules are the fifth set of national procedural rules to be restyled. The restyled Rules of Appellate Procedure took effect in 1998. The restyled Rules of Criminal Procedure took effect in 2002. The restyled Rules of Civil Procedure took effect in 2007. The restyled Rules of Evidence took effect in 2011. The restyled Bankruptcy Rules apply the same general drafting guidelines and principles used in restyling the Appellate, Criminal, Civil and Evidence Rules.

General Guidelines. Guidance in drafting, usage, and style was provided by Bryan Garner, Guidelines for Drafting and Editing Court Rules, Administrative Office of the United States Courts (1996) and Bryan Garner, Dictionary of Modern Legal Usage (2d ed. 1995). See also Joseph Kimble, Guiding Principles for Restyling the Civil Rules, in Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure, at page x (Feb. 2005) (available at https://www.michbar.org/file/barjournal/article/documents/pdf4article909.pdf and https://www.michbar.org/file/barjournal/article/documents/pdf4article921.pdf); Joseph Kimble, Lessons in Drafting from the New Federal Rules of Civil Procedure, 12 Scribes J. Legal Writing 25 (2008-2009).

Formatting Changes. Many of the changes in the restyled Bankruptcy Rules result from using format to achieve clearer presentations. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. "Hanging indents" are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed.

Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words. The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. The restyled rules also minimize the use of inherently ambiguous words. The restyled rules minimize the use of redundant "intensifiers." These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. The absence of intensifiers in the restyled rules does not change their

substantive meaning. The restyled rules also remove words and concepts that are outdated or redundant.

Rule Numbers. The restyled rules keep the same numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity. No Substantive Change. The style changes to the rules are intended to make no changes in substantive meaning. The Committee made special efforts to reject any purported style improvement that might result in a substantive change in the application of a rule. The Committee also declined to modify "sacred phrases"— those that have become so familiar in practice that to alter them would be unduly disruptive to practice and expectations. An example in the Bankruptcy Rules would be "meeting of creditors."

Legislative Rules. In those cases in which Congress enacted a rule by statute, in particular Rule 2002(n) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 357), Rule 3001(g) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 361) and Rule 7004(h) (Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106), the Committee has not restyled the rule.]

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| PART VII— ADVERSARY PROCEEDINGS | **PART VII. ADVERSARY PROCEEDINGS** |
| **Rule 7001. Scope of Rules of Part VII** | **Rule 7001. Types of Adversary Proceedings** |
| An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:<br><br>(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;<br><br>(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);<br><br>(3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property;<br><br>(4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§ 727(a)(8)[1], (a)(9), or 1328(f);<br><br>(5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;<br><br>(6) a proceeding to determine the dischargeability of a debt;<br><br>(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief; | An adversary proceeding is governed by the rules in this Part VII. The following are adversary proceedings:<br><br>(a) a proceeding to recover money or property—except a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b), § 725, Rule 2017, or Rule 6002;<br><br>(b) a proceeding to determine the validity, priority, or extent of a lien or other interest in property—except a proceeding under Rule 3012 or Rule 4003(d);<br><br>(c) a proceeding to obtain authority under § 363(h) to sell both the estate's interest in property and that of a co-owner;<br><br>(d) a proceeding to revoke or object to a discharge—except an objection under § 727(a)(8) or (a)(9), or § 1328(f);<br><br>(e) a proceeding to revoke an order confirming a plan in a Chapter 11, 12, or 13 case;<br><br>(f) a proceeding to determine whether a debt is dischargeable;<br><br>(g) a proceeding to obtain an injunction or other equitable relief—except when the relief is provided in a Chapter 9, 11, 12, or 13 plan;<br><br>(h) a proceeding to subordinate an allowed claim or interest—except when subordination is provided in a Chapter 9, 11, 12, or 13 plan; |

[1] So in original. Probably should be only one section symbol.

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| (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;<br><br>(9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or<br><br>(10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452. | (i) a proceeding to obtain a declaratory judgment relating to any proceeding described in (a)–(h); and<br><br>(j) a proceeding to determine a claim or cause of action removed under 28 U.S.C § 1452. |

**Committee Note**

The language of Rule 7001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
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| **Rule 7002. References to Federal Rules of Civil Procedure** | **Rule 7002. References to the Federal Rules of Civil Procedure** |
| Whenever a Federal Rule of Civil Procedure applicable to adversary proceedings makes reference to another Federal Rule of Civil Procedure, the reference shall be read as a reference to the Federal Rule of Civil Procedure as modified in this Part VII. | When a Federal Rule of Civil Procedure applicable to an adversary proceeding refers to another civil rule, that reference must be read as a reference to the civil rule as modified by this Part VII. |

**Committee Note**

The language of Rule 7002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
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| **Rule 7003. Commencement of Adversary Proceeding** | **Rule 7003. Commencing an Adversary Proceeding** |
| Rule 3 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 3 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
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| **Rule 7004. Process; Service of Summons, Complaint** | **Rule 7004. Process; Issuing and Serving a Summons and Complaint** |
| (a) SUMMONS; SERVICE; PROOF OF SERVICE.<br><br>(1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1),(d)(5), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.<br><br>(2) The clerk may sign, seal, and issue a summons electronically by putting an "s/" before the clerk's name and including the court's seal on the summons. | **(a) Issuing, Delivering, and Personally Serving a Summons and Complaint.**<br><br>(1) *In General.* Except as provided in (3), Fed. R. Civ. P. 4(a), (b), (c)(1), (d)(5), (e)–(j), (*l*), and (m) applies in an adversary proceeding.<br><br>(2) *Issuing and Delivering a Summons.* The clerk may:<br><br>• sign, seal, and issue the summons electronically by placing an "s/" before the clerk's name and adding the court's seal to the summons; and<br><br>• deliver the summons for service.<br><br>(3) *Personally Serving a Summons and Complaint.* Any person who is at least 18 years old and not a party may personally serve a summons and complaint under Fed. R.Civ. P. 4(e)–(j). |
| (b) SERVICE BY FIRST CLASS MAIL. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:<br><br>(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession. | **(b) Service by Mail as an Alternative.** Except as provided in subdivision (h), in addition to the methods of service authorized by Fed. R. Civ. P. 4(e)-(j), a copy of a summons and complaint may be served by first-class mail, postage prepaid, within the United States on:<br><br>(1) an individual except an infant or an incompetent person—by mailing the copy to the individual's dwelling or usual place of abode or where the individual regularly conducts a business or profession; |

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| (2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession. | (2) an infant or incompetent person—by mailing the copy:<br>(A) to a person who, under the law of the state where service is made, is authorized to receive service on behalf of the infant or incompetent person when an action is brought in that state's courts of general jurisdiction; and<br>(B) at that person's dwelling or usual place of abode or where the person regularly conducts a business or profession; |
| (3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant. | (3) a domestic or foreign corporation, or a partnership or other unincorporated association—by mailing the copy:<br>(A) to an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service; and<br>(B) also to the defendant if a statute authorizes an agent to receive service and the statute so requires; |
| (4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The | (4) the United States, with these requirements:<br>(A) a copy of the summons and complaint must be mailed to:<br>(i) the civil-process clerk in the United States attorney's office in the district where the case is filed;<br>(ii) the Attorney General of the United States in Washington, D.C.; and<br>(iii) in an action attacking the validity of an order of a United States officer or agency that is not a party, also to that officer or agency; and |

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| court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.<br><br>(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule. | (B) if the plaintiff has mailed a copy of the summons and complaint to a person specified in either (A)(i) or (ii), the court must allow a reasonable time to serve the others that must be served under (A);<br><br>(5) an officer or agency of the United States, with these requirements:<br><br>(A) the summons and complaint must be mailed not only to the officer or the agency—as prescribed in (3) if the agency is a corporation—but also to the United States, as prescribed in (4);[2]<br><br>(B) if the plaintiff has mailed a copy of the summons and complaint to a person specified in either (4)(A)(i) or (ii), the court must allow a reasonable time to serve the others that must be served under (A); and<br><br>(C) if a United States trustee is the trustee in the case, service may be made on the United States trustee solely as trustee, as prescribed in (10);<br><br>(6) a state or municipal corporation or other governmental organization subject to suit, with these requirements:<br><br>(A) the summons and complaint must be mailed to the person or office that, under the law of the state where service is made, is authorized to receive service in a case filed against that defendant in that state's courts of general jurisdiction; and |

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| (6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.<br><br>(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.<br><br>(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.<br><br>(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy ofthe summons and complaint to the debtor at the address shown in the | (B) if there is no such authorized person or office, the summons and complaint may be mailed to the defendant's chief executive officer;<br><br>(7) a defendant of any class referred to in (1) and (3)—for whom it also suffices to mail the summons and complaint to the entity on which service must be made under a federal statute or under the law of the state where service is made when an action is brought against that defendant in that state's courts of general jurisdiction;<br><br>(8) any defendant—for whom it also suffices to mail the summons and complaint to the defendant's agent under these conditions:<br><br>(A) the agent is authorized by appointment or by law to accept service of process;<br><br>(B) the mail is addressed to the agent's dwelling or usual place of abode or where the agent regularly conducts a business or profession; and<br><br>(C) if the agent's authorization so requires, a copy is also mailed to the defendant as provided in this subdivision (b);<br><br>(9) the debtor, with the qualification that after a petition has been filed by or served upon a debtor, and until the case is dismissed or closed—by addressing the mail to the debtor at the address shown on the debtor's petition or the address the debtor specifies in a filed writing;<br><br>(10) a United States trustee who is the trustee in the case and service is made upon the United States trustee solely as trustee—by addressing the mail to the |

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| petition or to such other address as the debtor may designate in a filed writing.<br><br>(10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending. | United States trustee's office or other place that the United States trustee designates within the district. |
| (c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)–(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct. | **(c) Service by Publication in an Adversary Proceeding Involving Property Rights.** If a party to an adversary proceeding to determine or protect rights in property in the court's custody cannot be served under (b) or Fed. R. Civ. P. 4(e)–(j), the court may order the summons and complaint to be served by:<br><br>(1) first-class mail, postage prepaid, to the party's last known address; and<br><br>(2) at least one publication in a form and manner as the court orders. |
| (d) NATIONWIDE SERVICE OF PROCESS. The summons and complaint and all other process except a subpoena may be served anywhere in the United States. | **(d) Nationwide Service of Process.** A summons and complaint (and all other process, except a subpoena) may be served anywhere within the United States. |
| (e) SUMMONS: TIME LIMIT FOR SERVICE WITHIN THE UNITED STATES. Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F.R.Civ.P. shall be by delivery of the summons and complaint within 7 days after the | **(e) Time to Serve a Summons and Complaint.**<br><br>**(1)** ***In General.*** A summons and complaint served under Fed. R. Civ. P. 4(e), (g), (h)(1), (i), or (j)(2) by delivery |

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| summons is issued. If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 7 days after the summons is issued. If a summons is not timely delivered or mailed, another summons will be issued for service. This subdivision does not apply to service in a foreign country. | must be served within 7 days after the summons is issued. If served by mail, they must be deposited in the mail within 7 days after the summons is issued. If a summons is not timely delivered or mailed, a new summons must be issued.<br>**(2)** ***Exception.*** This paragraph does not apply to service in a foreign country. |
| (f) PERSONAL JURISDICTION. If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code. | **(f) Establishing Personal Jurisdiction.** If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service under this Rule 7004 or the applicable provisions of Fed. R. Civ. P. 4 establishes personal jurisdiction over the person of a defendant:<br>(A) in a bankruptcy case;<br>(B) in a civil proceeding arising in or related to a bankruptcy case; or<br>(C) in a civil proceeding under the Code. |
| (g) SERVICE ON DEBTOR'S ATTORNEY. If the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney by any means authorized under Rule 5(b) F.R.Civ.P. | **(g) Serving a Debtor's Attorney.** If, when served, a debtor is represented by an attorney, the attorney must also be served by any means authorized by Fed. R. Civ. P. 5(b). |
| (h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless— | **(h) Service of Process on an Insured Depository Institution.** Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—<br>(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail; |

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| (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;<br><br>(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or<br><br>(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service. | (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or<br><br>(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service. |
| (i) SERVICE OF PROCESS BY TITLE. This subdivision (i) applies to service on a domestic or foreign corporation or partnership or other unincorporated association under Rule 7004(b)(3) or on an officer of an insured depository institution under Rule 7004(h). The defendant's officer or agent need not be correctly named in the address – or even be named – if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title. | **(i) Service of Process by Title.** This subdivision (i) applies to service on a domestic or foreign corporation or partnership or other unincorporated association under Rule 7004(b)(3), or on an officer of an insured depository institution under Rule 7004(h). The defendant's officer or agent need not be correctly named in the address – or even be named – if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title. |

**Committee Note**

The language of Rule 7004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. The first clause of Rule 7004(b) and Rule 7004(h) have not been restyled because they were enacted by Congress, P.L. 103-394, 108 Stat. 361, Sec. 4118 (1994). The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, provides no authority to modify statutory language.

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| **Rule 7005. Service and Filing of Pleadings and Other Papers** | **Rule 7005. Serving and Filing Pleadings and Other Papers** |
| Rule 5 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 5 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7007. Pleadings Allowed** | **Rule 7007. Pleadings Allowed** |
| Rule 7 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 7 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7007.1. Corporate Ownership Statement** | **Rule 7007.1. Corporate Ownership Statement** |
| (a) REQUIRED DISCLOSURE. Any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, shall file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene. | **(a) Required Disclosure.** Any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene. |
| (b) TIME FOR FILING; SUPPLEMENTAL FILING. The corporate ownership statement shall:<br>(1) be filed with the corporation's first appearance, pleading, motion, response, or other request addressed to the court; and<br>(2) be supplemented whenever the information required by this rule changes. | **(b) Time for Filing; Supplemental Filing.** The statement must:<br>(1) be filed with the corporation's first appearance, pleading, motion, response, or other request to the court; and<br>(2) be supplemented whenever the information required by this rule changes. |

**Committee Note**

The language of Rule 7007.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7008. General Rules of Pleading** | **Rule 7008. General Rules of Pleading** |
| Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court. | Fed. R. Civ. P. 8 applies in an adversary proceeding. The allegation of jurisdiction required by that rule must include a reference to the name, number, and Code chapter of the case that the adversary proceeding relates to and the district and division where it is pending. In an adversary proceeding before a bankruptcy court, a complaint, counterclaim, crossclaim, or third-party complaint must state whether the pleader does or does not consent to the entry of a final order or judgment by the bankruptcy court. |

**Committee Note**

The language of Rule 7008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7009. Pleading Special Matters** | **Rule 7009. Pleading Special Matters** |
| Rule 9 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 9 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7010. Form of Pleadings** | **Rule 7010. Form of Pleadings in an Adversary Proceeding** |
| Rule 10 F.R.Civ.P. applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to the appropriate Official Form. | Fed. R. Civ. P. 10 applies in an adversary proceeding—except that a pleading's caption must conform substantially to the appropriate version of Official Form 416. |

**Committee Note**

The language of Rule 7010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7012. Defenses and Objections—When and How Presented— By Pleading or Motion—Motion for Judgment on the Pleadings** | **Rule 7012. Defenses; Effect of a Motion; Motion for Judgment on the Pleadings and Other Procedural Matters** |
| (a) WHEN PRESENTED. If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 21 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 14 days after the service of a more definite statement. | **(a) Time to Serve.** The time to serve a responsive pleading is as follows:<br>(1) *Answer to a Complaint in General.* A defendant must serve an answer to a complaint within 30 days after the summons was issued, unless the court sets a different time.<br>(2) *Answer to a Complaint Served by Publication or on a Party in a Foreign Country.* The court must set the time to serve an answer to a complaint served by publication or served on a party in a foreign country.<br>(3) *Answer to a Crossclaim.* A party served with a pleading that states a crossclaim must serve an answer to the crossclaim within 21 days after being served.<br>(4) *Answer to a Counterclaim.* A plaintiff served with an answer that contains a counterclaim must answer the counterclaim within 21 days after service of:<br>(A) the answer; or<br>(B) a court order requiring an answer, unless the order states otherwise.<br>(5) *Answer to a Complaint or Crossclaim—or Answer to a Counterclaim—Served on the United States or an Officer or Agency.* The United States or its officer or agency must serve:<br>(A) an answer to a complaint within 35 days after the summons was issued; and |

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| | (B) an answer to a crossclaim or an answer to a counterclaim within 35 days after the United States attorney is served with the pleading that asserts the claim.<br><br>(6) ***Effect of a Motion.*** Unless the court sets a different time, serving a motion under this rule alters these times as follows:<br><br>(A) if the court denies the motion or postpones disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or<br><br>(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the statement is served. |
| (b) APPLICABILITY OF RULE 12(b)–(i) F.R.CIV.P. Rule 12(b)–(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court. | **(b) Applicability of Civil Rule 12(b)-(i).** Fed. R. Civ. P. 12(b)-(i) applies in an adversary proceeding. A responsive pleading must state whether the party does or does not consent to the entry of a final order or judgment by the bankruptcy court. |

**Committee Note**

The language of Rule 7012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7013. Counterclaim and Cross-Claim** | **Rule 7013. Counterclaim and Crossclaim** |
| Rule 13 F.R.Civ.P. applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim that the party has against the debtor, the debtor's property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice so requires, may by leave of court amend the pleading, or commence a new adversary proceeding or separate action. | Fed. R. Civ. P. 13 applies in an adversary proceeding. But a party sued by a trustee or debtor in possession need not state as a counterclaim any claim the party has against the debtor, the debtor's property, or the estate, unless the claim arose after the order for relief. If, through oversight, inadvertence, or excusable neglect, a trustee or debtor in possession fails to plead a counterclaim—or when justice so requires—the court may permit the trustee or debtor in possession to:<br>(a) amend the pleading; or<br>(b) commence a new adversary proceeding or separate action. |

**Committee Note**

The language of Rule 7013 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7014. Third-Party Practice** | **Rule 7014. Third-Party Practice** |
| Rule 14 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 14 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7014 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7015. Amended and Supplemental Pleadings** | **Rule 7015. Amended and Supplemental Pleadings** |
| Rule 15 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 15 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7015 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7016. Pretrial Procedures** | **Rule 7016. Pretrial Procedures** |
| (a) PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT. Rule 16 F.R.Civ.P. applies in adversary proceedings. | **(a) Pretrial Conferences; Scheduling; Management**. Fed. R. Civ. P. 16 applies in anadversary proceeding.<br><br>**(b) Determining Procedure**. On its own or a party's timely motion, the court must decide whether:<br><br>(1) to hear and determine the proceeding;<br><br>(2) to hear it and issue proposed findings of fact and conclusions of law; or<br><br>(3) to take other action. |
| (b) DETERMINING PROCEDURE. The bankruptcy court shall decide, on its own motion or a party's timely motion, whether:<br><br>(1) to hear and determine the proceeding;<br><br>(2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or<br><br>(3) to take some other action. | |

**Committee Note**

The language of Rule 7016 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7017. Parties Plaintiff and Defendant; Capacity** | **Rule 7017. Plaintiff and Defendant; Capacity; Public Officers** |
| Rule 17 F.R.Civ.P. applies in adversary proceedings, except as provided in Rule 2010(b). | Fed. R. Civ. P. 17 applies in an adversary proceeding, except as provided in Rule 2010(b). |

**Committee Note**

The language of Rule 7017 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7018. Joinder of Claims and Remedies** | **Rule 7018. Joinder of Claims** |
| Rule 18 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 18 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7018 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7019. Joinder of Persons Needed for Just Determination** | **Rule 7019. Required Joinder of Persons** |
| Rule 19 F.R.Civ.P. applies in adversary proceedings, except that (1) if an entity joined as a party raises the defense that the court lacks jurisdiction over the subject matter and the defense is sustained, the court shall dismiss such entity from the adversary proceedings and (2) if an entity joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 28 U.S.C. § 1412, whether that part of the proceeding involving the joined party shall be transferred to another district, or whether the entire adversary proceeding shall be transferred to another district. | Fed. R. Civ. P. 19 applies in an adversary proceeding. But these exceptions apply:<br>(a) if an entity joined as a party raises the defense that the court lacks subject-matter jurisdiction and the defense is sustained, the court must dismiss the party; and<br>(b) if an entity joined as a party properly and timely raises the defense of improper venue, the court must determine under 28 U.S.C. § 1412 whether to transfer to another district the entire adversary proceeding or just that part involving the joined party. |

**Committee Note**

The language of Rule 7019 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7020. Permissive Joinder of Parties** | **Rule 7020. Permissive Joinder of Parties** |
| Rule 20 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 20 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7020 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7021. Misjoinder and Non-Joinder of Parties** | **Rule 7021. Misjoinder and Nonjoinder of Parties** |
| Rule 21 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 21 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7021 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7022. Interpleader** | **Rule 7022. Interpleader** |
| Rule 22(a) F.R.Civ.P. applies in adversary proceedings. This rule supplements—and does not limit—the joinder of parties allowed by Rule 7020. | Fed. R. Civ. P. 22(a) applies in an adversary proceeding. This rule supplements and does not limit the joinder of parties under Rule 7020. |

**Committee Note**

The language of Rule 7022 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7023. Class Proceedings** | **Rule 7023. Class Actions** |
| Rule 23 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 23 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7023 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 7023.1. Derivative Actions** | **Rule 7023.1. Derivative Actions** |
| Rule 23.1 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 23.1 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7023.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations** | **Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations** |
| Rule 23.2 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 23.2 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7023.2 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7024. Intervention** | **Rule 7024. Intervention** |
| Rule 24 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 24 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7024 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7025. Substitution of Parties** | **Rule 7025. Substitution of Parties** |
| Subject to the provisions of Rule 2012, Rule 25 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 25 applies in an adversary proceeding—but is subject to Rule 2012. |

**Committee Note**

The language of Rule 7025 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7026. General Provisions Governing Discovery** | **Rule 7026. Duty to Disclose; General Provisions Governing Discovery** |
| Rule 26 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 26 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7026 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7027. Depositions Before Adversary Proceedings or Pending Appeal** | **Rule 7027. Depositions to Perpetuate Testimony** |
| Rule 27 F.R.Civ.P. applies to adversary proceedings. | Fed. R. Civ. P. 27 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7027 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7028. Persons Before Whom Depositions May Be Taken** | **Rule 7028. Persons Before Whom Depositions May Be Taken** |
| Rule 28 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 28 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7028 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7029. Stipulations Regarding Discovery Procedure** | **Rule 7029. Stipulations About Discovery Procedure** |
| Rule 29 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 29 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7029 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7030. Depositions Upon Oral Examination** | **Rule 7030. Depositions by Oral Examination** |
| Rule 30 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 30 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7030 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7031. Deposition Upon Written Questions** | **Rule 7031. Depositions by Written Questions** |
| Rule 31 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 31 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7031 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7032. Use of Depositions in Adversary Proceedings** | **Rule 7032. Using Depositions in Court Proceedings** |
| Rule 32 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 32 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7032 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7033. Interrogatories to Parties** | **Rule 7033. Interrogatories to Parties** |
| Rule 33 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 33 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7033 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7034. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes** | **Rule 7034. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes** |
| Rule 34 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 34 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7034 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7035. Physical and Mental Examination of Persons** | **Rule 7035. Physical and Mental Examinations** |
| Rule 35 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 35 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7035 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7036. Requests for Admission** | **Rule 7036. Requests for Admission** |
| Rule 36 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 36 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7036 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7037. Failure to Make Discovery: Sanctions** | **Rule 7037. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions** |
| Rule 37 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 37 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7037 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7040. Assignment of Cases for Trial** | **Rule 7040. Scheduling Cases for Trial** |
| Rule 40 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 40 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7040 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7041. Dismissal of Adversary Proceedings** | **Rule 7041. Dismissal of Adversary Proceedings** |
| Rule 41 F.R.Civ.P. applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper. | Fed. R. Civ. P. 41 applies in an adversary proceeding. But a complaint objecting to the debtor's discharge may be dismissed on the plaintiff's motion only:<br>(a) with notice to the trustee, the United States trustee, and any other person as the court designates; and<br>(b) by a court order that sets out any conditions for the dismissal. |

**Committee Note**

The language of Rule 7041 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7042. Consolidation of Adversary Proceedings; Separate Trials** | **Rule 7042. Consolidating Adversary Proceedings; Separate Trials** |
| Rule 42 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 42 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7042 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7052. Findings by the Court** | **Rule 7052. Findings and Conclusions by the Court; Judgment on Partial Findings** |
| Rule 52 F.R.Civ.P. applies in adversary proceedings, except that any motion under subdivision (b) of that rule for amended or additional findings shall be filed no later than 14 days after entry of judgment. In these proceedings, the reference in Rule 52 F.R.Civ.P. to the entry of judgment under Rule 58 F.R.Civ.P. shall be read as a reference to the entry of a judgment or order under Rule 5003(a). | Fed. R. Civ. P. 52 applies in an adversary proceeding—except that a motion under Fed. R. Civ. P. 52(b) to amend or add findings must be filed within 14 days after the judgment is entered. The reference in Fed. R. Civ. P. 52(a) to entering a judgment under Fed. R. Civ. P. 58 must be read as referring to entering a judgment or order under Rule 5003(a). |

**Committee Note**

The language of Rule 7052 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7054. Judgments; Costs** | **Rule 7054. Judgments; Costs** |
| (a) JUDGMENTS. Rule 54(a)–(c) F.R.Civ.P. applies in adversary proceedings. | **(a) Judgment.** Fed. R. Civ. P. 54(a)–(c) applies in an adversary proceeding. |
| (b) COSTS; ATTORNEY'S FEES.<br><br>(1) *Costs Other Than Attorney's Fees.* The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court.<br><br>(2) *Attorney's Fees.*<br><br>(A) Rule 54(d)(2)(A)–(C) and (E) F.R.Civ.P. applies in adversary proceedings except for the reference in Rule 54(d)(2)(C) to Rule 78.<br><br>(B) By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. | **(b) Costs and Attorney's Fees.**<br><br>(1) ***Costs Other Than Attorney's Fees.*** The court may allow costs to the prevailing party, unless a federal statute or these rules provide otherwise. Costs against the United States, its officers, and its agencies may be imposed only to the extent permitted by law. The clerk, on 14 days' notice, may tax costs, and the court, on motion served within the next 7 days, may review the clerk's action.<br><br>(2) ***Attorney's Fees.***<br><br>(A) *In General.* Fed. R. Civ. P. 54(d)(2)(A)–(C) and (E) applies in an adversary proceeding—except for the reference in Rule 54(d)(2)(C) to Rule 78.<br><br>(B) *Local Rules for Resolving Issues.* By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. |

**Committee Note**

The language of Rule 7054 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7055. Default** | **Rule 7055. Default; Default Judgment** |
| Rule 55 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 55 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7055 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7056. Summary Judgment** | **Rule 7056. Summary Judgment** |
| Rule 56 F.R.Civ.P. applies in adversary proceedings, except that any motion for summary judgment must be made at least 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought, unless a different time is set by local rule or the court orders otherwise. | Fed. R. Civ. P. 56 applies in an adversary proceeding. But a motion for summary judgment must be filed at least 30 days before the first date set for an evidentiary hearing on any issue that the motion addresses, unless a local rule sets a different time or the court orders otherwise. |

**Committee Note**

The language of Rule 7056 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7058. Entering Judgment in Adversary Proceeding** | **Rule 7058. Entering Judgment** |
| Rule 58 F.R.Civ.P. applies in adversary proceedings. In these proceedings, the reference in Rule 58 F.R.Civ.P. to the civil docket shall be read as a reference to the docket maintained by the clerk under Rule 5003(a). | Fed. R. Civ. P. 58 applies in an adversary proceeding. A reference in that rule to the civil docket must be read as referring to the docket maintained by the clerk under Rule 5003(a). |

**Committee Note**

The language of Rule 7058 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7062. Stay of Proceedings to Enforce a Judgment** | **Rule 7062. Stay of Proceedings to Enforce a Judgment** |
| Rule 62 F.R.Civ.P. applies in adversary proceedings, except that proceedings to enforce a judgment are stayed for 14 days after its entry. | Fed. R. Civ. P. 62 applies in an adversary proceeding—except that a proceeding to enforce a judgment is stayed for 14 days after its entry. |

**Committee Note**

The language of Rule 7062 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7064. Seizure of Person or Property** | **Rule 7064. Seizing a Person or Property** |
| Rule 64 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 64 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7064 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7065. Injunctions** | **Rule 7065. Injunctions** |
| Rule 65 F.R.Civ.P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c). | Fed. R. Civ. P. 65 applies in an adversary proceeding. But on application of a debtor, trustee, or debtor in possession, the court may issue a temporary restraining order or preliminary injunction without complying with subdivision (c) of that rule. |

**Committee Note**

The language of Rule 7065 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7067. Deposit in Court** | **Rule 7067. Deposit into Court** |
| Rule 67 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 67 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7067 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7068. Offer of Judgment** | **Rule 7068. Offer of Judgment** |
| Rule 68 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 68 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7068 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7069. Execution** | **Rule 7069. Execution** |
| Rule 69 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 69 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7069 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7070. Judgment for Specific Acts; Vesting Title** | **Rule 7070. Enforcing a Judgment for a Specific Act; Vesting Title** |
| Rule 70 F.R.Civ.P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is within the jurisdiction of the court. | Fed. R. Civ. P. 70 applies in an adversary proceeding. When real or personal property is within the court's jurisdiction, the court may enter a judgment divesting a party's title and vesting it in another person. |

**Committee Note**

The language of Rule 7070 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7071. Process in Behalf of and Against Persons Not Parties** | **Rule 7071. Enforcing Relief For or Against a Nonparty** |
| Rule 71 F.R.Civ.P. applies in adversary proceedings. | Fed. R. Civ. P. 71 applies in an adversary proceeding. |

**Committee Note**

The language of Rule 7071 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 7087. Transfer of Adversary Proceeding** | **Rule 7087. Transferring an Adversary Proceeding** |
| On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1412, except as provided in Rule 7019(2). | On motion and after a hearing, the court may transfer an adversary proceeding, or any part of it, to another district under 28 U.S.C. § 1412—except as provided in Rule 7019(b). |

**Committee Note**

The language of Rule 7087 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

# Bankruptcy Rules Restyling

## 8000 Series

## Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

| ORIGINAL | REVISION |
|---|---|
| PART VIII—APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL | **PART VIII. APPEAL TO A DISTRICT COURT OR A BANKRUPTCY APPELLATE PANEL** |
| **Rule 8001. Scope of Part VIII Rules; Definition of "BAP"; Method of Transmission** | **Rule 8001. Scope; Definition of "BAP"; Sending Documents Electronically** |
| (a) GENERAL SCOPE. These Part VIII rules govern the procedure in a United States district court and a bankruptcy appellate panel on appeal from a judgment, order, or decree of a bankruptcy court. They also govern certain procedures on appeal to a United States court of appeals under 28 U.S.C. § 158(d). | **(a) Scope.** These Part VIII rules govern the procedure in a United States district court and a bankruptcy appellate panel on appeal from a bankruptcy court's judgment, order, or decree. They also govern certain procedures on appeal to a United States court of appeals under 28 U.S.C. § 158(d). |
| (b) DEFINITION OF "BAP." "BAP" means a bankruptcy appellate panel established by a circuit's judicial council and authorized to hear appeals from a bankruptcy court under 28 U.S.C. § 158. | **(b) Definition of "BAP."** "BAP" means a bankruptcy appellate panel established by a circuit judicial council and authorized to hear appeals from a bankruptcy court under 28 U.S.C. § 158. |
| (c) METHOD OF TRANSMITTING DOCUMENTS. A document must be sent electronically under these Part VIII rules, unless it is being sent by or to an individual who is not represented by counsel or the court's governing rules permit or require mailing or other means of delivery. | **(c) Requirement to Send Documents Electronically.** Under these Part VIII rules, a document must be sent electronically, unless:<br>(1) it is sent by or to an individual who is not represented by counsel; or<br>(2) the court's local rules permit or require mailing or delivery by other means. |

**Committee Note**

The language of Rule 8001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
|---|---|
| **Rule 8002. Time for Filing Notice of Appeal** | **Rule 8002. Time to File a Notice of Appeal** |
| (a) IN GENERAL.<br><br>(1) Fourteen-Day Period. Except as provided in subdivisions (b) and (c), a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed.<br><br>(2) Filing Before the Entry of Judgment. A notice of appeal filed after the bankruptcy court announces a decision or order—but before entry of the judgment, order, or decree—is treated as filed on the date of and after the entry.<br><br>(3) Multiple Appeals. If one party files a timely notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise allowed by this rule, whichever period ends later.<br><br>(4) Mistaken Filing in Another Court. If a notice of appeal is mistakenly filed in a district court, BAP, or court of appeals, the clerk of that court must state on the notice the date on which it was received and transmit it to the bankruptcy clerk. The notice of appeal is then considered filed in the bankruptcy court on the date so stated.<br><br>(5) Entry Defined.<br><br>(A) A judgment, order, or decree is entered for purposes of this Rule 8002(a):<br><br>(i) when it is entered in the docket under Rule 5003(a), or | **(a) In General.**<br><br>**(1)** ***Time to File.*** Except as (b) and (c) provide otherwise, a notice of appeal must be filed with the bankruptcy clerk within 14 days after the judgment, order, or decree to be appealed is entered.<br><br>**(2)** ***Filing Before the Entry of Judgment.*** A notice of appeal filed after the bankruptcy court announces a decision or order—but before entry of the judgment, order, or decree—is treated as filed on the date of and after the entry.<br><br>**(3)** ***Multiple Appeals.*** If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise allowed by this rule, whichever period ends later.<br><br>**(4)** ***Mistaken Filing in Another Court.*** If a notice of appeal is mistakenly filed in a district court, BAP, or court of appeals, that court's clerk must note on it the date when it was received and send it to the bankruptcy clerk. The notice is then considered filed in the bankruptcy court on the date noted.<br><br>**(5)** ***Entry Defined.***<br><br>(A) *In General.* A judgment, order, or decree is entered for purposes of this subdivision (a):<br><br>(i) when it is entered in the docket under Rule 5003(a); or<br><br>(ii) if Rule 7058 applies and Fed. R. Civ. P. 58(a) requires a separate document, when the judgment, order, or decree is |

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| (ii) if Rule 7058 applies and Rule 58(a) F.R.Civ.P. requires a separate document, when the judgment, order, or decree is entered in the docket under Rule 5003(a) and when the earlier of these events occurs:<br>• the judgment, order, or decree is set out in a separate document; or<br>• 150 days have run from entry of the judgment, order, or decree in the docket under Rule 5003(a).<br><br>(B) A failure to set out a judgment, order, or decree in a separate document when required by Rule 58(a) F.R.Civ.P. does not affect the validity of an appeal from that judgment, order, or decree. | entered in the docket under Rule 5003(a) and when the earlier of these events occurs:<br>• the judgment, order, or decree is set out in a separate document; or<br>• 150 days have run from entry of the judgment, order, or decree in the docket under Rule 5003(a).<br><br>(B) *Failure to Use a Separate Document.* A failure to set out a judgment, order, or decree in a separate document when required by Fed. R. Civ. P. 58(a) does not affect the validity of an appeal from that judgment, order, or decree. |
| (b) EFFECT OF A MOTION ON THE TIME TO APPEAL.<br><br>(1) In General. If a party files in the bankruptcy court any of the following motions and does so within the time allowed by these rules, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion: | **(b) Effect of a Motion on the Time to Appeal.**<br><br>**(1)** ***In General.*** If a party files in the bankruptcy court any of the following motions—and does so within the time allowed by these rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion: |

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| (A) to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;<br><br>(B) to alter or amend the judgment under Rule 9023;<br><br>(C) for a new trial under Rule 9023; or<br><br>(D) for relief under Rule 9024 if the motion is filed within 14 days after the judgment is entered.<br><br>(2) Filing an Appeal Before the Motion is Decided. If a party files a notice of appeal after the court announces or enters a judgment, order, or decree—but before it disposes of any motion listed in subdivision (b)(1)—the notice becomes effective when the order disposing of the last such remaining motion is entered.<br><br>(3) Appealing the Ruling on the Motion. If a party intends to challenge an order disposing of any motion listed in subdivision (b)(1)—or the alteration or amendment of a judgment, order, or decree upon the motion—the party must file a notice of appeal or an amended notice of appeal. The notice or amended notice must comply with Rule 8003 or 8004 and be filed within the time prescribed by this rule, measured from the entry of the order disposing of the last such remaining motion.<br><br>(4) No Additional Fee. No additional fee is required to file an amended notice of appeal. | (A) to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;<br><br>(B) to alter or amend the judgment under Rule 9023;<br><br>(C) for a new trial under Rule 9023; or<br><br>(D) for relief under Rule 9024 if the motion is filed within 14 days after the judgment is entered.<br><br>**(2)** ***Notice of Appeal Filed Before a Motion Is Decided.*** If a party files a notice of appeal after the court announces or enters a judgment, order, or decree—but before it disposes of any motion listed in (1)—the notice becomes effective when the order disposing of the last such remaining motion is entered.<br><br>**(3)** ***Appealing the Ruling on the Motion.*** A party intending to challenge an order disposing of a motion listed in (1)—or an alteration or amendment of a judgment, order, or decree made by a decision on the motion—must file a notice of appeal or an amended notice of appeal. It must:<br><br>(A) comply with Rule 8003 or 8004; and<br><br>(B) be filed within the time prescribed by this rule, measured from the entry of the order disposing of the last such remaining motion.<br><br>**(4)** ***No Additional Fee for an Amended Notice.*** No additional fee is required to file an amended notice of appeal. |

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| (c) APPEAL BY AN INMATE CONFINED IN AN INSTITUTION.<br><br>(1) In General. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8002(c)(1). If an inmate files a notice of appeal from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:<br><br>(A) it is accompanied by:<br><br>(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being pre-paid; or<br><br>(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or<br><br>(B) the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 8002(c)(1)(A)(i).<br><br>(2) Multiple Appeals. If an inmate files under this subdivision the first notice of appeal, the 14-day period provided in subdivision (a)(3) for another party to file a notice of appeal runs from the date when the bankruptcyclerk dockets the first notice. | **(c) Appeal by an Inmate Confined in an Institution.**<br><br>**(1)** ***In General.*** If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this paragraph (1). If an inmate files a notice of appeal from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:<br><br>(A) it is accompanied by:<br><br>(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or<br><br>(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or<br><br>(B) the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies (A)(i).<br><br>**(2)** ***Multiple Appeals.*** If an inmate files under this subdivision (c) the first notice of appeal, the 14-day period provided in (a)(3) for another party to file a notice of appeal runs from the date when the bankruptcy clerk dockets the first notice. |

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| (d) EXTENDING THE TIME TO APPEAL.<br><br>(1) When the Time May be Extended. Except as provided in subdivision (d)(2), the bankruptcy court may extend the time to file a notice of appeal upon a party's motion[1] that is filed:<br><br>(A) within the time prescribed by this rule; or<br><br>(B) within 21 days after that time, if the party shows excusable neglect.<br><br>(2) When the Time May Not be Extended. The bankruptcy court may not extend the time to file a notice of appeal if the judgment, order, or decree appealed from:<br><br>(A) grants relief from an automatic stay under § 362, 922, 1201, or 1301 of the Code;<br>(B) authorizes the sale or lease of property or the use of cash collateral under § 363 of the Code;<br>(C) authorizes the obtaining of credit under § 364 of the Code;<br>(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365 of the Code;<br>(E) approves a disclosure statement under § 1125 of the Code; or<br>(F) confirms a plan under § 943, 1129, 1225, or 1325 of the Code. | **(d) Extending the Time to File a Notice of Appeal.**<br><br>**(1)** ***When the Time May Be Extended.*** Except as (2) provides otherwise, the bankruptcy court may, on motion, extend the time to file a notice of appeal[2] if the motion is filed:<br><br>(A) within the time prescribed by this rule; or<br><br>(B) within 21 days after that time expires if the party shows excusable neglect.<br><br>**(2)** ***When the Time May Not Be Extended.*** The bankruptcy court may not extend the time to file the notice if the judgment, order, or decree being appealed:<br><br>(A) grants relief from the automatic stay under § 362, 922, 1201, or 1301;<br><br>(B) authorizes the sale or lease of property or the use of cash collateral under § 363;<br><br>(C) authorizes obtaining credit under § 364;<br><br>(D) authorizes assuming or assigning an executory contract or unexpired lease under § 365;<br>(E) approves a disclosure statementunder § 1125; or<br><br>(F) confirms a plan under § 943, 1129, 1225, or 1325. |

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| (3) TIME LIMITS ON AN EXTENSION. No extension of time may exceed 21 days after the time prescribed by this rule, or 14 days after the order granting the motion to extend time is entered, whichever is later. | **(3)** ***Limit on Extending Time.*** An extension of time must not exceed 21 days after the time prescribed by this rule, or 14 days after the order granting the motion to extend time is entered—whichever is later. |

**Committee Note**

The language of Rule 8002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal** | **Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal** |
| (a) FILING THE NOTICE OF APPEAL.<br><br>(1) In General. An appeal from a judgment, order, or decree of a bankruptcy court to a district court or BAP under 28 U.S.C. § 158(a)(1) or (a)(2) may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002.<br><br>(2) Effect of Not Taking Other Steps. An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal.<br><br>(3) Contents. The notice of appeal must:<br><br>(A) conform substantially to the appropriate Official Form;<br><br>(B) be accompanied by the judgment, order, or decree, or the part of it, being appealed; and<br><br>(C) be accompanied by the prescribed fee.<br><br>(4) Additional Copies. If requested to do so, the appellant must furnish the bankruptcy clerk with enough copies of the notice to enable the clerk to comply with subdivision (c). | **(a) Filing a Notice of Appeal.**<br><br>(1) *Time to File.* An appeal under 28 U.S.C. § 158(a)(1) or (2) from a judgment, order, or decree of a bankruptcy court to a district court or a BAP may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002.<br><br>(2) *Failure to Take Any Other Step.* An appellant's failure to take any other step does not affect the appeal's validity, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal.<br><br>(3) *Content of the Notice of Appeal.* A notice of appeal must:<br><br>(A) conform substantially to Form 417A;<br><br>(B) be accompanied by the judgment, order, or decree, or the part of it, being appealed; and<br><br>(C) be accompanied by the prescribed filing fee.<br><br>(4) *Clerk's Request for Additional Copies of the Notice of Appeal.* On the bankruptcy clerk's request, the appellant must provide enough copies of the notice of appeal to enable the clerk to comply with (c). |

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| (b) JOINT OR CONSOLIDATED APPEALS.<br><br>(1) Joint Notice of Appeal. When two or more parties are entitled to appeal from a judgment, order, or decree of a bankruptcy court and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.<br><br>(2) Consolidating Appeals. When parties have separately filed timely notices of appeal, the district court or BAP may join or consolidate the appeals. | **(b) Joint or Consolidated Appeals.**<br><br>(1) *Joint Notice of Appeal.* When two or more parties are entitled to appeal from a bankruptcy court's judgment, order, or decree and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.<br><br>(2) *Consolidating Appeals.* When parties have separately filed timely notices of appeal, the district court or BAP may join or consolidate the appeals. |
| (c) SERVING THE NOTICE OF APPEAL.<br><br>(1) Serving Parties and Transmitting to the United States Trustee. The bankruptcy clerk must serve the notice of appeal on counsel of record for each party to the appeal, excluding the appellant, and transmit it to the United States trustee. If a party is proceeding pro se, the clerk must send the notice of appeal to the party's last known address. The clerk must note, on each copy, the date when the notice of appeal was filed.<br><br>(2) Effect of Failing to Serve or Transmit Notice. The bankruptcy clerk's failure to serve notice on a party or transmit notice to the United States trustee does not affect the validity of the appeal.<br><br>(3) Noting Service on the Docket. The clerk must note on the docket the names of the parties served and the date and method of the service. | **(c) Serving the Notice of Appeal.**<br><br>(1) *Serving Parties; Sending to the United States Trustee.* The bankruptcy clerk must serve the notice of appeal by sending a copy to counsel of record for each party to the appeal—excluding the appellant's—and send it to the United States trustee. If a party is proceeding pro se, the clerk must send the notice to the party's last known address. The clerk must note, on each copy, the date when the notice of appeal was filed.<br><br>(2) *Failure to Serve the Notice of Appeal.* The bankruptcy clerk's failure to serve notice on a party or send notice to the United States trustee does not affect the validity of the appeal.<br><br>(3) *Entry of Service on the Docket.* The clerk must note on the docket the names of the parties served and the date and method of service. |

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| (d) TRANSMITTING THE NOTICE OF APPEAL TO THE DISTRICT COURT OR BAP; DOCKETING THE APPEAL.<br><br>(1) Transmitting the Notice. The bankruptcy clerk must promptly transmit the notice of appeal to the BAP clerk if a BAP has been established for appeals from that district and the appellant has not elected to have the district court hear the appeal. Otherwise, the bankruptcy clerk must promptly transmit the notice to the district clerk.<br><br>(2) Docketing in the District Court or BAP. Upon receiving the notice of appeal, the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary. | **(d) Sending the Notice of Appeal to the District Court or BAP; Docketing the Appeal.**<br><br>(1) ***Where to Send the Notice of Appeal.*** If a BAP has been established to hear appeals from that district—and an appellant has not elected to have the appeal heard in the district court—the bankruptcy clerk must promptly send the notice of appeal to the BAP clerk. Otherwise, the bankruptcy clerk must promptly send it to the district clerk.<br><br>(2) ***Docketing the Appeal.*** Upon receiving the notice of appeal, the BAP clerk or district clerk must:<br><br>(A) docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding; and<br><br>(B) identify the appellant, adding the appellant's name if necessary. |

**Committee Note**

The language of Rule 8003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal** | **Rule 8004. Appeal by Leave from an Interlocutory Order or Decree Under 28 U.S.C. § 158(a)(3)** |
| (a) NOTICE OF APPEAL AND MOTION FOR LEAVE TO APPEAL. To appeal from an interlocutory order or decree of a bankruptcy court under 28 U.S.C. § 158(a)(3), a party must file with the bankruptcy clerk a notice of appeal as prescribed by Rule 8003(a). The notice must:<br><br>(1) be filed within the time allowed by Rule 8002;<br><br>(2) be accompanied by a motion for leave to appeal prepared in accordance with subdivision (b); and<br><br>(3) unless served electronically using the court's transmission equipment, include proof of service in accordance with Rule 8011(d). | **(a) Notice of Appeal and Accompanying Motion for Leave to Appeal.** To appeal under 28 U.S.C. § 158(a)(3) from a bankruptcy court's interlocutory order or decree, a party must file with the bankruptcy clerk a notice of appeal under Rule 8003(a). The notice must:<br><br>(1) be filed within the time allowed by Rule 8002;<br><br>(2) be accompanied by a motion for leave to appeal prepared in accordance with (b); and<br><br>(3) unless served electronically using the court's electronic-filing system, include proof of service in accordance with Rule 8011(d). |
| (b) CONTENTS OF THE MOTION; RESPONSE.<br><br>(1) Contents. A motion for leave to appeal under 28 U.S.C. § 158(a)(3) must include the following:<br><br>(A) the facts necessary to understand the question presented;<br><br>(B) the question itself;<br><br>(C) the relief sought;<br><br>(D) the reasons why leave to appeal should be granted; and<br><br>(E) a copy of the interlocutory order or decree and any related opinion or memorandum. | **(b) Content of the Motion for Leave to Appeal; Response.**<br><br>**(1)** ***Content.*** A motion for leave to appeal under 28 U.S.C. § 158(a)(3) must include:<br><br>(A) the facts needed to understand the question presented;<br><br>(B) the question itself;<br><br>(C) the relief sought;<br><br>(D) the reasons why leave to appeal should be granted; and<br><br>(E) a copy of the interlocutory order or decree and any related opinion or memorandum. |

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| (2) Response. A party may file with the district or BAP clerk a response in opposition or a cross-motion within 14 days after the motion is served. | **(2)** ***Response.*** Within 14 days after the motion for leave has been served, a party may file with the district clerk or BAP clerk a response in opposition or a cross-motion. |
| (c) TRANSMITTING THE NOTICE OF APPEAL AND THE MOTION; DOCKETING THE APPEAL; DETERMINING THE MOTION.<br><br>(1) Transmitting to the District Court or BAP. The bankruptcy clerk must promptly transmit the notice of appeal and the motion for leave to the BAP clerk if a BAP has been established for appeals from that district and the appellant has not elected to have the district court hear the appeal. Otherwise, the bankruptcy clerk must promptly transmit the notice and motion to the district clerk.<br><br>(2) Docketing in the District Court or BAP. Upon receiving the notice and motion, the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the titleof any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary.<br><br>(3) Oral Argument Not Required. The motion and any response or cross-motion are submitted without oral argument unless the district court orBAP orders otherwise. | **(c) Sending the Notice of Appeal and Motion for Leave to Appeal; Docketing the Appeal; Oral Argument Not Required.**<br><br>**(1)** ***Sending to the District Court or BAP.*** If a BAP has been established to hear appeals from that district—and an appellant has not elected to have the appeal heard in the district court—the bankruptcy clerk must promptly send the notice of appeal and the motion for leave to appeal to the BAP clerk. Otherwise, the bankruptcy clerk must promptly send the notice and motion to the district clerk.<br><br>**(2)** ***Docketing the Appeal.*** Upon receiving the notice and motion, the district or BAP clerk must docket the appeal as prescribed by Rule 8003(d)(2).<br><br>**(3)** ***Oral Argument Not Required.*** Unless the district court or BAP orders otherwise, a motion, a cross-motion, and any response will be submitted without oral argument. |
| (d) FAILURE TO FILE A MOTION WITH A NOTICE OF APPEAL. If an appellant timely files a notice of appeal under this rule but does not include a motion for leave, the district court or BAP may order the appellant to file a motion for leave, or treat the notice of appeal as a motion for leave and either | **(d) Failure to File a Motion for Leave to Appeal.** If an appellant files a timely notice of appeal under this rule but fails to include a motion for leave to appeal, the district court or BAP may:<br><br>(1) treat the notice of appeal as a motion for leave to appeal and grant or deny it; or |

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| grant or deny it. If the court orders that a motion for leave be filed, the appellant must do so within 14 days after the order is entered, unless the order provides otherwise. | (2) order the appellant to file a motion for leave to appeal within 14 days after the order has been entered—unless the order provides otherwise. |
| (e) DIRECT APPEAL TO A COURT OF APPEALS. If leave to appeal an interlocutory order or decree is required under 28 U.S.C. § 158(a)(3), an authorization of a direct appeal by the court of appeals under 28 U.S.C. § 158(d)(2) satisfies the requirement. | **(e) Direct Appeal to a Court of Appeals.** If leave to appeal an interlocutory order or decree is required under 28 U.S.C. § 158(a)(3), an authorization by a court of appeals for a direct appeal under 28 U.S.C. § 158(d)(2) satisfies the requirement. |

**Committee Note**

The language of Rule 8004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP** | **Rule 8005. Election to Have an Appeal Heard in a District Court Instead of the BAP** |
| (a) FILING OF A STATEMENT OF ELECTION. To elect to have an appeal heard by the district court, a party must:<br><br>(1) file a statement of election that conforms substantially to the appropriate Official Form; and<br><br>(2) do so within the time prescribed by 28 U.S.C. § 158(c)(1). | **(a) Filing a Statement of Election.** To elect to have an appeal heard in a district court, a party must file a statement of election within the time prescribed by 28 U.S.C. § 158(c)(1). The statement must conform substantially to Form 417A. |
| (b) TRANSMITTING THE DOCUMENTS RELATED TO THE APPEAL. Upon receiving an appellant's timely statement of election, the bankruptcy clerk must transmit to the district clerk all documents related to the appeal. Upon receiving a timely statement of election by a party other than the appellant, the BAP clerk must transmit to the district clerk all documents related to the appeal and notify the bankruptcy clerk of the transmission. | **(b) Sending Documents Relating to the Appeal.** Upon receiving an appellant's timely statement of election, the bankruptcy clerk must send all documents related to the appeal to the district clerk. A BAP clerk who receives a timely statement of election from a party other than the appellant must:<br><br>(1) send those documents to the district clerk; and<br><br>(2) notify the bankruptcy clerk that they have been sent. |
| (c) DETERMINING THE VALIDITY OF AN ELECTION. A party seeking a determination of the validity of an election must file a motion in the court where the appeal is then pending. The motion must be filed within 14 days after the statement of election is filed. | **(c) Determining the Validity of an Election.** Within 14 days after the statement of election has been filed, a party seeking to determine the election's validity must file a motion in the court where the appeal is pending. |
| (d) MOTION FOR LEAVE WITHOUT A NOTICE OF APPEAL—EFFECT ON THE TIMING OF AN ELECTION. If an appellant moves for leave to appeal under Rule 8004 but fails to file a separate notice of appeal with the | **(d) Effect of Filing a Motion for Leave to Appeal Without Filing a Notice of Appeal.** If an appellant moves for leave to appeal under Rule 8004 but fails to file a notice of appeal with the motion, it must be treated as a notice of appeal in determining |

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| motion, the motion must be treated as a notice of appeal for purposes of determining the timeliness of a statement of election. | whether the statement of election has been timely filed. |

**Committee Note**

The language of Rule 8005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8006. Certifying a Direct Appeal to the Court of Appeals** | **Rule 8006. Certifying a Direct Appeal to a Court of Appeals** |
| (a) EFFECTIVE DATE OF A CERTIFICATION. A certification of a judgment, order, or decree of a bankruptcy court for direct review in a court of appeals under 28 U.S.C. § 158(d)(2) is effective when:<br><br>(1) the certification has been filed;<br><br>(2) a timely appeal has been taken under Rule 8003 or 8004; and<br><br>(3) the notice of appeal has become effective under Rule 8002. | **(a) Effective Date of a Certification.** A certification of a bankruptcy court's judgment, order, or decree to a court of appeals for direct review under 28 U.S.C. § 158(d)(2) becomes effective when:<br><br>(1) it is filed;<br><br>(2) a timely appeal is taken under Rule 8003 or Rule 8004; and<br><br>(3) the notice of appeal becomes effective under Rule 8002. |
| (b) FILING THE CERTIFICATION. The certification must be filed with the clerk of the court where the matter is pending. For purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the effective date under Rule 8002 of the first notice of appeal from the judgment, order, or decree for which direct review is sought. A matter is pending in the district court or BAP thereafter. | **(b) Filing the Certification.** The certification must be filed with the clerk of the court where the matter is pending. For purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the first notice of appeal concerning that matter becomes effective under Rule 8002. After that time, the matter is pending in the district court or BAP. |
| (c) JOINT CERTIFICATION BY ALL APPELLANTS AND APPELLEES.<br><br>(1) How Accomplished. A joint certification by all the appellants and appellees under 28 U.S.C. § 158(d)(2)(A) must be made by using the appropriate Official Form. The parties may supplement the certification with a short statement of the basis for the certification, which may include the information listed in subdivision (f)(2). | **(c) Joint Certification by All Appellants and Appellees.**<br><br>**(1)** ***In General.*** A joint certification by all appellants and appellees under 28 U.S.C. § 158(d)(2)(A) must be made using Form 424. The parties may supplement the certification with a short statement about its basis. The statement may include the information required by (f)(2). |

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| (2) Supplemental Statement by the Court. Within 14 days after the parties' certification, the bankruptcy court or the court in which the matter is then pending may file a short supplemental statement about the merits of the certification. | **(2)** ***Supplemental Statement by the Court.*** Within 14 days after the parties file the certification, the bankruptcy court—or the court where the matter is pending—may file a short supplemental statement about the certification's merits. |
| (d) THE COURT THAT MAY MAKE THE CERTIFICATION. Only the court where the matter is pending, as provided in subdivision (b), may certify a direct review on request of parties or on its own motion. | **(d) Court's Authority to Certify a Direct Appeal.** On a party's request or on its own, the court where the matter is pending under (b) may certify a direct appeal to a court of appeals. |
| (e) CERTIFICATION ON THE COURT'S OWN MOTION.<br><br>(1) How Accomplished. A certification on the court's own motion must be set forth in a separate document. The clerk of the certifying court must serve it on the parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1). The certification must be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(2)(A)–(D).<br><br>(2) Supplemental Statement by a Party. Within 14 days after the court's certification, a party may file with the clerk of the certifying court a short supplemental statement regarding the merits of certification. | **(e) Certification by the Court Acting on Its Own.**<br><br>**(1)** ***Separate Document Required; Service; Content.*** A certification by a court acting on its own must be set forth in a separate document. The clerk of the certifying court must serve the document on the parties to the appeal in the manner required for serving a notice of appeal under Rule 8003(c)(1). It must be accompanied by an opinion or memorandum that contains the information required by (f)(2)(A)–(D).<br><br>**(2)** ***Supplemental Statement by a Party.*** Within 14 days after the court's certification, a party may file with the clerk of the certifying court a short supplemental statement about the merits of certification. |

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| (f) CERTIFICATION BY THE COURT ON REQUEST.<br><br>(1) How Requested. A request by a party for certification that a circumstance specified in 28 U.S.C. §158(d)(2)(A)(i)–(iii) applies—or a request by a majority of the appellants and a majority of the appellees—must be filed with the clerk of the court where the matter is pending within 60 days after the entry of the judgment, order, or decree.<br><br>(2) Service and Contents. The request must be served on all parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1), and it must include the following:<br><br>(A) the facts necessary to understand the question presented;<br><br>(B) the question itself;<br><br>(C) the relief sought;<br><br>(D) the reasons why the direct appeal should be allowed, including which circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)–(iii) applies; and<br><br>(E) a copy of the judgment, order, or decree and any related opinion or memorandum.<br><br>(3) Time to File a Response or a Cross-Request. A party may file a response to the request within 14 days after the request is served, or such other time as the court where the matter is pending allows. A party may file a cross-request for certification within 14 days after the request is served, or within 60 days after the entry of the judgment, order, or decree, whichever occurs first. | **(f) Certification by the Court on Request.**<br><br>**(1)** ***How Requested.*** A party's request for certification under 28 U.S.C. § 158(d)(2)(A)—or a request by a majority of the appellants and of the appellees—must be filed with the clerk of the court where the matter is pending. The request must be filed within 60 days after the judgment, order, or decree is entered.<br><br>**(2)** ***Service; Content.*** The request must be served on all parties to the appeal in the manner required for serving a notice of appeal under Rule 8003(c)(1). The request must include:<br><br>(A) the facts needed to understand the question presented;<br><br>(B) the question itself;<br><br>(C) the relief sought;<br><br>(D) the reasons why a direct appeal should be allowed, including which circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)–(iii) applies; and<br><br>(E) the judgment, order, or decree, and any related opinion or memorandum.<br><br>**(3)** ***Time to File a Response or a Cross-Request.***<br><br>(A) Response. A party may file a response within 14 days after the request has been served, or within such other time as the court where the matter is pending allows.<br><br>(B) Cross-Request. A party may file a cross-request for certification within 14 days after the request has been served or within 60 days after the judgment, order, or decree has been entered—whichever occurs first. |

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| (4) Oral Argument Not Required. The request, cross-request, and any response are submitted without oral argument unless the court where the matter is pending orders otherwise.<br><br>(5) Form and Service of the Certification. If the court certifies a direct appeal in response to the request, it must do so in a separate document. The certification must be served on the parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1). | **(4)** ***Oral Argument Not Required.*** Unless the court where the matter is pending orders otherwise, a request, a cross-request, and any response will be submitted without oral argument.<br><br>**(5)** ***Form of a Certification; Service.*** The court that certifies a direct appeal in response to a request must do so in a separate document served on all parties to the appeal in the manner required for serving a notice of appeal under Rule 8003(c)(1). |
| (g) PROCEEDING IN THE COURT OF APPEALS FOLLOWING A CERTIFICATION. Within 30 days after the date the certification becomes effective under subdivision (a), a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk in accordance with F.R.App.P. 6(c). | **(g) Request for Leave to Take a Direct Appeal to a Court of Appeals After Certification.** Within 30 days after the certification has become effective under (a), a request for leave to take a direct appeal to a court of appeals must be filed with the circuit clerk in accordance with Fed. R. App. P. 6(c). |

**Committee Note**

The language of Rule 8006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings** | **Rule 8007. Stay Pending Appeal; Bond; Suspending Proceedings** |
| (a) INITIAL MOTION IN THE BANKRUPTCY COURT.<br><br>(1) In General. Ordinarily, a party must move first in the bankruptcy court for the following relief:<br><br>(A) a stay of a judgment, order, or decree of the bankruptcy court pending appeal;<br><br>(B) the approval of a bond or other security provided to obtain a stay of judgment;<br><br>(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or<br><br>(D) the suspension or continuation of proceedings in a case or other relief permitted by subdivision (e).<br><br>(2) Time to File. The motion may be made either before or after the notice of appeal is filed. | **(a) Initial Motion in the Bankruptcy Court.**<br><br>(1) ***In General.*** Ordinarily, a party must move first in the bankruptcy court for the following relief:<br><br>(A) a stay of the bankruptcy court's judgment, order, or decree pending appeal;<br><br>(B) the approval of a bond or other security provided to obtain a stay of judgment;<br><br>(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or<br><br>(D) an order suspending or continuing proceedings or granting other relief permitted by (e).<br><br>(2) ***Time to File.*** The motion may be filed either before or after the notice of appeal is filed. |
| (b) MOTION IN THE DISTRICT COURT, THE BAP, OR THE COURT OF APPEALS ON DIRECT APPEAL.<br><br>(1) Request for Relief. A motion for the relief specified in subdivision (a)(1)—or to vacate or modify a bankruptcy court's order granting such relief—may be made in the court where | **(b) Motion in the District Court, BAP, or Court of Appeals on Direct Appeal.**<br><br>(1) ***In General.*** A motion for the relief specified in (a)(1)—or to vacate or modify a bankruptcy court's order granting such relief—may be filed in the court where the appeal is pending. |

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| the appeal is pending.<br><br>(2) Showing or Statement Required. The motion must:<br><br>(A) show that moving first in the bankruptcy court would be impracticable; or<br><br>(B) if a motion was made in the bankruptcy court, either state that the court has not yet ruled on the motion, or state that the court has ruled and set out any reasons given for the ruling.<br><br>(3) Additional Content. The motion must also include:<br><br>(A) the reasons for granting the relief requested and the facts relied upon;<br><br>(B) affidavits or other sworn statements supporting facts subject to dispute; and<br><br>(C) relevant parts of the record.<br><br>(4) Serving Notice. The movant must give reasonable notice of the motion to all parties. | (2) ***Required Showing.*** The motion must:<br><br>(A) show that moving first in the bankruptcy court would be impracticable; or<br><br>(B) if a motion has already been made in the bankruptcy court, state whether the court has ruled on it, and if so, state any reasons given for the ruling.<br><br>(3) ***Additional Requirements.*** The motion must also include:<br><br>(A) the reasons for granting the relief requested and the facts relied on;<br><br>(B) affidavits or other sworn statements supporting facts subject to dispute; and<br><br>(C) relevant parts of the record.<br><br>(4) ***Serving Notice.*** The movant must give reasonable notice of the motion to all parties. |
| (c) FILING A BOND OR OTHER SECURITY. The district court, BAP, or court of appeals may condition relief on filing a bond or other security with the bankruptcy court. | **(c) Filing a Bond or Other Security as a Condition of Relief.** The district court, BAP, or court of appeals may condition relief on filing a bond or other security withthe bankruptcy court. |

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| (d) BOND OR OTHER SECURITY FOR A TRUSTEE OR THE UNITED STATES. The court may require a trustee to file a bond or other security when the trustee appeals. A bond or other security is not required when an appeal is taken by the United States, its officer, or its agency or by direction of any department of the federal government. | **(d) Bond or Other Security for a Trustee; Not for the United States.** The court may require a trustee who appeals to file a bond or other security. No bond or security is required when:<br>(1) the United States, its officer, or its agency appeals; or<br>(2) an appeal is taken by direction of any federal governmental department. |
| (e) CONTINUATION OF PROCEEDINGS IN THE BANKRUPTCY COURT. Despite Rule 7062 and subject to the authority of the district court, BAP, or court of appeals, the bankruptcy court may:<br>(1) suspend or order the continuation of other proceedings in the case; or<br>(2) issue any other appropriate orders during the pendency of an appeal to protect the rights of all parties in interest. | **(e) Continuing Proceedings in the Bankruptcy Court.** Despite Rule 7062—but subject to the authority of the district court, BAP, or court of appeals—while the appeal is pending, the bankruptcy court may:<br>(1) suspend or order the continuation of other proceedings in the case, or<br>(2) issue any appropriate order to protect the rights of all parties in interest. |

**Committee Note**

The language of Rule 8007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8008. Indicative Rulings** | **Rule 8008. Indicative Rulings** |
| (a) RELIEF PENDING APPEAL. If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may:<br><br>(1) defer considering the motion;<br><br>(2) deny the motion; or<br><br>(3) state that the court would grant the motion if the court where the appeal is pending remands for that purpose, or state that the motion raises a substantial issue. | **(a) Motion for Relief Filed When an Appeal Is Pending; Bankruptcy Court's Options.** If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because an appeal has been docketed and is pending, the bankruptcy court may:<br><br>(1) defer considering the motion;<br><br>(2) deny the motion;<br><br>(3) state that it would grant the motion if the court where the appeal is pending remands for that purpose; or<br><br>(4) state that the motion raises a substantial issue. |
| (b) NOTICE TO THE COURT WHERE THE APPEAL IS PENDING. The movant must promptly notify the clerk of the court where the appeal is pending if the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue. | **(b) Notice to the Court Where the Appeal Is Pending.** The movant must promptly notify the clerk of the court where the appeal is pending if the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue. |
| (c) REMAND AFTER AN INDICATIVE RULING. If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, the district court or BAP may remand for further proceedings, but it retains jurisdiction unless it expressly dismisses the appeal. If the district court or BAP remands but retains jurisdiction, the parties must promptly notify the clerk of that court when the bankruptcy court has decided the motion on remand. | **(c) Remand After an Indicative Ruling.** If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, the district court or BAP may remand for further proceedings, but it retains jurisdiction unless it expressly dismisses the appeal. If the district court or BAP remands but retains jurisdiction, the parties must promptly notify the clerk of that court when the bankruptcy court has decided the motion on remand. |

**Committee Note**

The language of Rule 8008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8009. Record on Appeal; Sealed Documents** | **Rule 8009. Record on Appeal; Sealed Documents** |
| (a) DESIGNATING THE RECORD ON APPEAL; STATEMENT OF THE ISSUES.<br><br>(1) Appellant.<br><br>(A) The appellant must file with the bankruptcy clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented.<br><br>(B) The appellant must file and serve the designation and statement within 14 days after:<br><br>(i) the appellant's notice of appeal as of right becomes effective under Rule 8002; or<br><br>(ii) an order granting leave to appeal is entered. A designation and statement served prematurely must be treated as served on the first day on which filing is timely.<br><br>(2) Appellee and Cross-Appellant. Within 14 days after being served, the appellee may file with the bankruptcy clerk and serve on the appellant a designation of additional items to be included in the record. An appellee who files a cross-appeal must file and serve a designation of additional items to be included in the record and a statement of the issues to be presented on the cross-appeal.<br><br>(3) Cross-Appellee. Within 14 days after service of the cross-appellant's designation and statement, a cross-appellee may file with the | **(a) Designating the Record on Appeal; Statement of the Issues; Content of the Record.**<br><br>**(1)** ***Appellant's Designation.*** The appellant must:<br><br>(A) file with the bankruptcy clerk a designation of the items to be included in the record on appeal and a statement of the issues to be presented; and<br><br>(B) file and serve the designation and statement on the appellee within 14 days after:<br><br>• the notice of appeal as of right has become effective under Rule 8002; or<br><br>• an order granting leave to appeal has been entered.<br><br>Premature service is treated as service on the first day on which filing is timely.<br><br>**(2)** ***Appellee's and Cross-Appellant's Designation.***<br><br>(A) Appellee. Within 14 days after being served, the appellee may file with the bankruptcy clerk and serve on the appellant a designation of additional items to be included in the record.<br><br>(B) Cross-Appellant. An appellee who files a cross-appeal must file and serve a designation of additional items to be included in the record and a statement of the issues to be presented on the cross-appeal.<br><br>**(3)** ***Cross-Appellee's Designation.*** Within 14 days after the cross- |

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| bankruptcy clerk and serve on the cross-appellant a designation of additional items to be included in the record.<br><br>(4) Record on Appeal. The record on appeal must include the following:<br><br>• docket entries kept by the bankruptcy clerk;<br>• items designated by the parties;<br>• the notice of appeal;<br>• the judgment, order, or decree being appealed;<br>• any order granting leave to appeal;<br>• any certification required for a direct appeal to the court of appeals;<br>• any opinion, findings of fact, and conclusions of law relating to the issues on appeal, including transcripts of all oral rulings;<br>• any transcript ordered under subdivision (b);<br>• any statement required by subdivision (c); and<br>• any additional items from the record that the court where the appeal is pending orders.<br><br>(5) Copies for the Bankruptcy Clerk. If paper copies are needed, a party filing a designation of items must provide a copy of any of those items that the bankruptcy clerk requests. If theparty fails to do so, the bankruptcy clerkmust prepare the copy at the party's expense. | appellant's designation and statement have been served, the cross-appellee may file with the bankruptcy clerk and serve on the cross-appellant a designation of additional items to be included in the record.<br><br>**(4)** *Record on Appeal.* The record on appeal must include:<br><br>• the docket entries;<br>• items designated by the parties;<br>• the notice of appeal;<br>• the judgment, order, or decree being appealed;<br>• any order granting leave to appeal;<br>• any certification required for a direct appeal to the court of appeals;<br>• any opinion, findings of fact and conclusions of law relating to the issues on appeal, and transcripts of all oral rulings;<br>• any transcript ordered under (b);<br>• any statement required by (c); and<br>• any other items from the record that the court where the appeal is pending orders.<br><br>**(5)** *Copies for the Bankruptcy Clerk.* If paper copies are needed and the bankruptcy clerk requests copies of designated items, the party filing the designation must provide them. If the party fails to do so, the bankruptcy clerk must prepare them at that party's expense. |

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| (b) TRANSCRIPT OF PROCEEDINGS.<br><br>(1) Appellant's Duty to Order. Within the time period prescribed by subdivision (a)(1), the appellant must:<br><br>(A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or<br><br>(B) file with the bankruptcy clerk a certificate stating that the appellant is not ordering a transcript.<br><br>(2) Cross-Appellant's Duty to Order. Within 14 days after the appellant files a copy of the transcript order or a certificate of not ordering a transcript, the appellee as cross-appellant must:<br><br>(A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such additional parts of the proceedings as the cross-appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or<br><br>(B) file with the bankruptcy clerk a certificate stating that the cross-appellant is not ordering a transcript. | **(b) Transcript of Proceedings.**<br><br>**(1)** ***Appellant's Duty to Order.*** Within the period prescribed by (a)(1), the appellant must:<br><br>(A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or<br><br>(B) file with the bankruptcy clerk a certificate stating that the appellant is not ordering a transcript.<br><br>**(2)** ***Appellee's Duty to Order as a Cross-Appellant.*** Within 14 days after the appellant has filed a copy of the transcript order—or a certificate stating that the appellant is not ordering a transcript—the appellee as cross-appellant must:<br><br>(A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such additional parts of the proceedings as the cross-appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or<br><br>(B) file with the bankruptcy clerk a certificate stating that the cross-appellant is not ordering a transcript. |

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| (3) Appellee's or Cross-Appellee's Right to Order. Within 14 days after the appellant or cross-appellant files a copy of a transcript order or certificate of not ordering a transcript, the appellee or cross-appellee may order in writing from the reporter a transcript of such additional parts of the proceedings as the appellee or cross-appellee considers necessary for the appeal. A copy of the order must be filed with the bankruptcy clerk.<br><br>(4) Payment. At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.<br><br>(5) Unsupported Finding or Conclusion. If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all relevant testimony and copies of all relevant exhibits. | **(3)** ***Appellee's or Cross-Appellee's Right to Order.*** Within 14 days after the appellant or cross-appellant has filed a copy of a transcript order—or a certificate stating that the appellant or cross-appellant is not ordering a transcript—the appellee or cross-appellee:<br><br>(A) may order in writing from the reporter (as defined in Rule 8010(a)(1)) a transcript of any additional parts of the proceeding that the appellee or cross-appellee considers necessary for the appeal; and<br><br>(B) must file a copy of the order with the bankruptcy clerk.<br><br>**(4)** ***Payment.*** At the time of ordering, a party must make satisfactory arrangements with the reporter to pay for the transcript.<br><br>**(5)** ***Unsupported Finding or Conclusion.*** If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all relevant testimony and a copy of all relevant exhibits. |
| (c) STATEMENT OF THE EVIDENCE WHEN A TRANSCRIPT IS UNAVAILABLE. If a transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement | **(c) When a Transcript Is Unavailable.**<br><br>**(1)** ***Statement of the Evidence.*** If a transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's |

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| must be filed within the time prescribed by subdivision (a)(1) and served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the bankruptcy court for settlement and approval. As settled and approved, the statement must be included by the bankruptcy clerk in the record on appeal. | recollection. The statement must be filed within the time prescribed by (a)(1) and served on the appellee.<br><br>**(2)** ***Appellee's Response.*** The appellee may serve objections or proposed amendments within 14 days after being served.<br><br>**(3)** ***Court Approval.*** The statement and any objections or proposed amendments must then be submitted to the bankruptcy court for settlement and approval. As settled and approved, the statement must be included by the bankruptcy clerk in the record on appeal. |
| (d) AGREED STATEMENT AS THE RECORD ON APPEAL. Instead of the record on appeal as defined in subdivision (a), the parties may prepare, sign, and submit to the bankruptcy court a statement of the case showing how the issues presented by the appeal arose and were decided in the bankruptcy court. The statement must set forth only those facts alleged and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is accurate, it—together with any additions that the bankruptcy court may consider necessary to a full presentation of the issues on appeal—must be approved by the bankruptcy court and must then be certified to the court where the appeal is pending as the record on appeal. The bankruptcy clerk must then transmit it to the clerk of that court within the time provided by Rule 8010. A copy of the agreed statement may be filed in place of the appendix required by Rule 8018(b) or, in the case of a direct appeal to the court of appeals, by F.R.App.P. 30. | **(d) Agreed Statement as the Record on Appeal.**<br><br>**(1)** ***Agreed Statement.*** Instead of the record on appeal as defined in (a), the parties may prepare, sign, and submit to the bankruptcy court a statement of the case showing how the issues presented by the appeal arose and were decided in the bankruptcy court.<br><br>**(2)** ***Content.*** The statement must set forth only those facts alleged and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is accurate, it—together with any additions that the bankruptcy court may consider necessary to a full presentation of the issues on appeal—must be:<br><br>(A) approved by the bankruptcy court; and<br><br>(B) certified to the court where the appeal is pending as the record on appeal.<br><br>**(3)** ***Time to Send the Agreed Statement to the Appellate Court.*** The bankruptcy clerk must then send the |

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| | agreed statement to the clerk of the court where the appeal is pending within the time provided by Rule 8010. A copy may be filed in place of the appendix required by Rule 8018(b) or, in the case of a direct appeal to the court of appeals, by Fed. R. App. P. 30. |
| (e) CORRECTING OR MODIFYING THE RECORD.<br><br>(1) Submitting to the Bankruptcy Court. If any difference arises about whether the record accurately discloses what occurred in the bankruptcy court, the difference must be submitted to and settled by the bankruptcy court and the record conformed accordingly. If an item has been improperly designated as part of the record on appeal, a party may move to strike that item.<br><br>(2) Correcting in Other Ways. If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and transmitted:<br><br>(A) on stipulation of the parties;<br><br>(B) by the bankruptcy court before or after the record has been forwarded; or<br><br>(C) by the court where the appeal is pending.<br><br>(3) Remaining Questions. All other questions as to the form and content of the record must be presentedto the court where the appeal is pending. | **(e) Correcting or Modifying the Record.**<br><br>**(1)** ***Differences About Accuracy and Improper Designations.*** If any difference arises about whether the record accurately discloses what occurred in the bankruptcy court, the difference must be submitted to and settled by the bankruptcy court and the record conformed accordingly. If an item has been improperly designated as part of the record on appeal, a party may move to strike it.<br><br>**(2)** ***Omissions and Misstatements.*** If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and sent:<br><br>(A) on stipulation of the parties;<br><br>(B) by the bankruptcy court before or after the record has been sent; or<br><br>(C) by the court where the appeal is pending.<br><br>**(3)** ***Remaining Questions.*** All other questions as to the form and content of the record must be presented to the court where the appeal is pending. |

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| (f) SEALED DOCUMENTS. A document placed under seal by the bankruptcy court may be designated as part of the record on appeal. In doing so, a party must identify it without revealing confidential or secret information, but the bankruptcy clerk must not transmit it to the clerk of the court where the appeal is pending as part of the record. Instead, a party must file a motion with the court where the appeal is pending to accept the document under seal. If the motion is granted, the movant must notify the bankruptcy court of the ruling, and the bankruptcy clerk must promptly transmit the sealed document to the clerk of the court where the appeal is pending. | **(f) Sealed Documents.**<br>**(1)** ***In General.*** A document placed under seal by the bankruptcy court may be designated as a part of the record on appeal. But a document so designated:<br>(A) must be identified without revealing confidential or secret information; and<br>(B) may be sent only as (2) prescribes.<br>**(2)** ***When to Send a Sealed Document.*** To have a sealed document sent as part of the record, a party must file in the court where the appeal is pending a motion to accept the document under seal. If the motion is granted, the movant must so notify the bankruptcy court, and the bankruptcy clerk must promptly send the sealed document to the clerk of the court where the appeal is pending. |
| (g) OTHER NECESSARY ACTIONS. All parties to an appeal must take any other action necessary to enable the bankruptcy clerk to assemble and transmit the record. | **(g) Duty to Assist the Bankruptcy Clerk.** All parties to an appeal must take any other action needed to enable the bankruptcy clerk to assemble and send the record. |

**Committee Note**

The language of Rule 8009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8010. Completing and Transmitting the Record** | **Rule 8010. Transcribing the Proceedings; Filing the Transcript; Sending the Record** |
| (a) REPORTER'S DUTIES.<br><br>(1) Proceedings Recorded Without a Reporter Present. If proceedings were recorded without a reporter being present, the person or service selected under bankruptcy court procedures to transcribe the recording is the reporter for purposes of this rule.<br><br>(2) Preparing and Filing the Transcript. The reporter must prepare and file a transcript as follows:<br><br>(A) Upon receiving an order for a transcript in accordance with Rule 8009(b), the reporter must file in the bankruptcy court an acknowledgment of the request that shows when it was received, and when the reporter expects to have the transcript completed.<br><br>(B) After completing the transcript, the reporter must file it with the bankruptcy clerk, who will notify the district, BAP, or circuit clerk of its filing.<br><br>(C) If the transcript cannot be completed within 30 days after receiving the order, the reporter must request an extension of time from the bankruptcy clerk. The clerk must enter on the docket and notify the parties whether the extension is granted.<br><br>(D) If the reporter does not file the transcript on time, the bankruptcy clerk must notify the bankruptcy judge. | **(a) Reporter's Duties.**<br><br>**(1)** ***Proceedings Recorded Without a Court Reporter Present.*** If proceedings were recorded without a reporter present, the person or service selected under bankruptcy court procedures to transcribe the recording is the reporter for purposes of this rule.<br><br>**(2)** ***Preparing and Filing the Transcript.*** The reporter must prepare and file a transcript as follows:<br><br>(A) *Initial Steps*. Upon receiving a transcript order under Rule 8009(b), the reporter must file in the bankruptcy court an acknowledgment showing when the order was received and when the reporter expects to have the transcript completed.<br><br>(B) *Filing the Transcript*. After completing the transcript, the reporter must file it with the bankruptcy clerk, who will notify the district, BAP, or circuit clerk of its filing.<br><br>(C) *Extending the Time to Complete a Transcript*. If the transcript cannot be completed within 30 days after the order has been received, the reporter must request an extension from the bankruptcy clerk. The clerk must enter on the docket and notify the parties whether the extension is granted.<br><br>(D) *Failure to File on Time*. If the reporter fails to file the transcript on time, the bankruptcy clerk mustnotify the bankruptcy judge. |

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| (b) CLERK'S DUTIES.<br><br>(1) Transmitting the Record—In General. Subject to Rule 8009(f) and subdivision (b)(5) of this rule, when the record is complete, the bankruptcy clerk must transmit to the clerk of the court where the appeal is pending either the record or a notice that the record is available electronically.<br><br>(2) Multiple Appeals. If there are multiple appeals from a judgment, order, or decree, the bankruptcy clerk must transmit a single record.<br><br>(3) Receiving the Record. Upon receiving the record or notice that it is available electronically, the district, BAP, or circuit clerk must enter that information on the docket and promptly notify all parties to the appeal.<br><br>(4) If Paper Copies Are Ordered. If the court where the appeal is pending directs that paper copies of the record be provided, the clerk of that court must so notify the appellant. If the appellant fails to provide them, the bankruptcy clerk must prepare them at the appellant's expense.<br><br>(5) When Leave to Appeal is Requested. Subject to subdivision (c), if a motion for leave to appeal has been filed under Rule 8004, the bankruptcy clerk must prepare and transmit the record only after the district court, BAP,or court of appeals grants leave. | **(b) Clerk's Duties.**<br><br>**(1)** ***Sending the Record.*** Subject to Rule 8009(f) and paragraph (5) below, when the record is complete, the bankruptcy clerk must send to the clerk of the court where the appeal is pending either the record or a notice that the record is available electronically.<br><br>**(2)** ***Multiple Appeals.*** When there are multiple appeals from a judgment, order, or decree, the bankruptcy clerk must send a single record.<br><br>**(3)** ***Docketing the Record in the Appellate Court.*** Upon receiving the record—or a notice that it is available electronically—the district, BAP, or circuit clerk must enter that information on the docket and promptly notify all parties to the appeal.<br><br>**(4)** ***If the Court Orders Paper Copies.*** If the court where the appeal is pending orders that paper copies of the record be provided, the clerk of that court must so notify the appellant. If the appellant fails to provide them, the bankruptcy clerk must prepare them at the appellant's expense.<br><br>**(5)** ***Motion for Leave to Appeal.*** Subject to (c), if a motion for leave to appeal is filed under Rule 8004, the bankruptcy clerk must prepare and send the record only after the motion is granted. |

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| (c) RECORD FOR A PRELIMINARY MOTION IN THE DISTRICT COURT, BAP, OR COURT OF APPEALS. This subdivision (c) applies if, before the record is transmitted, a party moves in the district court, BAP, or court of appeals for any of the following relief:<br><br>• leave to appeal;<br>• dismissal;<br>• a stay pending appeal;<br>• approval of a bond or other security provided to obtain a stay of judgment; or<br>• any other intermediate order.<br><br>The bankruptcy clerk must then transmit to the clerk of the court where the relief is sought any parts of the record designated by a party to the appeal or a notice that those parts are available electronically. | **(c) When a Preliminary Motion Is Filed in the District Court, BAP, or Court of Appeals.**<br><br>**(1)** *In General.* This subdivision (c) applies if, before the record is sent, a party moves in the district court, BAP, or court of appeals for:<br><br>• leave to appeal;<br>• dismissal;<br>• a stay pending appeal;<br>• approval of a bond or other security provided to obtain a stay of judgment; or<br>• any other intermediate order.<br><br>**(2)** *Sending the Record.* The bankruptcy clerk must send to the clerk of the court where the relief is sought any parts of the record designated by a party to the appeal—or send a notice that they are available electronically. |

**Committee Note**

The language of Rule 8010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8011. Filing and Service; Signature** | **Rule 8011. Filing and Service; Signature** |
| (a) FILING.<br><br>(1) With the Clerk. A document required or permitted to be filed in a district court or BAP must be filed with the clerk of that court.<br><br>(2) Method and Timeliness.<br><br>(A) Nonelectronic Filing.<br><br>(i) In General. For a document not filed electronically,filing may be accomplished by mail addressed to the clerk of the district court or BAP. Except as provided in subdivision (a)(2)(A)(ii) and (iii), filing istimely only if the clerk receives the document within the time fixed for filing.<br><br>(ii) Brief or Appendix. A brief or appendix not filedelectronically is also timely filed if, on orbefore the last day for filing, it is:<br><br>• mailed to the clerk by first-class mail—or other class of mail that is at least as expeditious—postage prepaid; or<br>• dispatched to a third-party commercial carrier for delivery within 3 days to the clerk.<br><br>(iii) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8011(a)(2)(A)(iii). A document not filedelectronically by an inmate confined in an institution is timely if it is deposited in the institution's internal mailing system on or before the last day for filing and: | **(a) Filing.**<br><br>**(1)** ***With the Clerk.*** A document required or permitted to be filed in a district court or BAP must be filed with the clerk of that court.<br><br>**(2)** ***Method and Timeliness.***<br><br>(A) *Nonelectronic Filing.*<br><br>(i) In General. For a document not filed electronically, filing may be accomplished by mail addressed to the clerk of the district court or BAP. Except as provided in (ii) and (iii), filing is timely only if the clerk receives the document within the time set for filing.<br><br>(ii) Brief or Appendix. A brief or appendix not filed electronically is also timely filed if, on or before the last day for filing, it is:<br><br>• mailed to the clerk by first-class mail—or other class of mail that is at least as expeditious—postage prepaid; or<br><br>• dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.<br><br>(iii) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this item (iii). A document not filed electronically by an inmate |

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| • it is accompanied by a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or<br>• the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies this Rule 8011(a)(2)(A)(iii).<br><br>(B) Electronic Filing.<br><br>) By a Represented Person—Generally Required; Exceptions. An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.<br><br>i) By an Unrepresented Individual—When Allowed or Required. An individual not represented by an attorney:<br><br>• may file electronically only if allowed by court order or by local rule; and<br>• may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.<br><br>(iii) Same as a Written Paper. A document filed electronically is a written paper for purposes of these rules. | confined in an institution is timely if it is deposited in the institution's internal mailing system on or before the last day for filing and:<br><br>• it is accompanied by a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or by evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or<br><br>• the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies this item (iii).<br><br>(B) *Electronic Filing.*<br><br>(i) By a Represented Person—Generally Required; Exceptions. An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for cause or is allowed or required by local rule.<br><br>(ii) By an Unrepresented Individual—When Allowed or Required. An individual not represented by an attorney:<br><br>• may file electronically only if allowed by court order or by local rule; and |

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| (C) Copies. If a document is filed electronically, no paper copy is required. If a document is filed by mail or delivery to the district court or BAP, no additional copies are required. But the district court or BAP may require by local rule or by order in a particular case the filing or furnishing of a specified number of paper copies.<br><br>(3) Clerk's Refusal of Documents. The court's clerk must not refuse to accept for filing any document transmitted for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice. | • may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.<br><br>(iii) Same as a Written Paper. A document filed electronically is a written paper for purposes of these rules.<br><br>(C) *When Paper Copies Are Required.* No paper copies are required when a document is filed electronically. If a document is filed by mail or delivery to the district court or BAP, no additional copies are required. But the district court or BAP may, by local rule or order in a particular case, require that a specific number of paper copies be filed or furnished.<br><br>**(3)** ***Clerk's Refusal of Documents.*** The court's clerk must not refuse to accept for filing any document presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice. |
| (b) SERVICE OF ALL DOCUMENTS REQUIRED. Unless a rule requires service by the clerk, a party must, at or before the time of the filing of a document, serve it on the other parties to the appeal. Service on a party represented by counsel must be made on the party's counsel. | **(b) Service of All Documents Required.** Unless a rule requires service by the clerk, a party must, at or before the time of the filing of a document, serve it on the other parties to the appeal. Service on a party represented by counsel must be made on the party's counsel. |

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| (c) MANNER OF SERVICE.<br><br>(1) Nonelectronic Service. Nonelectronic service may be by any of the following:<br><br>(A) personal delivery;<br><br>(B) mail; or<br><br>(C) third-party commercial carrier for delivery within 3 days.<br><br>(2) Electronic Service. Electronic service may be made by sending a document to a registered user by filing it with the court's electronic-filing system or by using other electronic means that the person served consented to in writing.<br><br>(3) When Service Is Complete. Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. | **(c) Manner of Service.**<br><br>**(1)** ***Nonelectronic Service.*** Nonelectronic service may be by any of the following:<br><br>(A) personal delivery;<br><br>(B) mail; or<br><br>(C) third-party commercial carrier for delivery within 3 days.<br><br>**(2)** ***Service By Electronic Means.*** Electronic service may be made by:<br><br>(A) sending a document to a registered user by filing it with the court's electronic-filing system; or<br><br>(B) using other electronic means that the person served consented to in writing.<br><br>**(3)** ***When Service Is Complete.*** Service by mail or by third-party commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served. |
| (d) PROOF OF SERVICE.<br><br>(1) What Is Required. A document presented for filing must contain either of the following if it was served other than through the court's electronic-filing system: | **(d) Proof of Service.**<br><br>**(1)** ***Requirements.*** A document presented for filing must contain either of the following if it was served other |

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| (A) an acknowledgment of service by the person served; or<br><br>(B) proof of service consisting of a statement by the person who made service certifying:<br><br>(i) the date and manner of service;<br><br>(ii) the names of the persons served; and<br><br>(iii) the mail or electronic address, the fax number, or the address of the place of delivery, as appropriate for the manner of service, for each person served.<br><br>(2) Delayed Proof. The district or BAP clerk may permit documents to be filed without acknowledgment or proof of service, but must require the acknowledgment or proof to be filed promptly thereafter.<br><br>(3) Brief or Appendix. When a brief or appendix is filed, the proof of service must also state the date and manner by which it was filed. | than through the court's electronic-filing system:<br><br>(A) an acknowledgement of service by the person served; or<br><br>(B) proof of service consisting of a statement by the person who made service certifying:<br><br>(i) the date and manner of service;<br><br>(ii) the names of the persons served; and<br><br>(iii) the mail or electronic address, the fax number, or the address of the place of delivery—as appropriate for the manner of service—for each person served.<br><br>**(2)** ***Delayed Proof of Service.*** A district or BAP clerk may accept a document for filing without an acknowledgement or proof of service, but must require the acknowledgment or proof of service to be filed promptly thereafter.<br><br>**(3)** ***For a Brief or Appendix.*** When a brief or appendix is filed, the proof of service must also state the date and manner by which it was filed. |
| (e) SIGNATURE. Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the electronic signature of counsel. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a | **(e) Signature Always Required.**<br><br>**(1)** ***Electronic Filing.*** Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the counsel's electronic signature. A filing made through a person's electronic-filing account and authorized by that |

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| signature block, constitutes the person's signature. Every document filed in paper form must be signed by the person filing the document or, if the person is represented, by counsel. | person—together with that person's name on a signature block—constitutes the person's signature.<br><br>**(2)** ***Paper Filing.*** Every document filed in paper form must be signed by the person filing it or, if the person is represented, by the person's counsel. |

**Committee Note**

The language of Rule 8011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8012. Disclosure Statement** | **Rule 8012. Disclosure Statement** |
| (a) NONGOVERNMENTAL COPRORATIONS. Any nongovernmental corporation that is a party to a proceeding in the district court or BAP must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene. | **(a) Disclosure by a Nongovernmental Corporation.** Any nongovernmental corporation that is a party to a proceeding in the district court or BAP must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene. |
| (b) DISCLOSURE ABOUT THE DEBTOR. The debtor, the trustee, or, if neither is a party, the appellant must file a statement that:<br><br>(1) identifies each debtor not named in the caption; and<br><br>(2) for each debtor that is a corporation, discloses the information required by Rule 8012(a). | **(b) Disclosure About the Debtor.** The debtor, the trustee, or, if neither is a party, the appellant must file a statement that:<br><br>(1) identifies each debtor not named in the caption; and<br><br>(2) for each debtor that is a corporation, discloses the information required by (a). |
| (c) TIME TO FILE; SUPPLEMENTAL FILING. A Rule 8012 statement must:<br><br>(1) be filed with the principal brief or upon filing a motion, response, petition, or answer in the district court or BAP, whichever occurs first, unless a local rule requires earlier filing;<br><br>(2) be included before the table of contents in the principal brief; and<br><br>(3) be supplemented whenever the information required by Rule 8012 changes. | **(c) Time to File; Supplemental Filing.** A Rule 8012 statement must:<br><br>(1) be filed with the principal brief or upon filing a motion, response, petition, or answer in the district court or BAP, whichever occurs first, unless a local rule requires earlier filing;<br><br>(2) be included before the table of contents in the principal brief; and<br><br>(3) be supplemented whenever the information required by this rule changes. |

**Committee Note**

The language of Rule 8012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8013. Motions; Intervention** | **Rule 8013. Motions; Interventions** |
| (a) CONTENTS OF A MOTION; RESPONSE; REPLY.<br><br>(1) Request for Relief. A request for an order or other relief is made by filing a motion with the district or BAP clerk.<br><br>(2) Contents of a Motion.<br><br>(A) Grounds and the Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.<br><br>(B) Motion to Expedite an Appeal. A motion to expedite an appeal must explain what justifies considering the appeal ahead of other matters. If the district court or BAP grants the motion, it may accelerate the time to transmit the record, the deadline for filing briefs and other documents, oral argument, and the resolution of the appeal. A motion to expedite an appeal may be filed as an emergency motion under subdivision (d).<br><br>(C) Accompanying Documents.<br><br>(i) Any affidavit or other document necessary to support a motion must be served and filed with the motion.<br><br>(ii) An affidavit must contain only factual information, not legal argument. | **(a) Content of a Motion; Response; Reply.**<br><br>**(1)** ***Request for Relief.*** A request for an order or other relief is made by filing a motion with the district or BAP clerk.<br><br>**(2)** ***Content of a Motion.***<br><br>(A) *Grounds and the Relief Sought.* A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.<br><br>(B) *Motion to Expedite an Appeal.* A motion to expedite an appeal must explain what justifies considering the appeal ahead of other matters. The motion may be filed as an emergency motion under (d). If it is granted, the district court or BAP may accelerate the time to:<br><br>(i) send the record;<br><br>(ii) file briefs and other documents;<br><br>(iii) conduct oral argument; and<br><br>(iv) resolve the appeal.<br><br>(C) *Accompanying Documents.*<br><br>(i) Supporting Document. Any affidavit or other document necessary to support a motion must be served and filed with the motion.<br><br>(ii) Content of Affidavit. An affidavit must contain only factual information, not legal argument.<br><br>(iii) Motion Seeking Substantive Relief. A motion seeking substantive relief must include a copy of the |

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| (ii) A motion seeking substantive relief must include a copy of the bankruptcy court's judgment, order, or decree, and any accompanying opinion as a separate exhibit.<br><br>(D) Documents Barred or Not Required.<br><br>(i) A separate brief supporting or responding to a motion must not be filed.<br><br>(ii) Unless the court orders otherwise, a notice of motion or a proposed order is not required.<br><br>(3) Response and Reply; Time to File. Unless the district court or BAP orders otherwise,<br><br>(A) any party to the appeal may file a response to the motion within 7 days after service of the motion; and<br><br>(B) the movant may file a reply to a response within 7 days after service of the response, but may only address matters raised in the response. | bankruptcy court's judgment, order, or decree, and any accompanying opinion as a separate exhibit.<br><br>(D) *Documents Barred or Not Required.*<br><br>(i) No Separate Brief. A separate brief supporting or responding to a motion must not be filed.<br><br>(ii) Notice and Proposed Order Not Required. Unless the court orders otherwise, a notice of motion or a proposed order is not required.<br><br>**(3)** ***Response and Reply; Time to File.*** Unless the district court or BAP orders otherwise:<br><br>(A) any party to the appeal may—within 7 days after the motion is served—file a response to the motion; and<br><br>(B) the movant may—within 7 days after the response is served—file a reply that addresses only matters raised in the response. |
| (b) DISPOSITION OF A MOTION FOR A PROCEDURAL ORDER. The district court or BAP may rule on a motion for a procedural order—including a motion under Rule 9006(b) or (c)—at any time without awaiting a response. A party adversely affected by the ruling may move to reconsider, vacate, or modify it within 7 days after the procedural order is served. | **(b) Disposition of a Motion for a Procedural Order.** The district court or BAP may rule on a motion for a procedural order— including a motion under Rule 9006(b) or (c)—at any time without awaiting a response. A party adversely affected by the ruling may move to reconsider, vacate, or modify itwithin 7 days after the order is served. |
| (c) ORAL ARGUMENT. A motion will be decided without oral argument unless the district court or BAP orders otherwise. | **(c) Oral Argument.** A motion will be decided without oral argument unless the district court or BAP orders otherwise. |

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| (d) EMERGENCY MOTION.<br><br>(1) Noting the Emergency. When a movant requests expedited action on a motion because irreparable harm would occur during the time needed to consider a response, the movant must insert the word "Emergency" before the title of the motion.<br><br>(2) Contents of the Motion. The emergency motion must<br><br>(A) be accompanied by an affidavit setting out the nature of the emergency;<br><br>(B) state whether all grounds for it were submitted to the bankruptcy court and, if not, why the motion should not be remanded for the bankruptcy court to consider;<br><br>(C) include the e-mail addresses, office addresses, and telephone numbers of moving counsel and, when known, of opposing counsel and any unrepresented parties to the appeal; and<br><br>(D) be served as prescribed by Rule 8011.<br><br>(3) Notifying Opposing Parties. Before filing an emergency motion, the movant must make every practicable effort to notify opposing counsel and any unrepresented parties in time for them to respond. The affidavit accompanying the emergency motion must state when and how notice was given or state why giving it was impracticable. | **(d) Emergency Motion.**<br><br>**(1)** ***Noting the Emergency.*** A movant who requests expedited action—because irreparable harm would occur during the time needed to consider a response—must insert "Emergency" before the motion's title.<br><br>**(2)** ***Content.*** An emergency motion must:<br><br>(A) be accompanied by an affidavit setting forth the nature of the emergency;<br><br>(B) state whether all grounds for it were previously submitted to the bankruptcy court and, if not, why the motion should not be remanded;<br><br>(C) include:<br><br>(i) the email address, office address, and telephone number of the moving counsel; and<br><br>(ii) when known, the same information as in (i) for opposing counsel and any unrepresented party to the appeal; and<br><br>(D) be served as Rule 8011 prescribes.<br><br>**(3)** ***Notifying Opposing Parties.*** Before filing an emergency motion, the movant must make every practicable effort to notify opposing counsel and any unrepresented party in time for them to respond. The affidavit accompanying the motion must state:<br><br>(A) when and how notice was given; or<br><br>(B) why giving notice was impracticable. |

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| (e) POWER OF A SINGLE BAP JUDGE TO ENTERTAIN A MOTION.<br><br>(1) Single Judge's Authority. A BAP judge may act alone on any motion, but may not dismiss or otherwise determine an appeal, deny a motion for leave to appeal, or deny a motion for a stay pending appeal if denial would make the appeal moot.<br><br>(2) Reviewing a Single Judge's Action. The BAP may review a single judge's action, either on its own motion or on a party's motion. | **(e) Motion Considered by a Single BAP Judge.**<br><br>**(1)** ***Judge's Authority.*** A BAP judge may act alone on any motion but may not:<br><br>(A) dismiss or otherwise determine an appeal;<br><br>(B) deny a motion for leave to appeal; or<br><br>(C) deny a motion for a stay pending appeal if denial would make the appeal moot.<br><br>**(2)** ***Reviewing a Single Judge's Action.*** The BAP, on its own or on a party's motion, may review a single judge's action. |
| (f) FORM OF DOCUMENTS; LENGTH LIMITS; NUMBER OF COPIES.<br><br>(1) Format of a Paper Document. Rule 27(d)(1) F.R.App.P. applies in the district court or BAP to a paper version of a motion, response, or reply.<br><br>(2) Format of an Electronically Filed Document. A motion, response, or reply filed electronically must comply with the requirements for a paper version regarding covers, line spacing, margins, typeface, and type style. It must also comply with the length limits under paragraph (3).<br><br>(3) Length Limits. Except by the district court's or BAP's permission, and excluding the accompanying documents authorized by subdivision (a)(2)(C): | **(f) Form of Documents; Length Limits; Number of Copies.**<br><br>**(1)** ***Document Filed in Paper Form.*** Fed. R. App. P. 27(d)(1) applies to a motion, response, or reply filed in paper form in the district court or BAP.<br><br>**(2)** ***Document Filed Electronically.*** A motion, response, or reply filed electronically must comply with the requirements in (1) for covers, line spacing, margins, typeface, and type style. It must also comply with the length limits in (3).<br><br>**(3)** ***Length Limits.*** Except by the district court's or BAP's permission, and excluding the accompanying documents authorized by (a)(2)(C): |

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| (A) a motion or a response to a motion produced using a computer must include a certificate under Rule 8015(h) and not exceed 5,200 words;<br><br>(B) a handwritten or typewritten motion or a response to a motion must not exceed 20 pages;<br><br>(C) a reply produced using a computer must include a certificate under Rule 8015(h) and not exceed 2,600 words; and<br><br>(D) a handwritten or typewritten reply must not exceed 10 pages.<br><br>(4) Paper Copies. Paper copiesmust be provided only if required by local rule or by an order in a particularcase. | (A) a motion or a response to a motion produced using a computer must include a certificate under Rule 8015(h) and not exceed 5,200 words;<br><br>(B) a handwritten or typewritten motion or a response to a motion must not exceed 20 pages;<br><br>(C) a reply produced using a computer must include a certificate under Rule 8015(h) and not exceed 2,600 words; and<br><br>(D) a handwritten or typewritten reply must not exceed 10 pages.<br><br>**(4)** ***Providing Paper Copies.*** Paper copies must be provided only if required by a local rule or by an order in a particular case. |
| (g) INTERVENING IN AN APPEAL. Unless a statute provides otherwise, an entity that seeks to intervene in an appeal pending in the district court or BAP must move for leave to intervene and serve a copy of the motion on the parties to the appeal. The motion or other notice of intervention authorized by statute must be filed within 30 days after the appeal is docketed. It must concisely state the movant's interest, the grounds for | **(g) Motion for Leave to Intervene.**<br><br>**(1)** ***Time to File.*** Unless a statute provides otherwise, an entity seeking to intervene in an appeal in the district court or BAP must move for leave to intervene and serve a copy of the motion on all parties to the appeal. The motion—or other notice of intervention authorized by statute— must be filed within 30 days after the appeal is docketed. |

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| intervention, whether intervention was sought in the bankruptcy court, why intervention is being sought at this stage of the proceeding, and why participating as an amicus curiae would not be adequate. | **(2)** *Content.* The motion must concisely state:<br>(A) the movant's interest;<br>(B) the grounds for intervention;<br>(C) whether intervention was sought in the bankruptcy court;<br>(D) why intervention is being sought at this stage of the proceedings; and<br>why participating as an amicus curiae—rather than intervening—would not be adequate. |

**Committee Note**

The language of Rule 8013 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8014. Briefs** | **Rule 8014. Briefs** |
| (a) APPELLANT'S BRIEF. The appellant's brief must contain the following under appropriate headings and in the order indicated:<br><br>(1) a corporate disclosure statement, if required by Rule 8012;<br><br>(2) a table of contents, with page references;<br><br>(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;<br><br>(4) a jurisdictional statement, including:<br><br>(A) the basis for the bankruptcy court's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;<br><br>(B) the basis for the district court's or BAP's jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;<br><br>(C) the filing dates establishing the timeliness of the appeal; and<br><br>(D) an assertion that the appeal is from a final judgment, order,or decree, or information establishing the district court's or BAP's jurisdiction on another basis; | **(a) Appellant's Brief.** The appellant's brief must contain the following under appropriate headings and in the order indicated:<br><br>(1) a disclosure statement, if required by Rule 8012;<br><br>(2) a table of contents, with page references;<br><br>(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;<br><br>(4) a jurisdictional statement, including:<br><br>(A) the basis for the bankruptcy court's subject-matter jurisdiction, citing applicable statutory provisions and stating relevant facts establishing jurisdiction;<br><br>(B) the basis for the district court's or BAP's jurisdiction, citing applicable statutory provisions and stating relevant facts establishing jurisdiction;<br><br>(C) the filing dates establishing the timeliness of the appeal; and<br><br>(D) an assertion that the appeal is from a final judgment, order, or decree, or information establishing the district court's or BAP's jurisdiction on another basis;<br><br>(5) a statement of the issues presented and, for each one, a concise statement of the applicable standard of appellate review;<br><br>(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and |

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| (5) a statement of the issues presented and, for each one, a concise statement of the applicable standard of appellate review;<br><br>(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record;<br><br>(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;<br><br>(8) the argument, which must contain the appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies;<br><br>(9) a short conclusion stating the precise relief sought; and<br><br>(10) the certificate of compliance, if required by Rule 8015(a)(7) or (b). | identifying the rulings presented for review, with appropriate references to the record;<br><br>(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;<br><br>(8) the argument, which must contain the appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies;<br><br>(9) a short conclusion stating the precise relief sought; and<br><br>(10) the certificate of compliance, if required by Rule 8015(a)(7) or (b). |

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| (b) APPELLEE'S BRIEF. The appellee's brief must conform to the requirements of subdivision (a)(1)–(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:<br><br>(1) the jurisdictional statement;<br><br>(2) the statement of the issues and the applicable standard of appellate review; and<br><br>(3) the statement of the case. | **(b) Appellee's Brief.** The appellee's brief must conform to the requirements of (a)(1)–(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:<br><br>(1) the jurisdictional statement;<br><br>(2) the statement of the issues and the applicable standard of appellate review; and<br><br>(3) the statement of the case. |
| (c) REPLY BRIEF. The appellant may file a brief in reply to the appellee's brief. A reply brief must comply with the requirements of subdivision (a)(2)–(3). | **(c) Reply Brief.** The appellant may file a brief in reply to the appellee's brief. A reply brief must comply with (a)(2)–(3). |
| (d) STATUTES, RULES, REGULATIONS, OR SIMILAR AUTHORITY. If the court's determination of the issues presented requires the study of the Code or other statutes, rules, regulations, or similar authority, the relevant parts must be set out in the brief or in an addendum. | **(d) Setting Out Statutes, Rules, Regulations, or Similar Authorities.** If the court's determination of the issues presented requires the study of the Code or other statutes, rules, regulations, or similar authority, the relevant parts must be set out in the brief or in an addendum. |
| (e) BRIEFS IN A CASE INVOLVING MULTIPLE APPELLANTS OR APPELLEES. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs. | **(e) Briefs in a Case Involving Multiple Appellants or Appellees.** In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs. |
| (f) CITATION OF SUPPLEMENTAL AUTHORITIES. If pertinent and significant authorities come to a party's | **(f) Citation of Supplemental Authorities.** If pertinent and significant authorities come to a party's attention after the party's brief |

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| attention after the party's brief has been filed—or after oral argument but before a decision— a party may promptly advise the district or BAP clerk by a signed submission setting forth the citations. The submission, which must be served on the other parties to the appeal, must state the reasons for the supplemental citations, referring either to the pertinent page of a brief or to a point argued orally. The body of the submission must not exceed 350 words. Any response must be made within 7 days after the party is served, unless the court orders otherwise, and must be similarly limited. | has been filed—or after oral argument but before a decision—a party may promptly advise the district or BAP clerk by a signed submission, with a copy to all other parties, setting forth the citations. The submission must state the reasons for the supplemental citations, referring either to the pertinent page of a brief or to a point argued orally. The body of the submission must not exceed 350 words. Any response must be made within 7 days after service, unless the court orders otherwise, and must be similarly limited. |

**Committee Note**

The language of Rule 8014 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8015. Form and Length of Briefs; Form of Appendices and Other Papers** | **Rule 8015. Form and Length of a Brief; Form of an Appendix or Other Paper** |
| (a) PAPER COPIES OF A BRIEF. If a paper copy of a brief may or must be filed, the following provisions apply:<br><br>(1) Reproduction.<br><br>(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.<br><br>(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.<br><br>(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. A glossy finish is acceptable if the original is glossy.<br><br>(2) Cover. The front cover of a brief must contain:<br><br>(A) the number of the case centered at the top;<br><br>(B) the name of the court;<br><br>(C) the title of the case as prescribed by Rule 8003(d)(2) or 8004(c)(2);<br><br>(D) the nature of the proceeding and the name of the court below;<br><br>(E) the title of the brief, identifying the party or parties for whom the brief is filed; and | **(a) Paper Copies of a Brief.** If a paper copy of a brief may or must be filed, the following provisions apply:<br><br>(1) ***Reproduction.***<br><br>(A) *Printing*. The brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.<br><br>(B) *Text*. Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.<br><br>(C) *Other Reproductions*. Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. A glossy finish is acceptable if the original is glossy.<br><br>(2) ***Cover.*** The front cover of the brief must contain:<br><br>(A) the number of the case centered at the top;<br><br>(B) the name of the court;<br><br>(C) the title of the case as prescribed by Rule 8003(d)(2) or 8004(c)(2);<br><br>(D) the nature of the proceeding and the name of the court below;<br><br>(E) the title of the brief, identifying the party or parties for whom the brief is filed; and<br><br>(F) the name, office address, telephone number, and e-mail address of counsel representing the party for whom the brief is filed. |

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| (F) the name, office address, telephone number, and e-mailaddress of counsel representing the party for whom the brief is filed.<br><br>(3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.<br><br>(4) Paper Size, Line Spacing, and Margins. The brief must be on 81⁄2-by-11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.<br><br>(5) Typeface. Either a proportionally spaced or monospaced face may be used.<br><br>(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headingsand captions. A proportionally spaced face must be 14-point or larger.<br><br>(B) A monospaced facemay not contain more than 101⁄2 characters per inch.<br><br>(6) Type Styles. A brief must beset in plain, roman style, although italicsor boldface may be used for emphasis. Case names must be italicized or underlined. | (3) ***Binding.*** The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.<br><br>(4) ***Paper Size, Line Spacing, and Margins.*** The brief must be on 8½"-by-11" paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.<br><br>(5) ***Typeface.*** Either a proportionally spaced or monospaced face may be used.<br><br>(A) Proportional Spacing. A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.<br><br>(B) Monospacing. A monospaced face may not contain more than 10½ characters per inch.<br><br>(6) ***Type Styles.*** The brief must be set in plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.<br><br>(7) ***Length.***<br><br>(A) *Page Limitation.* A principal brief must not exceed 30 pages, or a reply brief 15 pages, unless it complies with (B).<br><br>(B) *Type-Volume Limitation.*<br><br>(i) Principal Brief. A principal brief is acceptable if it |

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| (7) Length.<br><br>(A) Page Limitation. A principal brief must not exceed 30 pages,or a reply brief 15 pages, unless it complies with subparagraph (B).<br><br>(B) Type-volume Limitation.<br><br>(i) A principal brief is acceptable if it contains a certificate under Rule 8015(h) and:<br><br>• contains no more than 13,000words; or<br>• uses a monospaced face and contains no more than 1,300 linesof text.<br><br>(ii) A reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half of the type volume specified in item (i). | contains a certificate under (h) and:<br><br>• contains no more than 13,000 words; or<br>• uses a monospaced face and contains no more than 1,300 lines of text.<br><br>(ii) Reply Brief. A reply brief is acceptable if it includes a certificate under (h) and contains no more than half the type volume specified in item (i). |

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| (b) ELECTRONICALLY FILED BRIEFS. A brief filed electronically must comply with subdivision (a), except for (a)(1), (a)(3), and the paper requirement of (a)(4). | **(b) Brief Filed Electronically.** A brief filed electronically must comply with (a)—except for (a)(1), (a)(3), and the paper requirement of (a)(4). |
| (c) PAPER COPIES OF APPENDICES. A paper copy of an appendix must comply with subdivision (a)(1), (2), (3), and (4), with the following exceptions:<br><br>(1) An appendix may include a legible photocopy of any document found in the record or of a printed decision.<br><br>(2) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 81⁄2-by-11 inches, and need not lie reasonably flat when opened. | **(c) Paper Copies of an Appendix.** A paper copy of an appendix must comply with (a)(1), (2), (3), and (4), with the following exceptions:<br><br>(1) *Photocopy of Court Document.* An appendix may include a legible photocopy of any document found in the record or of a printed decision.<br><br>(2) *Odd-Sized Document.* When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8½" by 11", and need not lie reasonably flat when opened. |
| (d) ELECTRONICALLY FILED APPENDICES. An appendix filed electronically must comply with subdivision (a)(2) and (4), except for the paper requirement of (a)(4). | **(d) Appendix Filed Electronically.** An appendix filed electronically must comply with (a)(2) and (4)—except for the paper requirement of (a)(4). |
| (e) OTHER DOCUMENTS.<br><br>(1) Motion. Rule 8013(f) governs the form of a motion, response, or reply.<br><br>(2) Paper Copies of Other Documents. A paper copy of any other document, other than a submission under Rule 8014(f), must comply with | **(e) Other Documents.**<br><br>(1) *Motion.* Rule 8013(f) governs the form of a motion, response, or reply.<br><br>(2) *Paper Copies of Other Documents.* A paper copy of any other document—except one submitted |

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| subdivision (a), with the following exceptions:<br><br>(A) A cover is not necessary if the caption and signature page together contain the information required by subdivision (a)(2).<br><br>(B) Subdivision (a)(7) does not apply.<br><br>(3) Other Documents Filed Electronically. Any other document filed electronically, other than a submission under Rule 8014(f), must comply with the appearance requirements of paragraph (2). | under Rule 8014(f)—must comply with (a), with the following exceptions:<br><br>(A) a cover is not necessary if the caption and signature page together contain the information required by (a)(2); and<br><br>(B) the length limits of (a)(7) do not apply.<br><br>(3) ***Document Filed Electronically.*** Any other document filed electronically—except a document submitted under Rule 8014(f)—must comply with the requirements of (2). |
| (f) LOCAL VARIATION. A district court or BAP must accept documents that comply with the form requirements of this rule and the length limits set by Part VIII of these rules. By local rule or order in a particular case, a district court or BAP may accept documents that do not meet all the form requirements of this rule or the length limits set by Part VIII of these rules. | **(f) Local Variation.** A district court or BAP must accept documents that comply with the form requirements of this rule and the length limits set by this Part VIII. By local rule or order in a particular case, a district court or BAP may accept documents that do not meet all the form requirements of this rule or the length limits set by this Part VIII. |
| (g) ITEMS EXCLUDED FROM LENGTH. In computing any length limit, headings, footnotes, and quotations count toward the limit, but the following items do not:<br><br>• the cover page;<br>• disclosure statement under Rule 8012;<br>• table of contents;<br>• table of citations;<br>• statement regarding oral argument; | **(g) Items Excluded from Length.** In computing any length limit, headings, footnotes, and quotations count toward the limit, but the following items do not:<br><br>• cover page;<br>• disclosure statement under Rule 8012;<br>• table of contents;<br>• table of citations;<br>• statement regarding oral argument; |

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| • addendum containing statutes, rules, or regulations;<br>• certificates of counsel;<br>• signature block;<br>• proof of service; and<br>• any item specifically excluded by these rules or by local rule. | • addendum containing statutes, rules, or regulations;<br>• certificate of counsel;<br>• signature block;<br>• proof of service; and<br>• any item specifically excluded by these rules or by local rule. |
| (h) CERTIFICATE OF COMPLIANCE.<br><br>(1) Briefs and Documents That Require a Certificate. A brief submitted under Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)—and a document submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The individual preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of mono-spaced type—in the document.<br><br>(2) Acceptable Form. The certificate requirement is satisfied by a certificate of compliance that conforms substantially to the appropriate Official Form. | **(h) Certificate of Compliance.**<br><br>(1) ***Briefs and Documents That Require a Certificate.*** A brief submitted under Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)—and a document submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The individual preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.<br><br>(2) ***Using the Official Form.*** A certificate of compliance that conforms substantially to Form 417C satisfies the certificate requirement. |

**Committee Note**

The language of Rule 8015 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8016. Cross-Appeals** | **Rule 8016. Cross-Appeals** |
| (a) APPLICABILITY. This rule applies to a case in which a cross- appeal is filed. Rules 8014(a)–(c), 8015(a)(7)(A)–(B), and 8018(a)(1)–(3) do not apply to such a case, except as otherwise provided in this rule. | **(a) Applicability.** This rule applies to a case in which a cross-appeal is filed. Rules 8014(a)–(c), 8015(a)(7)(A)–(B), and 8018(a)(1)–(3) do not apply to such a case, unless this rule states otherwise. |
| (b) DESIGNATION OF APPELLANT. The party who files a notice of appeal first is the appellant for purposes of this rule and Rule 8018(a)(4) and (b) and Rule 8019. If notices are filed on the same day, the plaintiff, petitioner, applicant, or movant in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order. | **(b) Designation of Appellant.** The party whofiles a notice of appeal first is the appellant for purposes of this rule and Rule 8018(a)(4) and (b) and Rule 8019. If notices are filed on the same day, the plaintiff, petitioner, applicant, or movant in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order. |
| (c) BRIEFS. In a case involving a cross-appeal:<br><br>(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 8014(a).<br><br>(2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That brief must comply with Rule 8014(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement.<br><br>(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same | **(c) Briefs.** In a case involving a cross-appeal:<br><br>(1) *Appellant's Principal Brief.* The appellant must file a principal brief in the appeal. That brief must comply with Rule 8014(a).<br><br>(2) *Appellee's Principal and Response Brief.* The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That brief must comply with Rule 8014(a), but the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement.<br><br>(3) *Appellant's Response and Reply Brief.* The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 8014(a)(2)–(8) and (10), but none of the following need appear unless the appellant is dissatisfied with the |

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| brief, reply to the response in the appeal. That brief must comply with Rule 8014(a)(2)–(8) and (10), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:<br><br>(A) the jurisdictional statement;<br><br>(B) the statement of the issues and the applicable standard of appellate review; and<br><br>(C) the statement of the case.<br><br>(4) Appellee's Reply Brief. The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 8014(a)(2)–(3) and (10) and must be limited to the issues presented by the cross-appeal. | appellee's statement in the cross-appeal:<br><br>(A) the jurisdictional statement;<br><br>(B) the statement of the issues;<br><br>(C) the statement of the case; and<br><br>(D) the statement of the applicable standard of appellate review.<br><br>(4) ***Appellee's Reply Brief.*** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 8014(a)(2)–(3) and (10) and must be limited to the issues presented by the cross-appeal. |
| (d) LENGTH.<br><br>(1) Page Limitation. Unless it complies with paragraph (2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.<br><br>(2) Type-volume Limitation.<br><br>(A) The appellant's | **(d) Length.**<br><br>(1) ***Page Limitation.*** Unless it complies with (2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.<br><br>(2) ***Type-Volume Limitation.***<br><br>(A) *Appellant's Brief*. The appellant's principal brief or the appellant's response and reply brief is |

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| principal brief or the appellant's response and reply brief is acceptable if it includes a certificate under Rule 8015(h) and:<br><br>(i) contains no more than 13,000 words; or<br><br>(ii) uses a monospaced face and contains no more than 1,300 lines of text.<br><br>(B) The appellee's principal and response brief is acceptable if it includes a certificate under Rule 8015(h) and:<br><br>(i) contains no more than 15,300 words; or<br><br>(ii) uses a monospaced face and contains no more than 1,500 lines of text.<br><br>(C) The appellee's reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half of the type volume specified in subparagraph (A). | acceptable if it includes a certificate under Rule 8015(h) and:<br><br>(i) contains no more than 13,000 words; or<br><br>(ii) uses a monospaced face and contains no more than 1,300 lines of text.<br><br>(B) *Appellee's Principal and Response Brief.* The appellee's principal and response brief is acceptable if it includes a certificate under Rule 8015(h) and:<br><br>(i) contains no more than 15,300 words; or<br><br>(ii) uses a monospaced face and contains no more than 1,500 lines of text.<br><br>(C) *Appellee's Reply Brief*. The appellee's reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half the type volume specified in (A). |
| (e) TIME TO SERVE AND FILE A BRIEF. Briefs must be served and filed as follows, unless the district court or BAP by order in a particular case excuses the filing of briefs or specifies different time limits:<br><br>(1) the appellant's principal brief, | **(e) Time to Serve and File a Brief.** Briefs must be served and filed as follows, unless the district court or BAP by order in a particular case excuses the filing of briefs or sets different time limits:<br><br>(1) the appellant's principal brief, within 30 days after the docketing of a notice |

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| within 30 days after the docketing of notice that the record has been transmitted or is available electronically;<br><br>(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;<br><br>(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and<br><br>(4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 7 days before scheduled argument unless the district court or BAP, for good cause, allows a later filing. | that the record has been sent or is available electronically;<br><br>(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;<br><br>(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and<br><br>(4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 7 days before scheduled argument unless the district court or BAP, for good cause, allows a later filing. |

**Committee Note**

The language of Rule 8016 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8017. Brief of an Amicus Curiae** | **Rule 8017. Brief of an Amicus Curiae** |
| (a) DURING INITIAL CONSIDERATION OF A CASE ON THE MERITS.<br><br>(1) Applicability. This Rule 8017(a) governs amicus filings during a court's initial consideration of a case on the merits.<br><br>(2) When Permitted. The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a district court or BAP may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification. On its own motion, and with notice to all parties to an appeal, the district court or BAP may request a brief by an amicus curiae.<br><br>(3) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:<br><br>(A) the movant's interest; and<br><br>(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal.<br><br>(4) Contents and Form. An amicus brief must comply with Rule 8015. In addition to the requirements ofRule 8015, the cover must identify the party or parties supported and indicate whether the brief supports affirmance orreversal. If an amicus curiae is a corporation, the brief | **(a) During the Initial Consideration of a Case on the Merits.**<br><br>**(1)** ***Applicability.*** This subdivision (a) governs amicus filings during a court's initial consideration of a case on the merits.<br><br>**(2)** ***When Permitted.*** The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a district court or BAP may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification. On its own, and with notice to all parties to an appeal, the district court or BAP may request a brief by an amicus curiae.<br><br>**(3)** ***Motion for Leave to File.*** The motion for leave must be accompanied by the proposed brief and state:<br><br>(A) the movant's interest; and<br><br>(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal.<br><br>**(4)** ***Content and Form.*** An amicus brief must comply with Rule 8015. In addition, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 8012. An amicus |

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| must include a disclosure statement like that required ofparties by Rule 8012. An amicus brief need not comply with Rule 8014, but must include the following:<br><br>(A) a table of contents, with page references;<br><br>(B) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;<br><br>(C) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;<br><br>(D) unless the amicus curiae is one listed in the first sentence of subdivision (a)(2), a statement that indicates whether:<br><br>(i) a party's counsel authored the brief in whole or in part;<br><br>(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and<br><br>(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;<br><br>(E) an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review; and | brief need not comply with Rule 8014, but must include the following:<br><br>(A) a table of contents, with page references;<br><br>(B) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;<br><br>(C) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;<br><br>(D) unless the amicus curiae is one listed in the first sentence of (2), a statement that indicates whether:<br><br>(i) a party's counsel authored the brief in whole or in part;<br><br>(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and<br><br>(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;<br><br>(E) an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review; and<br><br>(F) a certificate of compliance, if required by Rule 8015(h).<br><br>**(5)** ***Length.*** Except by the district court's or BAP's permission, an amicus brief must be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the |

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| (F) a certificate of compliance, if required by Rule 8015(h).<br><br>(5) Length. Except by the district court's or BAP's permission, an amicus brief must be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.<br><br>(6) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's principal brief is filed. The district court or BAP may grant leave for later filing, specifying the time within which an opposing party may answer.<br><br>(7) Reply Brief. Except by the district court's or BAP's permission, an amicus curiae may not file a reply brief.<br><br>(8) Oral Argument. An amicus curiae may participate in oral argument only with the district court's or BAP's permission. | court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.<br><br>**(6)** ***Time for Filing.*** An amicus curiae must file its brief—accompanied by a motion for leave to file when required—within 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief within 7 days after the appellant's principal brief is filed. The district court or BAP may grant leave for later filing, specifying the time within which an opposing party may answer.<br><br>**(7)** ***Reply Brief.*** Except by the district court's or BAP's permission, an amicus curiae may not file a reply brief.<br><br>**(8)** ***Oral Argument.*** An amicus curiae may participate in oral argument only with the district court's or BAP's permission. |

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| (b) DURING CONSIDERATION OF WHETHER TO GRANT REHEARING.<br><br>(1) Applicability. This Rule 8017(b) governs amicus filings during a district court's or BAP's consideration of whether to grant rehearing, unless a local rule or order in a case provides otherwise.<br><br>(2) When Permitted. The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.<br><br>(3) Motion for Leave to File. Rule 8017(a)(3) applies to a motion for leave.<br><br>(4) Contents, Form, and Length. Rule 8017(a)(4) applies to the amicus brief. The brief must include a certificate under Rule 8015(h) and not exceed 2,600 words.<br><br>(5) Time for Filing. An amicus curiae supporting the motion for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the motion is filed. An amicus curiae opposing the motion for rehearing must file its brief,accompanied by a motion for filing when necessary, no later than the date set by the court for the response. | **(b) During Consideration of Whether to Grant Rehearing.**<br><br>**(1)** ***Applicability.*** This subdivision (b) governs amicus filings during a district court's or BAP's consideration of whether to grant rehearing, unless a local rule or order in a particular case provides otherwise.<br><br>**(2)** ***When Permitted.*** The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.<br><br>**(3)** ***Motion for Leave to File.*** Paragraph (a)(3) applies to a motion for leave to file.<br><br>**(4)** ***Content, Form, and Length.*** Paragraph (a)(4) applies to the amicus brief. The brief must include a certificate under Rule 8015(h) and not exceed 2,600 words.<br><br>**(5)** ***Time for Filing.*** An amicus curiae supporting a motion for rehearing or supporting neither party must file its brief—accompanied by a motion for leave to file when required—within 7 days after the motion is filed. An amicus curiae opposing the motion for rehearing must file its brief—accompanied by a motion for leave to file when required—no later than the date set by the court for the response. |

**Committee Note**

The language of Rule 8017 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8018. Serving and Filing Briefs; Appendices** | **Rule 8018. Serving and Filing Briefs and Appendices** |
| (a) TIME TO SERVE AND FILE A BRIEF. The following rules apply unless the district court or BAP by order in a particular case excuses the filing of briefs or specifies different time limits:<br><br>(1) The appellant must serve and file a brief within 30 days after the docketing of notice that the record has been transmitted or is available electronically.<br><br>(2) The appellee must serve and file a brief within 30 days after service of the appellant's brief.<br><br>(3) The appellant may serve and file a reply brief within 14 days after service of the appellee's brief, but a reply brief must be filed at least 7 days before scheduled argument unless the district court or BAP, for good cause, allows a later filing.<br><br>(4) If an appellant fails to file a brief on time or within an extended time authorized by the district court or BAP, an appellee may move to dismiss the appeal—or the district court or BAP, after notice, may dismiss the appeal on its own motion. An appellee who fails to file a brief will not be heard at oral argument unless the district court or BAP grants permission. | **(a) Time to Serve and File a Brief.** Unless the district court or BAP by order in a particular case excuses the filing of briefs or sets a different time, the following time limits apply:<br><br>(1) *Appellant's Brief.* The appellant must serve and file a brief within 30 days after the docketing of notice that the record has been sent or that it is available electronically.<br><br>(2) *Appellee's Brief.* The appellee must serve and file a brief within 30 days after the appellant's brief is served.<br><br>(3) *Appellant's Reply Brief.* The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but at least 7 days before scheduled argument—unless the district court or BAP, for good cause, allows a later filing.<br><br>(4) *Consequence of Failure to File.* If an appellant fails to file a brief on time or within an extended time authorized under (a)(3), the district court or BAP may—on its own after notice or on the appellee's motion—dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the district court or BAP grants permission. |
| (b) DUTY TO SERVE AND FILE AN APPENDIX TO THE BRIEF. | **(b) Duty to Serve and File an Appendix.**<br><br>(1) *Appellant's Duty.* Subject to (e) and Rule 8009(d), the appellant must serve |

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| (1) Appellant. Subject to subdivision (e) and Rule 8009(d), the appellant must serve and file with its principal brief excerpts of the record as an appendix. It must contain the following:<br><br>(A) the relevant entries in the bankruptcy docket;<br><br>(B) the complaint and answer, or other equivalent filings;<br><br>(C) the judgment, order, or decree from which the appeal is taken;<br><br>(D) any other orders, pleadings, jury instructions, findings, conclusions, or opinions relevant to the appeal;<br><br>(E) the notice of appeal; and<br><br>(F) any relevant transcript or portion of it.<br><br>(2) Appellee. The appellee may also serve and file with its brief an appendix that contains material required to be included by the appellant or relevant to the appeal or cross-appeal, but omitted by the appellant.<br><br>(3) Cross-Appellee. The appellant as cross-appellee may also serve and file with its response an appendix that contains material relevant to matters raised initially by the principalbrief in the cross-appeal, but omitted bythe cross-appellant. | and file with its principal brief an appendix containing excerpts from the record. It must contain:<br><br>(A) the relevant docket entries;<br><br>(B) the complaint and answer or equivalent filings;<br><br>(C) the judgment, order, or decree from which the appeal is taken;<br><br>(D) any other orders, pleadings, jury instructions, findings, conclusions, or opinions relevant to the appeal;<br><br>(E) the notice of appeal; and<br><br>(F) any relevant transcript or portion of it.<br><br>(2) ***Appellee's Duty.*** The appellee may serve and file with its brief an appendix containing any material that is required to be included or is relevant to the appeal or cross-appeal but that is omitted from the appellant's appendix.<br><br>(3) ***Appellant's Duty as Cross-Appellee.*** The appellant—as cross-appellee—may also serve and file with its response an appendix containing material that is relevant to matters raised initially by the cross-appeal, but that is omitted by the cross-appellant. |

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| (c) FORMAT OF THE APPENDIX. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of documents or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, and the like) should be omitted. | **(c) Format of the Appendix.** The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. These provisions apply:<br>(1) ***Page Numbers.*** When transcript pages are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages.<br>(2) ***Omissions.*** Omissions from the text of a document or of the transcript must be indicated by asterisks.<br>(3) ***Immaterial Formal Matters.*** Immaterial formal matters (captions, subscriptions, acknowledgments, and the like) should be omitted. |
| (d) EXHIBITS. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume or volumes, suitably indexed. | **(d) Reproduction of Exhibits.** Exhibits designated for inclusion in the appendix may be reproduced in a separate volume or volumes, suitably indexed. |
| (e) APPEAL ON THE ORIGINAL RECORD WITHOUT AN APPENDIX. The district court or BAP may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record, with the submission of any relevant parts of the record that the district court or BAP orders the parties to file. | **(e) Appeal on the Original Record Without an Appendix.** The district court or BAP may, either by rule for all cases or classes of cases or by order in a particular case:<br>(1) dispense with the appendix, and<br>(2) permit an appeal to proceed on the original record with the submission of any relevant parts that the district court or BAP orders the parties to file. |

**Committee Note**

The language of Rule 8018 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
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| **Rule 8018.1. District-Court Review of a Judgment that the Bankruptcy Court Lacked the Constitutional Authority to Enter** | **Rule 8018.1. Reviewing a Judgment That the Bankruptcy Court Lacked Authority to Enter** |
| If, on appeal, a district court determines that the bankruptcy court did not have the power under Article III of the Constitution to enter the judgment, order, or decree appealed from, the district court may treat it as proposed findings of fact and conclusions of law. | If, on appeal, a district court determines that the bankruptcy court did not have authority under Article III of the Constitution to enter the judgment, order, or decree being appealed, the district court may treat it as proposed findings of fact and conclusions of law. |

**Committee Note**

The language of Rule 8018.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8019. Oral Argument** | **Rule 8019. Oral Argument** |
| (a) PARTY'S STATEMENT. Any party may file, or a district court or BAP may require, a statement explaining why oral argument should, or need not, be permitted. | **(a) Party's Statement.** Any party may file, or a district court or BAP may require, a statement explaining why oral argument should, or need not, be permitted. |
| (b) PRESUMPTION OF ORAL ARGUMENT AND EXCEPTIONS. Oral argument must be allowed in every case unless the district judge—or all the BAP judges assigned to hear the appeal—examine the briefs and record and determine that oral argument is unnecessary because<br><br>(1) the appeal is frivolous;<br><br>(2) the dispositive issue or issues have been authoritatively decided; or<br><br>(3) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. | **(b) Presumption of Oral Argument; Exceptions.** Oral argument must be allowed in every case unless the district judge—or all the BAP judges assigned to hear the appeal—examines the briefs and record and determines that oral argument is unnecessary because:<br><br>(1) the appeal is frivolous;<br><br>(2) the dispositive issue or issues have been authoritatively decided; or<br><br>(3) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. |
| (c) NOTICE OF ARGUMENT; POSTPONEMENT. The district court or BAP must advise all parties of the date, time, and place for oral argument, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date. | **(c) Notice of Oral Argument; Motion to Postpone.** The district court or BAP must advise all parties of the date, time, and place for oral argument, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably before the hearing date. |
| (d) ORDER AND CONTENTS OF ARGUMENT. The appellant opens and concludes the argument. Counsel must not read at length from briefs, the record, or authorities. | **(d) Order and Content of Argument.** The appellant opens and concludes the argument. Counsel must not read at length from briefs, the record, or authorities. |

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| (e) CROSS-APPEALS AND SEPARATE APPEALS. If there is a cross-appeal, Rule 8016(b) determines which party is the appellant and which is the appellee for the purposes of oral argument. Unless the district court or BAP directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument. | **(e) Cross-Appeals and Separate Appeals.** If there is a cross-appeal, Rule 8016(b) determines which party is the appellant and which is the appellee for the purposes of oral argument. Unless the district court or BAP orders otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument. |
| (f) NONAPPEARANCE OF A PARTY. If the appellee fails to appear for argument, the district court or BAP may hear the appellant's argument. If the appellant fails to appear for argument, the district court or BAP may hear the appellee's argument. If neither party appears, the case will be decided on the briefs unless the district court or BAP orders otherwise. | **(f) Nonappearance of a Party.** If the appellee fails to appear for argument, the district court or BAP may hear the appellant's argument. If the appellant fails to appear for argument, the district court or BAP may hear the appellee's argument. If neither party appears, the case will be decided on the briefs unless the district court or BAP orders otherwise. |
| (g) SUBMISSION ON BRIEFS. The parties may agree to submit a case for decision on the briefs, but the district court or BAP may direct that the case be argued. | **(g) Submission on Briefs.** The parties may agree to submit a case for decision on the briefs, but the district court or BAP may order that the case be argued. |
| (h) USE OF PHYSICAL EXHIBITS AT ARGUMENT; REMOVAL. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom unless the district court or BAP directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them. | **(h) Use of Physical Exhibits at Argument; Removal.** Any attorney intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom unless the district court or BAP orders otherwise. The clerk may destroy or dispose of them if counsel does not reclaim them within a reasonable time after the clerk gives notice to do so. |

**Committee Note**

The language of Rule 8019 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8020. Frivolous Appeal and Other Misconduct** | **Rule 8020. Frivolous Appeal; Other Misconduct** |
| (a) FRIVOLOUS APPEAL—DAMAGES AND COSTS. If the district court or BAP determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee. | **(a) Frivolous Appeal—Damages and Costs.** If the district court or BAP determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee. |
| (b) OTHER MISCONDUCT. The district court or BAP may discipline or sanction an attorney or party appearing before it for other misconduct, including failure to comply with any court order. First, however, the court must afford the attorney or party reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing. | **(b) Other Misconduct; Sanctions.** The district court or BAP may discipline or sanction an attorney or party appearing before it for other misconduct, including a failure to comply with a court order. But the court must first give the attorney or party reasonable notice and an opportunity to show cause to the contrary—and if requested, grant a hearing. |

**Committee Note**

The language of Rule 8020 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8021. Costs** | **Rule 8021. Costs** |
| (a) AGAINST WHOM ASSESSED. The following rules apply unless the law provides or the district court or BAP orders otherwise:<br><br>(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;<br><br>(2) if a judgment, order, or decree is affirmed, costs are taxed against the appellant;<br><br>(3) if a judgment, order, or decree is reversed, costs are taxed against the appellee;<br><br>(4) if a judgment, order, or decree is affirmed or reversed in part, modified, or vacated, costs are taxed only as the district court or BAP orders. | **(a) Against Whom Assessed.** The following rules apply unless the law provides or the district court or BAP orders otherwise:<br><br>(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;<br><br>(2) if a judgment, order, or decree is affirmed, costs are taxed against the appellant;<br><br>(3) if a judgment, order, or decree is reversed, costs are taxed against the appellee;<br><br>(4) if a judgment, order, or decree is affirmed or reversed in part, modified, or vacated, costs are taxed only as the district court or BAP orders. |
| (b) COSTS FOR AND AGAINST THE UNITED STATES. Costs for or against the United States, its agency, or its officer may be assessed under subdivision (a) only if authorized by law. | **(b) Costs For and Against the United States.** Costs for or against the United States, its agency, or its officer may be assessed under (a) only if authorized by law. |
| (c) COSTS ON APPEAL TAXABLE IN THE BANKRUPTCY COURT. The following costs on appeal are taxable in the bankruptcy court for the benefit of the party entitled to costs under this rule:<br><br>(1) the production of any required copies of a brief, appendix, exhibit, or the record; | **(c) Costs on Appeal Taxable in the Bankruptcy Court.** The following costs on appeal are taxable in the bankruptcy court for the benefit of the party entitled to costs under this rule:<br><br>(1) producing any required copies of a brief, appendix, exhibit, or the record;<br><br>(2) preparing and sending the record;<br><br>(3) the reporter's transcript, if needed to determine the appeal; |

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| (2) the preparation and transmission of the record;<br><br>(3) the reporter's transcript, if needed to determine the appeal;<br><br>(4) premiums paid for a bond or other security to preserve rights pending appeal; and<br><br>(5) the fee for filing the notice of appeal. | (4) premiums paid for a bond or other security to preserve rights pending appeal; and<br><br>(5) the fee for filing the notice of appeal. |
| (d) BILL OF COSTS; OBJECTIONS. A party who wants costs taxed must, within 14 days after entry of judgment on appeal, file with the bankruptcy clerk and serve an itemized and verified bill of costs. Objections must be filed within 14 days after service of the bill of costs, unless the bankruptcy court extends the time. | **(d) Bill of Costs; Objections.** A party who wants costs taxed must, within 14 days after entry of judgment on appeal, file with the bankruptcy clerk and serve an itemized and verified bill of costs. Objections must be filed within 14 days after the bill of costs is served, unless the bankruptcy court extends the time. |

**Committee Note**

The language of Rule 8021 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8022. Motion for Rehearing** | **Rule 8022. Motion for Rehearing** |
| (a) TIME TO FILE; CONTENTS; RESPONSE; ACTION BY THE DISTRICT COURT OR BAP IF GRANTED.<br><br>(1) Time. Unless the time is shortened or extended by order or local rule, any motion for rehearing by the district court or BAP must be filed within 14 days after entry of judgment on appeal.<br><br>(2) Contents. The motion must state with particularity each point of law or fact that the movant believes the district court or BAP has overlooked or misapprehended and must argue in support of the motion. Oral argument is not permitted.<br><br>(3) Response. Unless the district court or BAP requests, no response to a motion for rehearing is permitted. But ordinarily, rehearing will not be granted in the absence of such a request.<br><br>(4) Action by the District Court or BAP. If a motion for rehearing is granted, the district court or BAP may do any of the following:<br><br>(A) make a final disposition of the appeal without reargument;<br><br>(B) restore the case to the calendar for reargument or resubmission; or<br><br>(C) issue any other appropriate order. | **(a) Time to File; Content; Response; Action by the District Court or BAP if Granted.**<br><br>(1) ***Time.*** Unless the time is shortened or extended by order or local rule, any motion for rehearing by the district court or BAP must be filed within 14 days after judgment on appeal is entered.<br><br>(2) ***Content.*** The motion must state with particularity each point of law or fact that the movant believes the district court or BAP has overlooked or misapprehended and must argue in support of the motion. Oral argument is not permitted.<br><br>(3) ***Response.*** Unless the district court or BAP requests, no response to a motion for rehearing is permitted. But ordinarily, rehearing will not be granted in the absence of such a request.<br><br>(4) ***Action by the District Court or BAP.*** If a motion for rehearing is granted, the district court or BAP may do any of the following:<br><br>(A) make a final disposition of the appeal without reargument;<br><br>(B) restore the case to the calendar for reargument or resubmission; or<br><br>(C) issue any other appropriate order. |

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| (b) FORM OF THE MOTION; LENGTH. The motion must comply in form with Rule 8013(f)(1) and (2). Copies must be served and filed as provided by Rule 8011. Except by the district court's or BAP's permission:<br><br>(1) a motion for rehearing produced using a computer must include a certificate under Rule 8015(h) and not exceed 3,900 words; and<br><br>(2) a handwritten or typewritten motion must not exceed 15 pages. | **(b) Form; Length.** The motion for rehearing must comply in form with Rule 8013(f)(1) and (2). Copies must be served and filed as Rule 8011 provides. Except by the district court's or BAP's permission:<br><br>(1) a motion produced using a computer must include a certificate under Rule 8015(h) and not exceed 3,900 words; and<br><br>(2) a handwritten or typewritten motion must not exceed 15 pages. |

**Committee Note**

The language of Rule 8022 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
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| **Rule 8023. Voluntary Dismissal** | **Rule 8023. Voluntary Dismissal** |
| (a) STIPULATED DISMISSAL. The clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due. | **(a) Stipulated Dismissal.** The clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due. |
| (b) APPELLANT'S MOTION TO DISMISS. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP. | **(b) Appellant's Motion to Dismiss.** An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP. |
| (c) OTHER RELIEF. A court order is required for any relief beyond the mere dismissal of an appeal—including approving a settlement, vacating an action of the bankruptcy court, or remanding the case to it. | **(c) Other Relief.** A court order is required for any relief beyond the mere dismissal of an appeal—including approving a settlement, vacating an action of the bankruptcy court, or remanding the case to it. |
| (d) COURT APPROVAL. This rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration. | **(d) Court Approval.** This rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration. |

**Committee Note**

The language of Rule 8023 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

| ORIGINAL | REVISION |
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| **Rule 8024. Clerk's Duties on Disposition of the Appeal** | **Rule 8024. Clerk's Duties on Disposition of the Appeal** |
| (a) JUDGMENT ON APPEAL. The district or BAP clerk must prepare, sign, and enter the judgment after receiving the court's opinion or, if there is no opinion, as the court instructs. Noting the judgment on the docket constitutes entry of judgment. | **(a) Preparing the Judgment.** After receiving the court's opinion—or instructions if there is no opinion—the district or BAP clerk must:<br>(1) prepare and sign the judgment; and<br>(2) note it on the docket, which act constitutes entry of judgment. |
| (b) NOTICE OF A JUDGMENT. Immediately upon the entry of a judgment, the district or BAP clerk must:<br>(1) transmit a notice of the entry to each party to the appeal, to the United States trustee, and to the bankruptcy clerk, together with a copy of any opinion; and<br>(2) note the date of the transmission on the docket. | **(b) Giving Notice of the Judgment.** Immediately after entering a judgment, the district or BAP clerk must:<br>(1) send notice of its entry, together with a copy of any opinion, to:<br>• the parties to the appeal;<br>• the United States trustee; and<br>• the bankruptcy clerk; and<br>(2) note on the docket the date the notice was sent. |
| (c) RETURNING PHYSICAL ITEMS. If any physical items were transmitted as the record on appeal, they must be returned to the bankruptcy clerk on disposition of the appeal. | **(c) Returning Physical Items.** On disposition of the appeal, the district or BAP clerk must return to the bankruptcy clerk any physical items sent as the record on appeal. |

**Committee Note**

The language of Rule 8024 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8025. Stay of a District Court or BAP Judgment** | **Rule 8025. Staying a District Court or BAP Judgment** |
| (a) AUTOMATIC STAY OF JUDGMENT ON APPEAL. Unless the district court or BAP orders otherwise, its judgment is stayed for 14 days after entry. | **(a) Automatic Stay of a Judgment on Appeal.** Unless the district court or BAP orders otherwise, its judgment is stayed for 14 days after its entry. |
| (b) STAY PENDING APPEAL TO THE COURT OF APPEALS.<br><br>(1) In General. On a party's motion and notice to all other parties to the appeal, the district court or BAP may stay its judgment pending an appeal to the court of appeals.<br><br>(2) Time Limit. The stay must not exceed 30 days after the judgment is entered, except for cause shown.<br><br>(3) Stay Continued. If, before a stay expires, the party who obtained the stay appeals to the court of appeals, the stay continues until final disposition by the court of appeals.<br><br>(4) Bond or Other Security. A bond or other security may be required as a condition for granting or continuing a stay of the judgment. A bond or other security may be required if a trustee obtains a stay, but not if a stay is obtained by the United States or its officer or agency or at the direction of any department of the United States government. | **(b) Stay Pending an Appeal to a United States Court of Appeals.**<br><br>(1) ***In General.*** The district court or BAP may—on a party's motion with notice to all other parties to the appeal—stay its judgment pending an appeal to the court of appeals.<br><br>(2) ***Time Limit.*** Except for cause shown, the stay must not exceed 30 days after the judgment is entered.<br><br>(3) ***Stay Continued When an Appeal Is Filed.*** If, before a stay expires, the party who obtained it appeals to a court of appeals, the stay continues until final disposition by the court of appeals.<br><br>(4) ***Bond or Other Security.*** A bond or other security may be required as a condition for granting or continuing a stay. If a trustee obtains a stay, a bond or other security may be required, but not if a stay is obtained by the United States or its officer or agency, or by direction of any department of the United States government. |
| (c) AUTOMATIC STAY OF AN ORDER, JUDGMENT, OR DECREE OF A BANKRUPTCY COURT. If the | **(c) Automatic Stay of a Bankruptcy Court's Order, Judgment, or Decree.** If a district court or BAP enters a judgment affirming a |

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| district court or BAP enters a judgment affirming an order, judgment, or decree of the bankruptcy court, a stay of the district court's or BAP's judgment automatically stays the bankruptcy court's order, judgment, or decree for the duration of the appellate stay. | bankruptcy court's order, judgment, or decree, a stay of the district court's or BAP's judgment automatically stays the bankruptcy court's order, judgment, or decree for the duration of the appellate stay. |
| (d) POWER OF A COURT OF APPEALS NOT LIMITED. This rule does not limit the power of a court of appeals or any of its judges to do the following:<br><br>(1) stay a judgment pending appeal;<br><br>(2) stay proceedings while an appeal is pending;<br><br>(3) suspend, modify, restore, vacate, or grant a stay or an injunction while an appeal is pending; or<br><br>(4) issue any order appropriate to preserve the status quo or the effectiveness of any judgment to be entered. | **(d) Power of a Court of Appeals or One of Its Judges Not Limited.** This rule does not limit the power of a court of appeals or one of its judges to:<br><br>(1) stay a judgment pending appeal;<br><br>(2) stay proceedings while an appeal is pending;<br><br>(3) suspend, modify, restore, vacate, or grant a stay or injunction while an appeal is pending; or<br><br>(4) issue any order appropriate to preserve the status quo or the effectiveness of any judgment that might be entered. |

**Committee Note**

The language of Rule 8025 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8026. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law** | **Rule 8026. Making and Amending Local Rules; Procedure When There Is No Controlling Law** |
| (a) LOCAL RULES BY CIRCUIT COUNCILS AND DISTRICT COURTS.<br><br>(1) Adopting Local Rules. A circuit council that has authorized a BAP under 28 U.S.C. § 158(b) may make and amend rules governing the practice and procedure on appeal from a judgment, order, or decree of a bankruptcy court to the BAP. A district court may make and amend rules governing the practice and procedure on appeal from a judgment, order, or decree of a bankruptcy court to the district court. Local rules must be consistent with, but not duplicative of, Acts of Congress and these Part VIII rules. Rule 83 F.R.Civ.P. governs the procedure for making and amending rules to govern appeals.<br><br>(2) Numbering. Local rules must conform to any uniform numbering system prescribed by the Judicial Conference of the United States.<br><br>(3) Limitation on Imposing Requirements of Form. A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply. | **(a) Local Rules.**<br><br>(1) ***Making and Amending Local Rules.***<br><br>(A) *BAP Local Rules.* A circuit council that has authorized a BAP under 28 U.S.C. § 158(b) may make and amend local rules governing the practice and procedure on appeal to the BAP from a bankruptcy court's judgment, order, or decree.<br><br>(B) *District-Court Local Rules.* A district court may make and amend local rules governing the practice and procedure on appeal to the district court from a bankruptcy court's judgment, order, or decree.<br><br>(C) *Procedure.* Fed. R. Civ. P. 83 governs the procedure for making and amending local rules. A local rule must be consistent with—but not duplicate—an Act of Congress and these Part VIII rules.<br><br>(2) ***Numbering.*** Local rules must conform to any uniform numbering system prescribed by the Judicial Conference of the United Sates.<br><br>(3) ***Limit on Enforcing a Local Rule Relating to Form.*** A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply. |
| (b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW.<br><br>(1) In General. A district court | **(b) Procedure When There Is No Controlling Law.**<br><br>(1) ***In General.*** A district court or BAP may regulate practice in any manner |

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| or BAP may regulate practice in any manner consistent with federal law, applicable federal rules, the Official Forms, and local rules.<br><br>(2) Limitation on Sanctions. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, applicable federal rules, the Official Forms, or local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement. | consistent with federal law, applicable federal rules, the official forms, and local rules.<br><br>(2) *Limit on Imposing Sanctions.* Unless an alleged violator has been given actual notice of a requirement in the particular case, no sanction or other disadvantage may be imposed for failing to comply with any requirement not in federal law, applicable federal rules, the official forms, or local rules. |

**Committee Note**

The language of Rule 8026 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8027. Notice of a Mediation Procedure** | **Rule 8027. Notice of a Mediation Procedure** |
| If the district court or BAP has a mediation procedure applicable to bankruptcy appeals, the clerk must notify the parties promptly after docketing the appeal of:<br><br>(a) the requirements of the mediation procedure; and<br><br>(b) any effect the mediation procedure has on the time to file briefs. | If a district court or BAP has a mediation procedure applicable to bankruptcy appeals, the clerk must notify the parties promptly after docketing the appeal of:<br><br>(a) the requirements of the mediation procedure; and<br><br>(b) any effect the mediation procedure has on the time to file briefs. |

**Committee Note**

The language of Rule 8027 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 8028. Suspension of Rules in Part VIII** | **Rule 8028. Suspending These Part VIII Rules** |
| In the interest of expediting decision or for other cause in a particular case, the district court or BAP, or where appropriate the court of appeals, may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002, 8003, 8004, 8005, 8006, 8007, 8012, 8020, 8024, 8025, 8026, and 8028. | To expedite a decision or for other cause, a district court or BAP—or when appropriate, the court of appeals—may, in a particular case, suspend the requirements of these Part VIII rules—except Rules 8001–8007, 8012, 8020, 8024–8026, and 8028. |

**Committee Note**

The language of Rule 8028 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

# Bankruptcy Rules Restyling

## 9000 Series

## Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

| ORIGINAL | REVISION |
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| PART IX—GENERAL PROVISIONS | **PART IX. GENERAL PROVISIONS** |
| **Rule 9001. General Definitions** | **Rule 9001. Definitions** |
| The definitions of words and phrases in §§ 101, 902, 1101, and 1502 of the Code, and the rules of construction in § 102, govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:<br><br>(1) "Bankruptcy clerk" means a clerk appointed pursuant to 28 U.S.C. § 156(b).<br><br>(2) "Bankruptcy Code" or "Code" means title 11 of the United States Code.<br><br>(3) "Clerk" means bankruptcy clerk, if one has been appointed, otherwise clerk of the district court.<br><br>(4) "Court" or "judge" means the judicial officer before whom a case or proceeding is pending.<br><br>(5) "Debtor." When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: (A) if the debtor is a corporation, "debtor" includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control; (B) if the debtor is a partnership, "debtor" includes any or all of its general partners or, if designated by the court, any other person in control.<br><br>(6) "Firm" includes a partnership or professional corporation of attorneys or accountants. | **(a) In the Code.** The definitions of words and phrases in §§ 101, 902, 1101, and 1502 and the rules of construction in § 102 apply in these rules.<br><br>**(b) In These Rules.** In these rules, the following words and phrases have these meanings:<br><br>(1) "Bankruptcy clerk" means a clerk appointed under 28 U.S.C. § 156(b).<br><br>(2) "Bankruptcy Code" or "Code" means Title 11 U.S.C.<br><br>(3) "Clerk" means a bankruptcy clerk if one has been appointed; otherwise, it means the district clerk.<br><br>(4) "Court" or "judge" means the judicial officer who presides over the case or proceeding.<br><br>(5) "Debtor," when the debtor is not a natural person and either is required by these rules to perform an act or must be compelled to appear for examination, includes any or all of the following:<br><br>(A) if the debtor is a corporation and if the court so designates:<br><br>• any or all of its officers, directors, trustees, or members of a similar controlling body;<br><br>• a controlling stockholder or member; or<br><br>• any other person in control; or<br><br>(B) if the debtor is a partnership:<br><br>• any or all of its general partners; or<br><br>• if the court so designates, any |

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| (7) "Judgment" means any appealable order.<br><br>(8) "Mail" means first class, postage prepaid.<br><br>(9) "Notice provider" means any entity approved by the Administrative Office of the United States Courts to give notice to creditors under Rule 2002(g)(4).<br><br>(10) "Regular associate" means any attorney regularly employed by, associated with, or counsel to an individual or firm.<br><br>(11) "Trustee" includes a debtor in possession in a chapter 11 case.<br><br>(12) "United States trustee" includes an assistant United States trustee and any designee of the United States trustee. | other person in control.<br><br>(6) "Firm" includes a partnership or professional corporation of attorneys or accountants.<br><br>(7) "Judgment" means any appealable order.<br><br>(8) "Mail" means first-class mail, postage prepaid.<br><br>(9) "Notice provider" means an entity approved by the Administrative Office of the United States Courts to give notice to creditors under Rule 2002(g)(4).<br><br>(10) "Regular associate" means an attorney regularly employed by, associated with, or counsel to an individual or firm.<br><br>(11) "Trustee" includes a debtor in possession in a Chapter 11 case.<br><br>(12) "United States trustee" includes any assistant United States trustee and United States trustee's designee. |

**Committee Note**

The language of Rule 9001 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under the Code** | **Rule 9002. Meaning of Words in the Federal Rules of Civil Procedure** |
| The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meanings indicated unless they are inconsistent with the context:<br><br>(1) "Action" or "civil action" means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter.<br><br>(2) "Appeal" means an appeal as provided by 28 U.S.C. § 158.<br><br>(3) "Clerk" or "clerk of the district court" means the court officer responsible for the bankruptcy records in the district.<br><br>(4) "District Court," "trial court," "court," "district judge," or "judge" means bankruptcy judge if the case or proceeding is pending before a bankruptcy judge.<br><br>(5) "Judgment" includes any order appealable to an appellate court. | Unless they are inconsistent with the context, the following words and phrases in the Federal Rules of Civil Procedure—when made applicable by these rules—have these meanings:<br><br>(a) "Action" or "civil action" means an adversary proceeding or, when appropriate:<br><br>(1) a contested petition;<br><br>(2) a proceeding to vacate an order for relief; or<br><br>(3) a proceeding to determine any other contested matter.<br><br>(b) "Appeal" means an appeal under 28 U.S.C. § 158.<br><br>(c) "Clerk" or "clerk of the district court" means the officer responsible for maintaining the district's bankruptcy records.<br><br>(d) "District court," "trial court," "court," "district judge," or "judge" means "bankruptcy judge" if the case or proceeding is pending before a bankruptcy judge.<br><br>(e) "Judgment" includes an appealable order. |

**Committee Note**

The language of Rule 9002 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9003. Prohibition of Ex Parte Contacts** | **Rule 9003. Ex Parte Contacts Prohibited** |
| (a) GENERAL PROHIBITION. Except as otherwise permitted by applicable law, any examiner, any party in interest, and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding. | **(a) In General.** Unless permitted by applicable law, the following persons must refrain from ex parte meetings and communications with the court about matters affecting a particular case or proceeding:<br>• an examiner;<br>• a party in interest:<br>• a party in interest's attorney, accountant, or employee; and<br>• the United States trustee and any of its assistants, agents, or employees. |
| (b) UNITED STATES TRUSTEE. Except as otherwise permitted by applicable law, the United States trustee and assistants to and employees or agents of the United States trustee shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding. This rule does not preclude communications with the court to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system. | **(b) Exception for a United States Trustee.** A United States trustee and any of its assistants, agents, or employees are not prohibited from communicating with the court about general problems of bankruptcy administration and how to improve it—including the operation of the United States trustee system. |

**Committee Note**

The language of Rule 9003 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9004. General Requirements of Form** | **Rule 9004. General Requirements of Form** |
| (a) LEGIBILITY; ABBREVIATIONS. All petitions, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used. | **(a) Legibility; Abbreviations.** A petition, pleading, schedule, or other document must be clearly legible. An abbreviation commonly used in English is acceptable. |
| (b) CAPTION. Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper. | **(b) Caption.** To be filed, a document must contain a caption that sets forth:<br>(1) the court's name;<br>(2) the case's title;<br>(3) the case number and, if appropriate, adversary-proceeding number; and<br>(4) a brief designation of the document's character. |

**Committee Note**

The language of Rule 9004 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9005. Harmless Error** | **Rule 9005. Harmless Error** |
| Rule 61 F.R.Civ.P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights. | Fed. R. Civ. P. 61 applies in a bankruptcy case. When appropriate, the court may order the correction of any error or defect—or the cure of any omission—that does not affect substantial rights. |

**Committee Note**

The language of Rule 9005 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9005.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention** | **Rule 9005.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention** |
| Rule 5.1 F.R.Civ.P. applies in cases under the Code. | Fed. R. Civ. P. 5.1 applies in a bankruptcy case. |

**Committee Note**

The language of Rule 9005.1 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9006. Computing and Extending Time; Time for Motion Papers** | **Rule 9006. Computing and Extending Time; Motions** |
| (a) COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.<br><br>(1) *Period Stated in Days or a Longer Unit*. When the period is stated in days or a longer unit of time:<br><br>(A) exclude the day of the event that triggers the period;<br><br>(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and<br><br>(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.<br><br>(2) *Period Stated in Hours*. When the period is stated in hours:<br><br>(A) begin counting immediately on the occurrence of the event that triggers the period;<br><br>(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and<br><br>(C) if the period would end on a Saturday, Sunday, or legal holiday, then continue the period until the same time on the next day that is not a Saturday, Sunday, or legal holiday.<br><br>(3) *Inaccessibility of Clerk's Office.* Unless the court orders otherwise, if the | **(a) Computing Time.** The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.<br><br>(1) ***Period Stated in Days or a Longer Unit.*** When the period is stated in days or a longer unit of time:<br><br>(A) exclude the day of the event that triggers the period;<br><br>(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and<br><br>(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.<br><br>(2) ***Period Stated in Hours.*** When the period is stated in hours:<br><br>(A) begin counting immediately on the occurrence of the event that triggers the period;<br><br>(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and<br><br>(C) if the period would end on a Saturday, Sunday, or legal holiday, then continue the period until the same hour on the next day that is not a Saturday, Sunday, or legal holiday.<br><br>(3) ***Inaccessibility of the Clerk's Office When a Filing Is Due.*** Unless the court orders otherwise, if the clerk's |

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| clerk's office is inaccessible:<br><br>(A) on the last day for filing under Rule 9006(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or<br><br>(B) during the last hour for filing under Rule 9006(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday. | office is inaccessible:<br><br>(A) on the last day for filing under (1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or<br><br>(B) during the last hour for filing under (2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday. |
| (4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or order in the case, the last day ends:<br><br>(A) for electronic filing, at midnight in the court's time zone; and<br><br>(B) for filing by other means, when the clerk's office is scheduled to close. | (4) ***"Last Day" Defined.*** Unless a different time is set by statute, local rule, or order in a case, the last day ends:<br><br>(A) for electronic filing, at midnight in the court's time zone; and<br><br>(B) for filing by other means, when the clerk's office is scheduled to close. |
| (5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event. | (5) ***"Next Day" Defined.*** The "next day" is determined by continuing to count forward when the period is measured after an event, and backward when measured before an event. |
| (6) *"Legal Holiday" Defined.* "Legal holiday" means:<br><br>(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;<br><br>(B) any day declared a holiday by the President or Congress; and<br><br>(C) for periods that are measured after an event, any other day declared a holiday by the state where the | (6) ***"Legal Holiday" Defined.*** "Legal holiday" means:<br><br>(A) the day set aside by statute for observing New Year's Day, Birthday of Martin Luther King Jr., Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day;<br><br>(B) any day declared a holiday by the President or Congress; and<br><br>(C) for periods that are measured after an event, any other day declared a holiday by the State where the |

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| district court is located. (In this rule, "state" includes the District of Columbia and any United States commonwealth or territory.) | district court is located. (In this rule, "State" includes the District of Columbia and any United States commonwealth or territory.) |
| (b) ENLARGEMENT.<br><br>(1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.<br><br>(2) *Enlargement Not Permitted.* The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.<br><br>(3) *Enlargement Governed By Other Rules.* The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules. In addition, the court may enlarge the time to file the statement required under Rule 1007(b)(7), and to file schedules and statements in a small business case under § 1116(3) of the Code, only to the extent and under the conditions stated in Rule 1007(c). | **(b) Extending Time.**<br><br>(1) ***In General.*** This paragraph (1) applies when these rules, a notice given under these rules, or a court order requires or allows an act to be performed at or within a specified period. Except as provided in (2) and (3), the court may—at any time and for cause shown—extend the time to act if:<br><br>(A) with or without a motion or notice, the request is made before the period (or a previously extended period) expires; or<br><br>(B) on motion made after the specified period expires, the failure to act within that period resulted from excusable neglect.<br><br>(2) ***Exceptions.*** The court must not extend the time to act under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.<br><br>(3) ***Extensions Governed by Other Rules.*** The court may extend the time to:<br><br>(A) act under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033—but only to the extent and under the conditions stated in those rules; and<br><br>(B) file the statement required by Rule 1007(b)(7), and the schedules and statements in a small business case under § 1116(3)—but only as permitted by Rule 1007(c). |

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| (c) REDUCTION.<br><br>(1) *In General.* Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.<br><br>(2) *Reduction Not Permitted.* The court may not reduce the time for taking action under Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, and 9033(b). In addition, the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7). | **(c) Reducing Time Limits.**<br><br>(1) ***When Permitted.*** When a rule, notice given under a rule, or court order requires or allows an act to be done within a specified time, the court may—for cause shown and with or without a motion or notice—reduce the period to act.<br><br>(2) ***When Not Permitted.*** The court may not reduce the time to act under Rule 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2) or (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, or 9033(b). Also, the court may not, under Rule 1007(c), reduce the time to file the statement required by Rule 1007(b)(7). |
| (d) MOTION PAPERS. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion. Except as otherwise provided in Rule 9023, any written response shall be served not later than one day before the hearing, unless the court permits otherwise. | **(d) Time to Serve a Motion.**<br><br>(1) ***In General.*** A motion (other than one that may be heard ex parte) and notice of any hearing must be served at least 7 days before the hearing date, unless the court or these rules set a different period. Any affidavit supporting the motion must be served with it. An application to change the period for service may be made ex parte for cause shown.<br><br>(2) ***Response.*** Except as provided in Rule 9023, any response must be served at least 1 day before the hearing—unless the court allows otherwise. |
| (e) TIME OF SERVICE. Service of process and service of any paper other than process or of notice by mail is complete on mailing. | **(e) Service Complete on Mailing.** Service by mail of process, any other document, or notice is complete upon mailing. |

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| (f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR UNDER RULE 5(b)(2)(D) OR (F) F.R.CIV.P. When there is a right or requirement to act or undertake some proceedings within a prescribed period after being served and that service is by mail or under Rule 5(b)(2)(D) (leaving with the clerk) or (F) (other means consented to) F.R.Civ.P., three days are added after the prescribed period would otherwise expire under Rule 9006(a). | **(f) Additional Time After Certain Kinds of Service.** When a party may or must act within a specified time after being served and service is made by mail or under Fed. R. Civ. P. 5(b)(2)(D) (leaving with the clerk) or (F) (other means consented to), 3 days are added after the period would otherwise expire under (a). |
| (g) GRAIN STORAGE FACILITY CASES. This rule shall not limit the court's authority under § 557 of the Code to enter orders governing procedures in cases in which the debtor is an owner or operator of a grain storage facility. | **(g) Grain-Storage Facility.** This rule does not limit the court's authority under § 557 to issue an order governing procedures in a case in which the debtor owns or operates a grain-storage facility. |

**Committee Note**

The language of Rule 9006 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9007. General Authority to Regulate Notices** | **Rule 9007. Authority to Regulate Notices.** |
| When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined. | **(a) In General.** Unless these rules provide otherwise, when notice is to be given, the court must designate:<br>(1) the deadline for giving it;<br>(2) the entities to whom it must be given; and<br>(3) the form and manner of giving it.<br>**(b) Combined Notices**. When feasible, the court may order any notices under these rules to be combined. |

**Committee Note**

The language of Rule 9007 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9008. Service or Notice by Publication** | **Rule 9008. Service or Notice by Publication** |
| Whenever these rules require or authorize service or notice by publication, the court shall, to the extent not otherwise specified in these rules, determine the form and manner thereof, including the newspaper or other medium to be used and the number of publications. | When these rules require or authorize service or notice by publication, and to the extent that they do not provide otherwise, the court must determine the form and manner of publication—including the newspaper or other medium to be used and the number of publications. |

**Committee Note**

The language of Rule 9008 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9009. Forms** | **Rule 9009. Using Official Forms; Director's Forms** |
| (a) OFFICIAL FORMS. The Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that:<br>(1) expand the prescribed areas for responses in order to permit complete responses;<br>(2) delete space not needed for responses; or<br>(3) delete items requiring detail in a question or category if the filer indicates—either by checking "no" or "none" or by stating in words—that there is nothing to report on that question or category. | **(a) Official Forms.** The Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by these rules, the form itself, or the national instructions for a particular official form. An Official Form may be modified to permit minor changes not affecting wording or the order of presentation, including a change that:<br>(1) expands the prescribed response area to permit a complete response;<br>(2) deletes space not needed for a response; or<br>(3) deletes items requiring detail in a question or category if the filer indicates—either by checking "no" or "none," or by stating in words—that there is nothing to report on that item. |
| (b) DIRECTOR'S FORMS. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code. | **(b) Director's Forms.** The Director of the Administrative Office of the United States Courts may issue additional forms. |
| (c) CONSTRUCTION. The forms shall be construed to be consistent with these rules and the Code. | **(c) Construing Forms.** The forms must be construed to be consistent with these rules and the Code. |

**Committee Note**

The language of Rule 9009 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9010. Representation and Appearances; Powers of Attorney** | **Rule 9010. Authority to Act Personally or by an Attorney; Power of Attorney** |
| (a) AUTHORITY TO ACT PERSONALLY OR BY ATTORNEY. A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy. | **(a) In General.** A debtor, creditor, equity security holder, indenture trustee, committee, or other party may:<br>(1) appear in a case and act either on the entity's own behalf or through an attorney authorized to practice in the court; and<br>(2) perform—through an authorized agent, attorney-in-fact, or proxy—any act not constituting the practice of law. |
| (b) NOTICE OF APPEARANCE. An attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record. | **(b) Attorney's Notice of Appearance.** An attorney appearing for a party in a case must file a notice of appearance that contains the attorney's name, office address, and telephone number—unless the appearance is already noted in the record. |
| (c) POWER OF ATTORNEY. The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered. | **(c) Power of Attorney to Represent a Creditor.** The authority of an agent, attorney-in-fact, or proxy to represent a creditor—for any purpose other than executing and filing a proof of claim or accepting or rejecting a plan—must be evidenced by a power of attorney that conforms substantially to the appropriate version of Form 411. A power of attorney must be acknowledged before:<br>(1) an officer listed in 28 U.S.C. § 459 or § 953 or in Rule 9012; or<br>(2) a person authorized to administer oaths under the state law where the oath is administered. |

**Committee Note**

The language of Rule 9010 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers** | **Rule 9011. Signing Documents; Representations to the Court; Sanctions; Verifying and Providing Copies** |
| (a) SIGNATURE. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. | **(a) Signature.** Every petition, pleading, written motion, and other document—except a list, schedule, or statement, or any amendment to one—must be signed by at least one attorney of record in the attorney's individual name. A party not represented by an attorney must sign all documents. Each document must state the signer's address and telephone number, if any. The court must strike an unsigned document unless the omission is promptly corrected after being called to the attorney's or party's attention. |
| (b) REPRESENTATIONS TO THE COURT. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—[1]<br><br>(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;<br><br>(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;<br><br>(3) the allegations and other | **(b) Representations to the Court.** By presenting to the court a petition, pleading, written motion, or other document—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:<br><br>(1) it is not presented for any improper purpose, such as to harass or to cause unnecessary delay, or needlessly increase litigation costs;<br><br>(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument to extend, modify, or reverse existing law, or to establish new law;<br><br>(3) the allegations and factual contentions have evidentiary support—or if specifically so identified, are likely to have evidentiary support after a |

[1] So in original. The comma probably should not appear.

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| factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and<br><br>(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. | reasonable opportunity for further investigation or discovery; and<br><br>(4) the denials of factual contentions are warranted on the evidence—or if specifically so identified, are reasonably based on a lack of information or belief. |
| (c) SANCTIONS. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.<br><br>(1) *How Initiated.*<br><br>(A) *By Motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held | **(c) Sanctions.**<br><br>**(1)** ***In General.*** If, after notice and a reasonable opportunity to respond, the court determines that (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction on any attorney, law firm, or party that committed the violation or is responsible for it. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.<br><br>**(2)** ***By Motion.***<br><br>(A) *In General.* A motion for sanctions must be made separately from any other motion or request, describe the specific conduct alleged to violate (b), and be served under Rule 7004.<br><br>(B) *When to File.* The motion for sanctions must not be filed or presented to the court if the challenged document, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected within 21 days after the motion was served (or within another period as the court may order). This limitation does not apply if the conduct alleged is filing a petition |

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| jointly responsible for violations committed by its partners, associates, and employees.<br><br>(B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.<br><br>(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in sub-paragraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.<br><br>(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).<br><br>(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.<br><br>(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the | in violation of (b).<br><br>(C) *Awarding Damages.* If warranted, the court may award to the prevailing party reasonable expenses and attorney's fees incurred in presenting or opposing the motion.<br><br>**(3)** ***By the Court.*** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated (b).<br><br>**(4)** ***Nature of a Sanction; Limitations.***<br><br>(A) *In General.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or deter comparable conduct by others similarly situated. The sanction may include:<br><br>(i) a nonmonetary directive;<br><br>(ii) an order to pay a penalty into court; or<br><br>(iii) if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of all or part of the reasonable attorney's fees and other expenses directly resulting from the violation.<br><br>(B) *Limitations on a Monetary Sanction.* The court must not impose a monetary sanction:<br><br>(i) against a represented party for violating (b)(2); or<br><br>(ii) on its own, unless it issued the show-cause order under (c)(3) before voluntary dismissal or settlement of the claims made by or against the |

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| basis for the sanction imposed. | party that is, or whose attorneys are, to be sanctioned.<br><br>**(5)** *Content of a Court Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction. |
| (d) INAPPLICABILITY TO DISCOVERY. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037. | **(d) Inapplicability to Discovery.** Subdivisions (a)–(c) do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to Rules 7026–7037. |
| (e) VERIFICATION. Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. § 1746 satisfies the requirement of verification. | **(e) Verification.** A document filed in a bankruptcy case need not be verified unless these rules provide otherwise. When these rules require verification, an unsworn declaration under 28 U.S.C. § 1746 suffices. |
| (f) COPIES OF SIGNED OR VERIFIED PAPERS. When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original. | **(f) Copies of Signed or Verified Documents.** When these rules require copies of a signed or verified document, if the original is signed or verified, a copy that conforms to the original suffices. |

**Committee Note**

The language of Rule 9011 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9012. Oaths and Affirmations** | **Rule 9012. Oaths and Affirmations** |
| (a) PERSONS AUTHORIZED TO ADMINISTER OATHS. The following persons may administer oaths and affirmations and take acknowledgments: a bankruptcy judge, clerk, deputy clerk, United States trustee, officer authorized to administer oaths in proceedings before the courts of the United States or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country. | **(a) Who May Administer an Oath.** These persons may administer an oath or affirmation or take an acknowledgment:<br>• a bankruptcy judge;<br>• a clerk;<br>• a deputy clerk;<br>• a United States trustee;<br>• an officer authorized to do so in a proceeding before a federal court or by state law in the state where the oath is taken; or<br>• a United States diplomatic or consular officer in a foreign country. |
| (b) AFFIRMATION IN LIEU OF OATH. When in a case under the Code an oath is required to be taken a solemn affirmation may be accepted in lieu thereof. | **(b) Affirmation as an Alternative.** If an oath is required, a solemn affirmation suffices. |

**Committee Note**

The language of Rule 9012 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9013. Motions: Form and Service** | **Rule 9013. Motions; Form and Service** |
| A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:<br><br>(a) the trustee or debtor in possession and on those entities specified by these rules; or<br><br>(b) the entities the court directs if these rules do not require service or specify the entities to be served. | **(a) Request for an Order.** A request for an order must be made by written motion unless:<br><br>(1) an application is authorized by these rules; or<br><br>(2) the request is made during a hearing.<br><br>**(b) Form and Service of the Motion.** The motion must state its grounds with particularity and set forth the relief or order sought. Unless a written motion may be considered ex parte, the movant must, within the time prescribed by Rule 9006(d), serve the motion on:<br><br>• the trustee or debtor in possession and those entities specified by these rules; or<br><br>• if these rules do not require service or specify the entities to be served, the entities designated by the court. |

**Committee Note**

The language of Rule 9013 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9014. Contested Matters** | **Rule 9014. Contested Matters** |
| (a) MOTION. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise. | **(a) Motion Required.** In a contested matter not otherwise governed by these rules, relief must be requested by motion. Reasonable notice and an opportunity to be heard must be given to the party against whom relief is sought. No response is required unless the court orders otherwise. |
| (b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R. Civ. P. | **(b) Service.**<br>(1) ***Motion.*** The motion must be served within the time prescribed by Rule 9006(d) and in the manner for serving a summons and complaint provided by Rule 7004.<br>(2) ***Response.*** Any written response must be served within the time prescribed by Rule 9006(d).<br>(3) ***Later Filing.*** After a motion is served, any other document must be served in the manner prescribed by Fed. R. Civ. P. 5(b). |
| (c) APPLICATION OF PART VII RULES. Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028–7037, 7041, 7042, 7052, 7054–7056, 7064, 7069, and 7071. The following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pretrial disclosure), and 26(f) (mandatory meeting before scheduling conference/discovery plan). An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a | **(c) Applying Part VII Rules.**<br>(1) ***In General.*** Unless this rule or a court order provides otherwise, the following rules apply in a contested matter: 7009, 7017, 7021, 7025–7026, 7028–7037, 7041–7042, 7052, 7054–7056, 7064, 7069, and 7071. At any stage of a matter, the court may order that one or more other Part VII rules apply.<br>(2) ***Exception.*** Unless the court orders otherwise, the following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, do not apply in a contested matter:<br>• (a)(1), mandatory disclosure;<br>• (a)(2), disclosures about expert testimony; |

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| deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order. | • (a)(3), other pretrial disclosures; and<br>• (f), mandatory meeting before a scheduling conference/discovery plan.<br>(3) ***Procedural Order.*** In issuing any procedural order under this subdivision (c), the court must give the parties notice and a reasonable opportunity to comply.<br>(4) ***Perpetuating Testimony.*** An entity desiring to perpetuate testimony may do so in the manner provided by Rule 7027 for taking a deposition before an adversary proceeding. |
| (d) TESTIMONY OF WITNESSES. Testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding. | **(d) Taking Testimony.** A witness's testimony on a disputed material factual issue must be taken in the same manner as testimony in an adversary proceeding. |
| (e) ATTENDANCE OF WITNESSES. The court shall provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify. | **(e) Evidentiary Hearing.** The court must provide procedures that allow parties— at a reasonable time before a scheduled hearing—to determine whether it will be an evidentiary hearing at which witnesses may testify. |

**Committee Note**

The language of Rule 9014 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9015. Jury Trials** | **Rule 9015. Jury Trial.** |
| (a) APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE. Rules 38, 39, 47–49, and 51, F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule 38(b) F.R.Civ.P. shall be filed in accordance with Rule 5005. | **(a) In General.** In a bankruptcy case or proceeding, Fed. R. Civ. P. 38–39, 47–49, 51, and 81(c) (insofar as it applies to jury trials) apply, but a demand for a jury trial under Fed. R. Civ. P. 38(b) must be filed in accordance with Rule 5005. |
| (b) CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE. If the right to a jury trial applies, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule. | **(b) Jury Trial Before a Bankruptcy Judge.** The parties may—jointly or separately—file a statement consenting to a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) if:<br>(1) the right to a jury trial applies;<br>(2) a timely demand has been filed under Fed. R. Civ. P. 38(b);<br>(3) the bankruptcy judge has been specially designated to conduct the jury trial; and<br>(4) the statement is filed within any time specified by local rule. |
| (c) APPLICABILITY OF RULE 50 F.R.CIV.P. Rule 50 F.R.Civ.P. applies in cases and proceedings, except that any renewed motion for judgment or request for a new trial shall be filed no later than 14 days after the entry of judgment. | **(c) Judgment as a Matter of Law; Motion for a New Trial.** Fed. R. Civ. P. 50 applies in a bankruptcy case or proceeding—except that a renewed motion for judgment, or a request for a new trial, must be filed within 14 days after the judgment is entered. |

**Committee Note**

The language of Rule 9015 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9016. Subpoena** | **Rule 9016. Subpoena** |
| Rule 45 F.R.Civ.P. applies in cases under the Code. | Fed. R. Civ. P. 45 applies in a bankruptcy case. |

**Committee Note**

The language of Rule 9016 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9017. Evidence** | **Rule 9017. Evidence** |
| The Federal Rules of Evidence and Rules 43, 44 and 44.1 F.R.Civ.P. apply in cases under the Code. | The Federal Rules of Evidence and Fed. R. Civ. P. 43, 44, and 44.1 apply in a bankruptcy case. |

**Committee Note**

The language of Rule 9017 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9018. Secret, Confidential, Scandalous, or Defamatory Matter** | **Rule 9018. Secret, Confidential, Scandalous, or Defamatory Matter** |
| On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion. | **(a) In General.** On motion or on its own, the court may—with or without notice—issue any order that justice requires to:<br>(1) protect the estate or any entity regarding a trade secret or other confidential research, development, or commercial information;<br>(2) protect an entity from scandalous or defamatory matter in any document filed in a bankruptcy case; or<br>(3) protect governmental matters made confidential by statute or regulation.<br>**(b) Motion to Vacate or Modify an Order Issued Without Notice.** An entity affected by an order issued under (a) without notice may move to vacate or modify it. After notice and a hearing, the court must rule on the motion. |

**Committee Note**

The language of Rule 9018 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9019. Compromise and Arbitration** | **Rule 9019. Compromise; Arbitration** |
| (a) COMPROMISE. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct. | **(a) Approving a Compromise.** On the trustee's motion and after notice and a hearing, the court may approve a compromise or settlement. Notice must be given to:<br>• the creditors;<br>• the United States trustee;<br>• the debtor;<br>• indenture trustees as provided in Rule 2002; and<br>• any other entity the court designates. |
| (b) AUTHORITY TO COMPROMISE OR SETTLE CONTROVERSIES WITHIN CLASSES. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice. | **(b) Compromising or Settling Controversies in Classes.** After a hearing on such notice as the court may direct, the court may:<br>(1) fix a class or classes of controversies; and<br>(2) authorize the trustee to compromise or settle controversies within the class or classes without further hearing or notice. |
| (c) ARBITRATION. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration. | **(c) Arbitration of Controversies Affecting an Estate.** If the parties so stipulate, the court may authorize a controversy affecting an estate to be submitted to final and binding arbitration. |

**Committee Note**

The language of Rule 9019 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9020. Contempt Proceedings** | **Rule 9020. Contempt Proceedings** |
| Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest. | Rule 9014 governs a motion for a contempt order made by the United States trustee or a party in interest. |

**Committee Note**

The language of Rule 9020 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9021. Entry of Judgment** | **Rule 9021. When a Judgment or Order Becomes Effective** |
| A judgment or order is effective when entered under Rule 5003. | A judgment or order becomes effective when it is entered under Rule 5003. |

**Committee Note**

The language of Rule 9021 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9022. Notice of Judgment or Order** | **Rule 9022. Notice of a Judgment or Order** |
| (a) JUDGMENT OR ORDER OF BANKRUPTCY JUDGE. Immediately on the entry of a judgment or order the clerk shall serve a notice of entry in the manner provided in Rule 5(b) F.R.Civ.P. on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002. | **(a) Issued by a Bankruptcy Judge.**<br>(1) *In General.* Upon entering a judgment or order, the clerk must:<br>(A) promptly serve notice of the entry on the contesting parties and other entities the court designates;<br>(B) do so in the manner provided by Fed. R. Civ. P. 5(b);<br>(C) except in a Chapter 9 case, promptly send a copy of the judgment or order to the United States trustee; and<br>(D) note service on the docket.<br>(2) *Lack of Notice; Time to Appeal.* Except as permitted by Rule 8002, lack of notice of the entry does not affect the time to appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed. |
| (b) JUDGMENT OR ORDER OF DISTRICT JUDGE. Notice of a judgment or order entered by a district judge is governed by Rule 77(d) F.R.Civ.P. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of a judgment or order entered by a district judge. | **(b) Issued by a District Judge.** Notice of a district judge's judgment or order is governed by Fed. R. Civ. P. 77(d). Except in a Chapter 9 case, the clerk must promptly send a copy to the United States trustee. |

**Committee Note**

The language of Rule 9022 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9023. New Trials; Amendment of Judgments** | **Rule 9023. New Trial; Amending a Judgment** |
| Except as provided in this rule and Rule 3008, Rule 59 F.R.Civ.P. applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment. In some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending. | **(a) By Motion.** Except as this rule and Rule 3008 provide otherwise, Fed. R. Civ. P. 59 applies in a bankruptcy case. A motion for a new trial or to alter or amend a judgment must be filed within 14 days after the judgment is entered. In some instances, Rule 8008 governs postjudgment motion practice after an appeal has been docketed and is pending.<br><br>**(b) By the Court.** Within 14 days after judgment is entered, the court may, on its own, order a new trial. |

**Committee Note**

The language of Rule 9023 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9024. Relief from Judgment or Order** | **Rule 9024. Relief from a Judgment or Order** |
| Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330. In some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending. | **(a) In General.** Fed. R. Civ. P. 60 applies in a bankruptcy case—except that:<br>(1) the one-year limitation in Fed. R. Civ. P. 60(c) does not apply to a motion to reopen a case or to reconsider an uncontested order allowing or disallowing a claim;<br>(2) a complaint to revoke a discharge in a Chapter 7 case must be filed within the time allowed by § 727(e); and<br>(3) a complaint to revoke an order confirming a plan must be filed within the time allowed by § 1144, 1230, or 1330.<br>**(b) Indicative Ruling**. In some instances, Rule 8008 governs postjudgment motion practice after an appeal has been docketed and is pending. |

**Committee Note**

The language of Rule 9024 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9025. Security: Proceedings Against Security Providers** | **Rule 9025. Security; Proceeding Against a Security Provider** |
| Whenever the Code or these rules require or permit a party to give security, and security is given with one or more security providers, each provider submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII. | When the Code or these rules require or permit a party to give security, and the party gives security with one or more security providers, each provider submits to the court's jurisdiction. Liability may be determined in an adversary proceeding governed by the Part VII rules. |

**Committee Note**

The language of Rule 9025 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9026. Exceptions Unnecessary** | **Rule 9026. Objecting to a Ruling or Order** |
| Rule 46 F.R.Civ.P. applies in cases under the Code. | Fed. R. Civ. P. 46 applies in a bankruptcy case. |

**Committee Note**

The language of Rule 9026 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9027. Removal** | **Rule 9027. Removing a Claim or Cause of Action from Another Court** |
| (a) NOTICE OF REMOVAL.<br><br>(1) *Where Filed; Form and Content.* A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action, the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings.<br><br>(2) *Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code.* If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.<br><br>(3) *Time for filing; civil action initiated after commencement of the case under the Code.* If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial | **(a) Notice of Removal.**<br><br>(1) ***Where Filed; Form and Content.*** A notice of removal must be filed with the clerk for the district and division where the state or federal civil action is pending. The notice must be signed—under Rule 9011—and must:<br><br>(A) contain a short and plain statement of the facts that entitle the party to remove;<br><br>(B) contain a statement that the party filing the notice does or does not consent to the bankruptcy court's entry of a final judgment or order; and<br><br>(C) be accompanied by a copy of all process and pleadings.<br><br>(2) ***Time to File When the Claim Was Filed Before the Bankruptcy Case Was Commenced.*** If the claim or cause of action in a civil action is pending when a bankruptcy case is commenced, the notice of removal must be filed within the longest of these periods:<br><br>(A) 90 days after the order for relief in the bankruptcy case;<br><br>(B) if the claim or cause of action has been stayed under § 362, 30 days after an order terminating the stay is entered; or<br><br>(C) in a Chapter 11 case, 30 days after a trustee qualifies—but no later than 180 days after the order for relief.<br><br>(3) ***Time to File When the Claim Is Filed After the Bankruptcy Case Was Commenced.*** If a claim or cause |

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| pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons. | of action is asserted in another court after the bankruptcy case was commenced, a party filing a notice of removal must do so within the shorter of these periods:<br>(A) 30 days after receiving (by service or otherwise) the initial pleading setting forth the claim or cause of action sought to be removed; or<br>(B) 30 days after receiving the summons if the initial pleading has been filed but not served with the summons. |
| (b) NOTICE. Promptly after filing the notice of removal, the party filing the notice shall serve a copy of it on all parties to the removed claim or cause of action. | **(b) Notice to Other Parties and to the Court from Which the Claim Was Removed.** A party filing a notice of removal must promptly:<br>(1) serve a copy on all other parties to the removed claim or cause of action; and<br>(2) file a copy with the clerk of the court from which it was removed. |
| (c) FILING IN NON-BANKRUPTCY COURT. Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded. | **(c) Effective Date of Removal.** Removal becomes effective when the notice is filed under (b)(2). The parties must proceed no further in the court from which the claim or cause of action was removed unless the claim or cause of action is remanded. |
| (d) REMAND. A motion for remand of the removed claim or cause of action shall be governed by Rule 9014 and served on the parties to the removed claim or cause of action. | **(d) Remand After Removal.** A motion to remand is governed by Rule 9014. The party filing the motion must serve a copy on all parties to the removed claim or cause of action. |
| (e) PROCEDURE AFTER REMOVAL. | **(e) Procedure After Removal.**<br>**(1)** ***Bringing Proper Parties Before the*** |

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| (1) After removal of a claim or cause of action to a district court the district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.<br><br>(2) The district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.<br><br>(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action. | *Court.* After removal, the district court—or the bankruptcy judge to whom the bankruptcy case has been referred—may issue all necessary orders and process to bring before it all proper parties. It does not matter whether they were served by process issued by the court from which the claim or cause of action was removed, or otherwise.<br><br>**(2)** *Records of Prior Proceedings.* The judge may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action that were filed in the court from which the removal occurred.<br><br>**(3)** *Statement by a Party to a Removed Claim.* A party who has filed a pleading in a removed claim or cause of action—except the party filing the notice of removal—must:<br><br>(A) file a statement that the party does or does not consent to the entry of a final order or judgment of the bankruptcy court;<br><br>(B) ensure that the statement is signed as Rule 9011 provides;<br><br>(C) file it within 14 days after the notice of removal is filed; and<br><br>(D) mail a copy to every other party to the removed claim or cause of action. |
| (f) PROCESS AFTER REMOVAL. If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued | **(f) Process Regarding a Defendant After Removal.** If a defendant has not been served—or service has not been completed before removal or has been proved defective—process or service may be completed or new process issued as the Part VII rules provide. A defendant served |

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| pursuant to Part VII of these rules. This subdivision shall not deprive any defendant on whom process is served after removal of the defendant's right to move to remand the case. | after removal may move to remand the claim or cause of action to the court from which it was removed. |
| (g) APPLICABILITY OF PART VII. The rules of Part VII apply to a claim or cause of action removed to a district court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within 21 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 21 days following the service of summons on such initial pleading, or within seven days following the filing of the notice of removal, whichever period is longest. | **(g) Applying Part VII Rules.**<br>**(1)** *In General.* The Part VII rules apply to a claim or cause of action removed to a district court from a federal or state court and govern the procedure after removal. Repleading is not necessary unless the court orders otherwise.<br>**(2)** *Time to File an Answer.* In a removed action, a defendant that has not previously done so must file an answer—or present other defenses or objections available under the Part VII rules. The defendant must do so within the longest of these periods:<br>(A) 21 days after receiving—by service or otherwise—a copy of the initial pleading that sets forth the claim for relief;<br>(B) 21 days after a summons on the original pleading was served; or<br>(C) 7 days after the notice of removal was filed. |
| (h) RECORD SUPPLIED. When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in the removed civil action or proceeding, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be | **(h) Clerk's Failure to Supply Certified Records of Court Proceedings.** If a party is entitled to copies of the records and proceedings in a civil action or proceeding in a federal or state court for use in the removed action or proceeding, the party may demand certified copies from that court's clerk. After the party pays for them or tenders the fees, if the clerk fails to provide them, the court to which the action or proceeding is removed may—after receiving an affidavit stating these facts—order that the record be supplied by |

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| had in the court, and all process awarded, as if certified copies had been filed. | affidavit or otherwise. The court may then proceed to trial and judgment, and may award all process, as if certified copies had been filed. |
| (i) ATTACHMENT OR SEQUESTRATION; SECURITIES. When a claim or cause of action is removed to a district court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the court. | **(i) Property Attached or Sequestered; Security; Injunction.**<br>**(1)** ***Property Attached or Sequestered.*** The court from which a claim or cause of action has been removed must hold attached or sequestered property to answer the final judgment or decree in the same way it would have been held had there been no removal.<br>**(2)** ***Security.*** Any bond, undertaking, or security given by either party before the removal remains valid.<br>**(3)** ***Injunction.*** Any injunction or order issued, or other proceeding had, before the removal remains in effect until dissolved or modified by the court. |

**Committee Note**

The language of Rule 9027 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9028. Disability of a Judge** | **Rule 9028. Judge's Disability** |
| Rule 63 F.R.Civ.P. applies in cases under the Code. | Fed. R. Civ. P. 63 applies in a bankruptcy case. |

**Committee Note**

The language of Rule 9028 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9029. Local Bankruptcy Rules; Procedure When There is No Controlling Law** | **Rule 9029. Adopting Local Rules; Limit on Enforcing a Local Rule; Absence of Controlling Law** |
| (a) LOCAL BANKRUPTCY RULES.<br><br>(1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States.<br><br>(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a non-willful failure to comply with the requirement. | **(a) Adopting Local Rules.**<br><br>(1) *By District Courts.* Each district court, acting by a majority of its judges, may make and amend rules governing practice and procedure in all cases and proceedings within its bankruptcy jurisdiction. Fed. R. Civ. P. 83 governs the procedure for adopting local rules. The rules must:<br><br>(A) be consistent with—but not duplicate—federal statutes and these rules;<br><br>(B) not prohibit or limit using Official Forms; and<br><br>(C) conform to any uniform numbering system prescribed by the Judicial Conference of the United States.<br><br>(2) *Delegating Authority to the Bankruptcy Judges.* A district court may—subject to any limitation or condition it may prescribe and Fed. R. Civ. P. 83—authorize the district's bankruptcy judges to do the same.<br><br>**(b) Limit on Enforcing a Local Rule Regarding Form.** A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose rights because of a nonwillful failure to comply. |
| (b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW. A judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement | **(c) Procedure When There Is No Controlling Law.** A judge may regulate practice in any manner consistent with federal law, these rules, the Official Forms, and the district's local rules. But for any requirement set out elsewhere a sanction or other disadvantage may be imposed for noncompliance only if the alleged violator |

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| not in federal law, federal rules, Official Forms, or the local rules of the district unless the alleged violator has been furnished in the particular case with actual notice of the requirement. | has been given actual notice of the requirement in the particular case. |

**Committee Note**

The language of Rule 9029 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9030. Jurisdiction and Venue Unaffected** | **Rule 9030. Jurisdiction and Venue** |
| These rules shall not be construed to extend or limit the jurisdiction of the courts or the venue of any matters therein. | These rules must not be construed to extend or limit jurisdiction of the courts or the venue of any matters. |

**Committee Note**

The language of Rule 9030 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9031. Masters Not Authorized** | **Rule 9031. Using Masters Not Authorized** |
| Rule 53 F.R.Civ.P. does not apply in cases under the Code. | Fed. R. Civ. P. 53 does not apply in a bankruptcy case. |

**Committee Note**

The language of Rule 9031 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9032. Effect of Amendment of Federal Rules of Civil Procedure** | **Rule 9032. Effect of an Amendment to the Federal Rules of Civil Procedure** |
| The Federal Rules of Civil Procedure which are incorporated by reference and made applicable by these rules shall be the Federal Rules of Civil Procedure in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by such amendment or by these rules. | To the extent these rules incorporate by reference the Federal Rules of Civil Procedure, an amendment to the Federal Rules of Civil Procedure is also effective under these rules, unless the amendment or these rules provide otherwise. |

**Committee Note**

The language of Rule 9032 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9033. Proposed Findings of Fact and Conclusions of Law** | **Rule 9033. Proposed Findings of Fact and Conclusions of Law** |
| (a) SERVICE. In a proceeding in which the bankruptcy court has issued proposed findings of fact and conclusions of law, the clerk shall serve forthwith copies on all parties by mail and note the date of mailing on the docket. | **(a) Service.** When a bankruptcy court issues proposed findings of fact and conclusions of law, the clerk must promptly serve a copy, by mail, on every party and must note the date of mailing on the docket. |
| (b) OBJECTIONS: TIME FOR FILING. Within 14 days after being served with a copy of the proposed findings of fact and conclusions of law a party may serve and file with the clerk written objections which identify the specific proposed findings or conclusions objected to and state the grounds for such objection. A party may respond to another party's objections within 14 days after being served with a copy thereof. A party objecting to the bankruptcy judge's proposed findings or conclusions shall arrange promptly for the transcription of the record, or such portions of it as all parties may agree upon or the bankruptcy judge deems sufficient, unless the district judge otherwise directs. | **(b) Objections; Time to File.**<br>(1) *Time to File.* Within 14 days after being served, a party may file and serve objections. The objections must identify each proposed finding or conclusion objected to and state the grounds for objecting. A party may respond to another party's objections within 14 days after being served with a copy.<br>(2) *Ordering a Transcript.* Unless the district judge orders otherwise, a party filing objections must promptly order a transcript of the record—or the parts of it that all parties agree to or the bankruptcy judge considers sufficient. |
| (c) EXTENSION OF TIME. The bankruptcy judge may for cause extend the time for filing objections by any party for a period not to exceed 21 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing objections must be made before the time for filing objections has expired, except that a request made no more than 21 days after the expiration of the time for filing objections may be granted upon a showing of excusable neglect. | (3) **Extending the Time.** On request made before the time to file objections expires, the bankruptcy judge may, for cause, extend the time to file for any party for no more than 21 days after the time otherwise provided by this rule expires. But a request made within 21 days after that time expires may be granted upon a showing of excusable neglect. |

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| (d) STANDARD OF REVIEW. The district judge shall make a de novo review upon the record or, after additional evidence, of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions. | **(c) Review by the District Judge.** The district judge:<br>(1) must review de novo—on the record or after receiving additional evidence—any part of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made under (b); and<br>(2) may accept, reject, or modify them, take additional evidence, or remand the matter to the bankruptcy judge with instructions. |

**Committee Note**

The language of Rule 9033 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9034. Transmittal of Pleadings, Motion Papers, Objections, and Other Papers to the United States Trustee** | **Rule 9034. Sending Copies to the United States Trustee** |
| Unless the United States trustee requests otherwise or the case is a chapter 9 municipality case, any entity that files a pleading, motion, objection, or similar paper relating to any of the following matters shall transmit a copy thereof to the United States trustee within the time required by these rules for service of the paper:<br><br>(a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business;<br><br>(b) the approval of a compromise or settlement of a controversy;<br><br>(c) the dismissal or conversion of a case to another chapter;<br><br>(d) the employment of professional persons;<br><br>(e) an application for compensation or reimbursement of expenses;<br><br>(f) a motion for, or approval of an agreement relating to, the use of cash collateral or authority to obtain credit;<br><br>(g) the appointment of a trustee or examiner in a chapter 11 reorganization case;<br><br>(h) the approval of a disclosure statement;<br><br>(i) the confirmation of a plan;<br><br>(j) an objection to, or waiver or revocation of, the debtor's discharge;<br><br>(k) any other matter in which the United States trustee requests copies of filed papers or the court orders copies | Except in a Chapter 9 case or when the United States trustee requests otherwise, an entity filing a pleading, motion, objection, or similar document relating to any of the following must send a copy to the United States trustee within the time required for service:<br><br>(a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business;<br><br>(b) the approval of a compromise or settlement of a controversy;<br><br>(c) the dismissal or conversion of a case to another chapter;<br><br>(d) the employment of a professional person;<br><br>(e) an application for compensation or reimbursement of expenses;<br><br>(f) a motion for, or the approval of an agreement regarding, the use of cash collateral or the authority to obtain credit;<br><br>(g) the appointment of a trustee or examiner in a Chapter 11 case;<br><br>(h) the approval of a disclosure statement;<br><br>(i) the confirmation of a plan;<br><br>(j) an objection to, or waiver or revocation of, the debtor's discharge; or<br><br>(k) any other matter in which the United States trustee requests copies of filed papers or the court orders copies sent |

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| transmitted to the United States trustee. | to the United States trustee. |

**Committee Note**

The language of Rule 9034 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9035. Applicability of Rules in Judicial Districts in Alabama and North Carolina** | **Rule 9035. Applying These Rules in a Judicial District in Alabama and North Carolina** |
| In any case under the Code that is filed in or transferred to a district in the State of Alabama or the State of North Carolina and in which a United States trustee is not authorized to act, these rules apply to the extent that they are not inconsistent with any federal statute effective in the case. | In a bankruptcy case filed in or transferred to a district in Alabama or North Carolina and in which a United States trustee is not authorized to act, these rules apply to the extent they are not inconsistent with any applicable federal statute. |

**Committee Note**

The language of Rule 9035 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9036. Notice and Service by Electronic Transmission** | **Rule 9036. Electronic Notice and Service** |
| (a) IN GENERAL. This rule applies whenever these rules require or permit sending a notice or serving a paper by mail or other means. | **(a) In General.** This rule applies whenever these rules require or permit sending a notice or serving a document by mail or other means. |
| (b) NOTICES FROM AND SERVICE BY THE COURT.<br>(1) *Registered Users*. The clerk may send notice to or serve a registered user by filing the notice or paper with the court's electronic-filing system.<br>(2) *All Recipients*. For any recipient, the clerk may send notice or serve a paper by electronic means that the recipient consented to in writing, including by designating an electronic address for receipt of notices. But these exceptions apply:<br>(A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk shall send the notice to or serve the paper at that address; and<br>(B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve | **(b) Notices From and Service by the Court.**<br>(1) ***Registered Users***. The clerk may send notice to or serve a registered user by filing the notice or document with the court's electronic-filing system.<br>(2) ***All Recipients***. For any recipient, the clerk may send notice or serve a document by electronic means that the recipient consented to in writing, including by designating an electronic address for receiving notices. But these exceptions apply:<br>(A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk must use that address; and<br>(B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the document electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f). |

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| the paper electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f) of the Code. | |
| (c) NOTICES FROM AND SERVICE BY AN ENTITY. An entity may send notice or serve a paper in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B). | **(c) Notices From and Service by an Entity.** An entity may send notice or serve a document in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B). |
| (d) COMPLETING NOTICE OR SERVICE. Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. It is the recipient's responsibility to keep its electronic address current with the clerk. | **(d) Completing Notice or Service.** Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be notified or served. The recipient must keep its electronic address current with the clerk. |
| (e) INAPPLICABILITY. This rule does not apply to any paper required to be served in accordance with Rule 7004. | **(e) Inapplicability**. This rule does not apply to any document required to be served in accordance with Rule 7004. |

**Committee Note**

The language of Rule 9036 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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| **Rule 9037. Privacy Protection For Filings Made with the Court** | **Rule 9037. Protecting Privacy for Filings** |
| (a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:<br>(1) the last four digits of the social-security number and taxpayer-identification number;<br>(2) the year of the individual's birth;<br>(3) the minor's initials; and<br>(4) the last four digits of the financial-account number. | **(a) Required Redaction.** Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual other than the debtor known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:<br>(1) the last four digits of a social-security and taxpayer-identification number;<br>(2) the year of the individual's birth;<br>(3) the minor's initials; and<br>(4) the last four digits of the financial-account number. |
| (b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:<br>(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;<br>(2) the record of an administrative or agency proceeding unless filed with a proof of claim;<br>(3) the official record of a state-court proceeding;<br>(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;<br>(5) a filing covered by subdivision (c) of this rule; and | **(b) Exemptions from the Redaction Requirement.** The redaction requirement does not apply to the following:<br>(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;<br>(2) the record of an administrative or agency proceeding, unless filed with a proof of claim;<br>(3) the official record of a state-court proceeding;<br>(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;<br>(5) a filing covered by (c); and<br>(6) a filing subject to § 110. |

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| (6) a filing that is subject to § 110 of the Code. | |
| (c) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record. | **(c) Order for a Filing Made Under Seal.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made it to file a redacted version for the public record. |
| (d) PROTECTIVE ORDERS. For cause, the court may by order in a case under the Code:<br>(1) require redaction of additional information; or<br>(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court. | **(d) Protective Orders**. For cause, the court may by order in a case under the Code:<br>(1) require redaction of additional information; or<br>(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court. |
| (e) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. An entity making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record. | **(e) Option to File an Additional Unredacted Document Under Seal.** An entity filing a redacted document may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record. |
| (f) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information. | **(f) Option to File a Reference List.** A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. A reference in the case to a listed identifier will be construed to refer to the corresponding item of information. |

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| (g) WAIVER OF PROTECTION OF IDENTIFIERS. An entity waives the protection of subdivision (a) as to the entity's own information by filing it without redaction and not under seal. | **(g) Waiver of Protection of Identifiers.** An entity waives the protection of (a) for the entity's own information by filing it without redaction and not under seal. |
| (h) MOTION TO REDACT A PREVIOUSLY FILED DOCUMENT.<br><br>(1) *Content of the Motion; Service.* Unless the court orders otherwise, if an entity seeks to redact from a previously filed document information that is protected under subdivision (a), the entity must:<br><br>(A) file a motion to redact identifying the proposed redactions;<br><br>(B) attach to the motion the proposed redacted document;<br><br>(C) include in the motion the docket or proof-of-claim number of the previously filed document; and<br><br>(D) serve the motion and attachment on the debtor, debtor's attorney, trustee (if any), United States trustee, filer of the unredacted document, and any individual whose personal identifying information is to be redacted.<br><br>(2) *Restricting Public Access to the Unredacted Document; Docketing the Redacted Document.* The court must promptly restrict public access to the motion and the unredacted document pending its ruling on the motion. If the court grants it, the court must docket the redacted document. The restrictions on public access to the motion and unredacted document remain in effect until a further court order. If the court denies it, the restrictions must be lifted, unless the court orders otherwise. | **(h) Motion to Redact a Previously Filed Document.**<br><br>**(1)** ***Content; Service.*** Unless the court orders otherwise, an entity seeking to redact from a previously filed document information that is protected under (a) must:<br><br>(A) file a motion that identifies the proposed redactions;<br><br>(B) attach to it the proposed redacted document;<br><br>(C) include the docket number—or proof-of-claim number—of the previously filed document; and<br><br>(D) serve the motion and attachment on;<br><br>• the debtor;<br><br>• the debtor's attorney;<br><br>• any trustee;<br><br>• the United States trustee;<br><br>• the person who filed the unredacted document; and<br><br>• any individual whose personal identifying information is to be redacted.<br><br>**(2)** ***Restricting Public Access to the Unredacted Document; Docketing the Redacted Document.*** Pending its ruling, the court must promptly restrict access to the motion and the unredacted document. If the court grants the motion, the clerk must docket the redacted document. The |

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| | restrictions on public access to the motion and unredacted document remain in effect until a further court order. If the court denies the motion, the restrictions must be lifted, unless the court orders otherwise. |

**Committee Note**

The language of Rule 9037 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

# Mortgage Proof of Claim Attachment

(12/23)

**If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.**

| Part 1: Mortgage and Case Information | | Part 2: Total Debt Calculation | | Part 3: Arrearage as of Date of the Petition | | Part 4: Monthly Mortgage Payment | |
|---|---|---|---|---|---|---|---|
| Case number: | _____ | Principal balance: | _____ | Principal due: | _____ | Principal & interest: | _____ |
| Debtor 1: | _____ | Interest due: | _____ | Interest due: | _____ | Monthly escrow: | _____ |
| Debtor 2: | _____ | Fees, costs due: | _____ | Prepetition fees due: | _____ | Private mortgage insurance: | _____ |
| Last 4 digits to identify: | ___ ___ ___ ___ | Escrow deficiency for funds advanced: | _____ | Escrow deficiency for funds advanced: | _____ | Total monthly payment: | _____ |
| Creditor: | _____ | Less total funds on hand: | – _____ | Projected escrow shortage: | _____ | | |
| Servicer: | _____ | Total debt: | _____ | Less funds on hand: | – _____ | | |
| Fixed accrual/daily simple interest/other: | _____ | | | Total prepetition arrearage: | _____ | | |

**Part 5 : Loan Payment History from First Date of Default**

| | | Account Activity | | | | How Funds Were Applied/Amount Incurred | | | | | | Balance After Amount Received or Incurred | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **A.** Date | **B.** Contractual payment amount | **C.** Funds received | **D.** Amount incurred | **E.** Description | **F.** Contractual due date | **G.** Prin, int & esc past due balance | **H.** Amount to principal | **I.** Amount to interest | **J.** Amount to escrow | **K.** Amount to fees or charges | **L.** Unapplied funds | **M.** Principal balance | **N.** Accrued interest balance | **O.** Escrow balance | **P.** Fees / Charges balance | **Q.** Unapplied funds balance |
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# Mortgage Proof of Claim Attachment: Additional Page

(12/23)

Case number: _____

Debtor 1: _____

**Part 5 : Loan Payment History from First Date of Default**

| | | Account Activity | | | | | How Funds Were Applied/Amount Incurred | | | | | Balance After Amount Received or Incurred | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **A.** Date | **B.** Contractual payment amount | **C.** Funds received | **D.** Amount incurred | **E.** Description | **F.** Contractual due date | **G.** Prin, int & esc past due balance | **H.** Amount to principal | **I.** Amount to interest | **J.** Amount to escrow | **K.** Amount to fees or charges | **L.** Unapplied funds | **M.** Principal balance | **N.** Accrued interest balance | **O.** Escrow balance | **P.** Fees / Charges balance | **Q.** Unapplied funds balance |
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## Committee Note

Part 3 of Form 410A is amended to provide for separate itemization of principal due and interest due. Because under § 1322(e) the amount necessary to cure a default is "determined in accordance with the underlying agreement and applicable nonbankruptcy law," it may be necessary for a debtor who is curing arrearages under § 1325(a)(5) to know which portion of the total arrearages is principal and which is interest.

Official Form 410A

# Instructions for Mortgage Proof of Claim Attachment

United States Bankruptcy Court 12/23

## Introduction

This form is used only in individual debtor cases. When required to be filed, it must be attached to *Proof of Claim* (Official Form B410) with other documentation required under the Federal Rules of Bankruptcy Procedure.

## Applicable Law and Rules

Rule 3001(c)(2)(A) of the Federal Rules of Bankruptcy Procedure requires for the bankruptcy case of an individual that any proof of claim be accompanied by a statement itemizing any interest, fees, expenses, and charges that are included in the claim.

Rule 3001(c)(2)(B) requires that a statement of the amount necessary to cure any default be filed with the claim if a security interest is claimed in the debtor's property.

If a security interest is claimed in property that is the debtor's principal residence, Rule 3001(c)(2)(C) requires this form to be filed with the proof of claim. The form implements the requirements of Rule 3001(c)(2)(A) and (B).

If an escrow account has been established in connection with the claim, Rule 3001(c)(2)(C) also requires an escrow statement to be filed with the proof of claim. The statement must be prepared as of the date of the petition and in a form consistent with applicable nonbankruptcy law.

## Directions

### Definition

This form must list all transactions on the claim from the *first date of default* to the petition date. The *first date of default* is the first date on which the borrower failed to make a payment in accordance with the terms of the note and mortgage, unless the note was subsequently brought current with no principal, interest, fees, escrow payments, or other charges immediately payable.

### Information required in Part 1: Mortgage and Case Information

Insert on the appropriate lines:

- the case number;
- the names of Debtor 1 and Debtor 2;
- the last 4 digits of the loan account number or any other number used to identify the account;
- the creditor's name;
- the servicer's name, if applicable; and
- the method used to calculate interest on the debt (i.e., fixed accrual, daily simple interest, or other method).

**Information required in Part 2: Total Debt Calculation**

Insert:

- the principal balance on the debt;
- the interest due and owing;
- any fees or costs owed under the note or mortgage and outstanding as of the date of the bankruptcy filing; and
- any *Escrow deficiency for funds advanced*—that is, the amount of any prepetition payments for taxes and insurance that the servicer or mortgagee made out of its own funds and for which it has not been reimbursed.

If the secured debt has merged into a prepetition judgment, the principal balance on the debt is the remaining amount of the judgment. Any post-judgment interest due and owing, fees and costs, and escrow deficiency for funds advanced shall be the amounts that are collectible under applicable law.

Also disclose the *Total amount of funds on hand*. This amount is the total of the following, if applicable:

- a positive escrow balance,
- unapplied funds, and
- amounts held in suspense accounts.

Total the amounts owed—subtracting total funds on hand—to determine the total debt due.

Insert this amount under *Total debt*. The amount should be the same as the claim amount that you report on line 7 of Official Form 410.

**Information required in the Part 3: Arrearage as of the Date of Petition**

Insert the amounts of the principal and interest portions of all prepetition monthly installments that remain outstanding as of the petition date. The escrow portion of prepetition monthly installment payments should not be included in this figure.

Insert the amount of fees and costs outstanding as of the petition date. This amount should equal the *Fees/Charges balance* as shown in the last entry in Part 5, Column P.

Insert any *escrow deficiency for funds advanced*. This amount should be the same as the amount of *escrow deficiency* stated in Part 2.

Insert the *Projected escrow shortage* as of the date the bankruptcy petition was filed. The *projected escrow shortage* is the amount the claimant asserts should exist in the escrow account as of the petition date, less the amount actually held. The amount actually held should equal the amount of a positive escrow account balance as shown in the last entry in Part 5, Column O.

This calculation should result in the amount necessary to cure any prepetition default on the note or mortgage that arises from the failure of the borrower to satisfy the amounts required under the Real Estate Settlement Practices Act (RESPA). The amount necessary to cure should include 1/6 of the anticipated annual charges against the escrow account or 2 months of the monthly pro rata installments due by the borrower as calculated under RESPA guidelines. The amount of the projected escrow shortage should be consistent with the escrow account statement attached to the *Proof of Claim*, as required by Rule 3001(c)(2)(C).

Insert the amount of funds on hand that are unapplied or held in a suspense account as of the petition date.

Total the amounts due listed in Part 3, subtracting the funds on hand, and insert the calculated amount in *Total prepetition arrearage*. This should be the same amount as "Amount necessary to cure any default as of the date of the petition" that you report on line 9 of Official Form 410.

**Information required in Part 4: Monthly Mortgage Payment**

Insert the principal and interest amount of the first postpetition payment.

Insert the monthly escrow portion of the monthly payment. This amount should take into account the receipt of any amounts claimed in Part 3 as escrow deficiency and projected escrow shortage. Therefore, a claimant should assume that the escrow deficiency and shortage will be paid through a plan of reorganization and provide for a credit of a like amount when calculating postpetition escrow installment payments.

Claimants should also add any monthly private mortgage insurance amount.

Insert the sum of these amounts in *Total monthly payment*.

**Information required in Part 5: Loan Payment History from the First Date of Default**

Beginning with the First Date of Default, enter:

- the date of the default in Column A;
- amount incurred in Column D;
- description of the charge in Column E;
- principal balance, escrow balance, and unapplied or suspense funds balance as of that date in Columns M, O, and Q, respectively.

For (1) all subsequently accruing installment payments; (2) any subsequent payment received; (3) any fee, charge, or amount incurred; and (4) any escrow charge satisfied since the date of first default, enter the information in date order, showing:

- the amount paid, accrued, or incurred;
- a description of the transaction;
- the contractual due date, if applicable;
- how the amount was applied or assessed; and
- the resulting principal balance, accrued interest balance, escrow balance, outstanding fees or charges balance, and the total unapplied funds held or in suspense.

If more space is needed, fill out and attach as many copies of *Mortgage Proof of Claim Attachment: Additional Page* as necessary.

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

**JOHN D. BATES**
CHAIR

**CHAIRS OF ADVISORY COMMITTEES**

**JAY S. BYBEE**
APPELLATE RULES

**DENNIS R. DOW**
BANKRUPTCY RULES

**ROBERT M. DOW, JR.**
CIVIL RULES

**RAYMOND M. KETHLEDGE**
CRIMINAL RULES

**PATRICK J. SCHILTZ**
EVIDENCE RULES

# MEMORANDUM

**TO:** Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

**FROM:** Hon. Robert M. Dow, Jr., Chair
Advisory Committee on Civil Rules

**RE:** Report of the Advisory Committee on Civil Rules

**DATE:** December 14, 2021

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*Introduction*

The Civil Rules Advisory Committee met on a teleconference platform that included public access, on October 5, 2021. Draft minutes of the meeting are attached.

Part I of this report presents one item for action at this meeting, recommending publication of an amendment of Rules 12(a)(2) and (3) to recognize statutes that set a time to file a responsive pleading different than the 60-day period in the present rule.

* * * * *

## I. Action Item: Rules 12(a)(2) and (3) for Publication

Rule 12(a) sets the times to serve responsive pleadings. Rule 12(a)(1) recognizes that a federal statute setting a different time should govern. Rules 12(a)(2) and (3) do not recognize the possibility of conflicting statutes. Statutes setting shorter times than the 60 days provided by

paragraph (2) exist. It is not clear whether any statute inconsistent with paragraph (3) exists now. This proposal would amend paragraphs (2) and (3) to bring them into line with paragraph (1), recognizing that a different statutory time should supersede the general 60-day rule time.

Rule 12(a) begins like this:

(a) TIME TO SERVE A RESPONSIVE PLEADING.

(1) *In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

* * * * *

(2) *United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.* The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) *United States Officers of Employees Sued in an Individual Capacity.* A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

* * * * *

The amendment would recast the beginning of Rule 12(a) to read like this:

(a) TIME TO SERVE A RESPONSIVE PLEADING. ~~(1)*In General.*~~ Unless another time is specified by ~~this rule or~~ a federal statute, the time for serving a responsive pleading is as follows:

(1) *In General.*

(A) a defendant must serve an answer

* * * * *

The most frequently encountered statute that sets a different time from Rule 12(a)(2) is the Freedom of Information Act. The Department of Justice reports that it understands and adheres to

the 30-day response time set by FOIA. But this question came to the agenda from a lawyer who had to argue with a clerk's office to gain a 30-day summons, and research by an independent journalist with a law librarian suggests that many districts issue 60-day summonses and that mean and median response times exceed 30 days.

The reasons to recommend the amendment are direct. Rules 12(a)(2) and (3) were never intended to supersede inconsistent statutes. It is embarrassing to have rule text that does not reflect the intent to defer. Worse, comparison of the text of paragraph (1) with the texts of paragraphs (2) and (3) might suggest a deliberate choice that only the response times set by paragraph (1) should defer to inconsistent statutory periods. And the risk that the rule text may be read to supersede inconsistent statutory provisions may be real. Working through a supersession argument, moreover, would lead to the prospect that the rule supersedes inconsistent earlier statutes, but is superseded by later statutes. It is better to avoid these problems by a simple amendment.

The reasons to hesitate are few. One is the ever-present concern that bench and bar should not be burdened with a never-ending flow of minor rules amendments. Time and again the committees find divergent or likely wrong interpretations of the rules but draw back from proposing amendments. The other is that the Department of Justice regularly encounters actions that involve both claims subject to a shorter period and claims subject to the general 60-day period in Rules 12(a)(2) and (3). Often it wins an order that allows it to file a single answer within the 60-day period. The Department has some concern that express recognition of the shorter statutes in rule text might make it more difficult to win such extensions. These reasons proved troubling to the Advisory Committee when this proposal was first considered in October 2020; the proposal was held for further study by an evenly divided vote.

The reasons to recommend this amendment for publication proved more persuasive to the Advisory Committee after further discussion. The recommendation was adopted without dissent.

* * * * *

**PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]**

**Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

**(a) Time to Serve a Responsive Pleading.**

~~(1) *In General.*~~ Unless another time is specified by ~~this rule or~~ a federal statute, the time for serving a responsive pleading is as follows:

**(1) *In General.***

**(A)** A defendant must serve an answer:

* * * * *

**Committee Note**

Rule 12 is amended to make it clear that a federal statute that specifies another time supersedes the times to serve a responsive pleading set by paragraphs (a)(2) and (3). Paragraph (a)(1) incorporates this provision, but the structure of subdivision (a) does not seem to extend it to paragraphs (2) and (3). There is no reason to supersede an inconsistent statute by any part of Rule 12(a). The amended structure recognizes the priority of any statute for all of paragraphs (1), (2), and (3).

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

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
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**RAYMOND M. KETHLEDGE**
CRIMINAL RULES

**PATRICK J. SCHILTZ**
EVIDENCE RULES

**MEMORANDUM**

**TO:** Honorable John D. Bates, Chair
Standing Committee on Rules of Practice and Procedure

**FROM:** Honorable Patrick J. Schiltz, Chair
Advisory Committee on Evidence Rules

**RE:** Report of the Advisory Committee on Evidence Rules

**DATE:** May 15, 2022

---

# I. Introduction

The Advisory Committee on Evidence Rules (the "Committee") met in Washington, D.C., on May 6, 2021. At the meeting the Committee discussed and gave final approval to three proposed amendments that had been released for public comment. The Committee also considered and approved six proposed amendments with the recommendation that they be released for public comment.

The Committee made the following determinations at the meeting:

* * * * *

● It unanimously approved proposals to amend Rules 611 * * * * *, 613(b), 801(d)(2), 804(b)(3), and 1006, and recommends to the Standing Committee that these proposed amendments be released for public comment.

A full description of all of these matters can be found in the draft minutes of the Committee meeting, attached to this Report. The proposed amendments can also be found as attachments to this Report.

## II. Action Items

* * * * *

### D. Possible Amendment to Rule 611 on Illustrative Aids, for Release for Public Comment

At the Spring meeting, the Committee unanimously approved a proposal to add a new Rule 611(d) to regulate the use of illustrative aids at trial. The distinction between "demonstrative evidence" (admitted into evidence and used substantively to prove disputed issues at trial) and "illustrative aids" (not admitted into evidence but used solely to assist the jury in understanding other evidence) is sometimes a difficult one to draw, and is a point of confusion in the courts. In addition, the standards for allowing illustrative aids to be presented --- and particularly whether illustrative aids may be used by the jury during deliberations --- are not made clear in the case law. The Committee has determined that it would be useful to set forth uniform standards to regulate the use of illustrative aids, and in doing so clarify the distinction between illustrative aids and demonstrative evidence.

The proposed amendment would distinguish illustrative aids --- presentations that are not evidence but offered only to help the factfinder understand evidence --- from demonstrative evidence offered to prove a fact. The amendment would allow illustrative aids to be used at trial after the court balances the utility of the aid against the risk of unfair prejudice, confusion, and delay.

Because illustrative aids are not evidence, adverse parties do not receive pretrial discovery of such aids. The proposed rule would require notice to be provided, unless the court for good cause orders otherwise. The Committee determined that advance notice is important so that the court can rule on whether the aid has sufficient utility before it is displayed to the jury. (After all, you can't unring a bell.) The Committee Note recognizes that the timing of the notice will depend on the circumstances.

Finally, because illustrative aids are not evidence, the proposed rule provides that the aids should not be allowed into the jury room during deliberations, unless the court orders otherwise.

The Committee Note specifies that if the court does allow an illustrative aid to go to the jury room, the court should instruct the jury that the aid is not evidence.

It is important to note that the proposed rule is not intended to regulate PowerPoints or other aids that an attorney uses merely to guide the jury through an opening or closing argument. Again, illustrative aids assist the jury in understanding *evidence*; something that assists the jury in following an *argument* is therefore not an illustrative aid.

The Committee strongly believes that the rule on illustrative aids will provide an important service to courts and litigants. Illustrative aids are used in almost every trial, and yet nothing in the evidence rules specifically addresses their use. This amendment rectifies that problem.

***At the Spring 2022 meeting, the Committee unanimously approved the proposed amendment to add Rule 611(d) to regulate the use of illustrative aids at a trial. The Committee recommends that the proposed amendment, and the accompanying Committee Note, be released for public comment.***

The proposed amendment to add Rule 611(d), together with the proposed Committee Note, is attached to this Report.

## E. Proposed Amendment to Rule 1006, for Release for Public Comment[1]

Evidence Rule 1006 provides that a summary can be admitted as evidence if the underlying records are admissible and too voluminous to be conveniently examined in court. The Committee has determined that the courts are in dispute about a number of issues regarding admissibility of summaries of evidence under Rule 1006 --- and that much of the problem is that some courts do not properly distinguish between summaries of evidence under Rule 1006 (which are themselves admitted into evidence) and summaries that are illustrative aids (which are not evidence at all). Some courts have stated that summaries admissible under Rule 1006 are "not evidence," which is incorrect. Other courts have stated that all of the underlying evidence must be admitted before the summary can be admitted; that, too, is incorrect. Still other courts state that the summary is inadmissible if any of the underlying evidence *has* been admitted; that is also wrong.

After extensive research and discussion, the Committee unanimously approved an amendment to Rule 1006 that would provide greater guidance to the courts on the admissibility and proper use of summary evidence under Rule 1006.

The proposal to amend Rule 1006 dovetails with the proposal to establish a rule on illustrative aids, discussed above. These two rules serve to distinguish a summary of voluminous evidence (which is itself evidence and governed by Rule 1006) from a summary that is designed to help the trier of fact understand evidence that has already been presented (which is not itself evidence and would be governed by new Rule 611(d)). The proposed amendment to Rule 1006 would clarify that a summary is admissible whether or not the underlying evidence has been

[1] This rule is taken out of numerical sequence, because it is of a piece with the proposed amendment on illustrative aids.

admitted. The Committee believes that the proposed amendment will provide substantial assistance to courts and litigants in navigating this confusing area.

***At the Spring 2022 meeting, the Committee unanimously approved the proposed amendment to Rule 1006. The Committee recommends that the proposed amendment, and the accompanying Committee Note, be released for public comment.***

The proposed amendment to Rule 1006, together with the proposed Committee Note, is attached to this Report.

* * * * *

## G. Proposed Amendment to Rule 613(b), for Release for Public Comment.

The common law provided that before a witness could be impeached with extrinsic evidence of a prior inconsistent statement, the adverse party was required to give the witness an opportunity to explain or deny the statement. Rule 613(b) rejects that "prior presentation" requirement. It provides that extrinsic evidence of the inconsistent statement is admissible so long as the witness is given an opportunity to explain or deny the statement at some point in the trial. It turns out, though, that many (perhaps most) courts have retained the common law "prior presentation" requirement. These courts have found that a prior presentation requirement saves time, because a witness will almost always concede that she made the inconsistent statement, and that makes it unnecessary for anyone to introduce extrinsic evidence. The prior presentation requirement also avoids unfair surprise and the difficulties inherent in calling a witness back to the stand to give her an opportunity at some later point to explain or deny a prior statement that has been proven through extrinsic evidence.

After discussion at three Committee meetings, the Committee unanimously determined that the better rule is to require a prior opportunity to explain or deny the statement, with the court having discretion to allow a later opportunity (for example, when the prior inconsistent statement is not discovered until after the witness testifies). This will bring the rule into alignment with what appears to be the practice of most trial judges --- a practice that the Committee concluded is superior to the practice described in the current rule.

* * * * *

***At the Spring 2022 meeting, the Committee unanimously approved the proposed amendment to Rule 613(b). The Committee recommends that the proposed amendment, and the accompanying Committee Note, be released for public comment.***

The proposed amendment to Rule 613(b), together with the proposed Committee Note, is attached to this Report.

## H. Proposed Amendment to Rule 801(d)(2) Governing Successors-in-Interest, for Release for Public Comment

Rule 801(d)(2) provides a hearsay exemption for statements of a party opponent. Courts are split about the applicability of this exemption in the following situation: a declarant makes a statement that would have been admissible against him as a party-opponent, but he is not the party-opponent because his claim or defense has been transferred to another (either by agreement or by operation of law), and it is the transferee that is the party-opponent. Some circuits would permit the statements made by the declarant to be offered against the successor as a party-opponent statement under Rule 801(d)(2), while others would foreclose admissibility because the statement was made by one who is technically not the party-opponent in the case.

At its Spring, 2002 meeting, after previous discussion, the Committee determined that the dispute in the courts about the admissibility of party-opponent statements against successors should be resolved by a rule amendment, because the problem arises with some frequency in a variety of successor/predecessor situations (most commonly, decedent and estate in a claim brought for damages under 42 U.S.C. § 1983). The Committee unanimously determined that the appropriate result should be that a hearsay statement should be admissible against the successor-in-interest. The Committee reasoned that admissibility was fair when the successor-in-interest is standing in the shoes of the declarant --- because the declarant is in substance the party-opponent. Moreover, a contrary rule results in random application of Rule 801(d)(2), and possible strategic action, such as assigning a claim in order to avoid admissibility of a statement. The Committee approved the following addition to Rule 801(d)(2):

> If a party's claim or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party.

The proposed Committee Note would emphasize that to be admissible against the successor, the declarant must have made the statement before the transfer of the claim or defense.

***At its Spring 2022 meeting, the Committee unanimously approved the proposed amendment to Rule 801(d)(2). The Committee recommends that the proposed amendment, and the accompanying Committee Note, be released for public comment.***

The proposed amendment to Rule 801(d)(2), together with the proposed Committee Note, is attached to this Report.

## I. Proposed Amendment to the Rule 804(b)(3) Corroborating Circumstances Requirement, for Release for Public Comment

Rule 804(b)(3) provides a hearsay exception for declarations against interest. In a criminal case in which a declaration against penal interest is offered, the rule requires that the proponent provide "corroborating circumstances that clearly indicate the trustworthiness" of the statement. There is a dispute in the courts about the meaning of the "corroborating circumstances" requirement. Most federal courts consider both the inherent guarantees of trustworthiness underlying a particular declaration against interest as well as independent evidence corroborating (or refuting) the accuracy of the statement. But some courts do not permit inquiry into independent evidence --- limiting judges to consideration of the inherent guarantees of trustworthiness surrounding the statement. This latter view --- denying consideration of independent corroborative evidence --- is inconsistent with the 2019 amendment to Rule 807 (the residual exception), which requires courts to look at corroborative evidence in determining whether a hearsay statement is sufficiently trustworthy under that exception. The rationale is that corroborative evidence can shore up concerns about the potential unreliability of a statement --- a rationale that is applied in many other contexts, such as admissibility of co-conspirator hearsay, and tips from informants in determining probable cause.

At its Spring, 2022 meeting, the Committee unanimously approved an amendment to Rule 804(b)(3) that would parallel the language in Rule 807, and require the court to consider the presence or absence of corroborating evidence in determining whether "corroborating circumstances" exist. The proposed language for the amendment, which is recommended for release for public comment, is as follows:

**Rule 804(b)(3) Statement Against Interest.**

A statement that:

> (A) A reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
>
> (B) if offered in a criminal case as one that tends to expose the declarant to criminal liability, the court finds it ~~is~~ supported by corroborating circumstances that clearly indicate trustworthiness --- after considering the totality of circumstances under which it was made and evidence, if any, corroborating it. ~~if offered in a criminal case as one that tends to expose the declarant to criminal liability~~.

The Committee believes that it is important to rectify the dispute among the circuits about the meaning of "corroborating circumstances" and that requiring consideration of corroborating evidence not only avoids inconsistency with the residual exception, but is also supported by logic and by the legislative history of Rule 804(b)(3).

***At its Spring 2022 meeting, the Committee unanimously approved the proposed amendment to Rule 80(4)(b)(3). The Committee recommends that the proposed amendment, and the accompanying Committee Note, be released for public comment.***

The proposed amendment to Rule 804(b)(3), together with the proposed Committee Note, is attached to this Report.

* * * * *

**PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE**[1]

**Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence**

* * * * *

**(d) Illustrative Aids.**

**(1)** ***Permitted Uses.*** The court may allow a party to present an illustrative aid to help the finder of fact understand admitted evidence if:

(A) its utility in assisting comprehension is not [substantially] outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time; and

(B) all parties are given notice and a reasonable opportunity to object to its

[1] New material is underlined in red.

use, unless the court, for good cause, orders otherwise.

**(2)** ***Use in Jury Deliberations.*** An illustrative aid must not be provided to the jury during deliberations unless:

**(A)** all parties consent; or

**(B)** the court, for good cause, orders otherwise.

**(3)** ***Record.*** When practicable, an illustrative aid that is used at trial must be entered into the record.

**Committee Note**

The amendment establishes a new subdivision within Rule 611 to provide standards for the use of illustrative aids. The new rule is derived from Maine Rule of Evidence 616. The term "illustrative aid" is used instead of the term "demonstrative evidence," as that latter term is vague and has been subject to differing interpretation in the courts. "Demonstrative evidence" is a term better applied to substantive evidence offered to prove, by demonstration, a disputed fact.

Writings, objects, charts, or other presentations that are used during the trial to provide information to the factfinder thus fall into two separate categories. The first category is evidence that is offered to prove a disputed fact; admissibility of such evidence is dependent upon satisfying the strictures of Rule 403, the hearsay rule, and other evidentiary screens. Usually the jury is permitted to take this substantive evidence to the jury room, to study it, and to use it to help determine the disputed facts.

The second category—the category covered by this rule—is information that is offered for the narrow purpose of helping the factfinder to understand what is being communicated to them by the witness or party presenting evidence. Examples include blackboard drawings, photos, diagrams, powerpoint presentations, video depictions, charts, graphs, and computer simulations. These kinds of presentations, referred to in this rule as "illustrative aids," have also been described as "pedagogical devices" and sometimes (and less helpfully) "demonstrative presentations"—that latter term being unhelpful because the purpose for presenting the information is not to "demonstrate" how an event occurred but rather to help the finder of fact understand evidence that is being or has been presented.

A similar distinction must be drawn between a summary of voluminous, admissible information offered to prove a fact, and a summary of evidence that is offered solely to assist the trier of fact in understanding the evidence. The former is subject to the strictures of Rule 1006. The latter is an illustrative aid, which the courts have previously regulated pursuant to the broad standards of Rule 611(a), and

which is now to be regulated by the more particularized requirements of this Rule 611(d).

While an illustrative aid is by definition not offered to prove a fact in dispute, this does not mean that it is free from regulation by the court. Experience has shown that illustrative aids can be subject to abuse. It is possible that the illustrative aid may be prepared to distort the evidence presented, to oversimplify, or to stoke unfair prejudice. This rule requires the court to assess the value of the illustrative aid in assisting the trier of fact to understand the evidence. *Cf*. Fed. R. Evid. 703; *see* Adv. Comm. Note to the 2000 amendment to Rule 703. Against that beneficial effect, the court must weigh most of the dangers that courts take into account in balancing evidence offered to prove a fact under Rule 403—one particular problem being that the illustrative aid might appear to be substantive demonstrative evidence of a disputed event. If those dangers [substantially] outweigh the value of the aid in assisting the trier of fact, the trial court should exercise its discretion to prohibit—or modify—the use of the illustrative aid. And if the court does allow the aid to be presented at a jury trial, the adverse party may ask to have the jury instructed about the limited purpose for which the illustrative aid may be used. *Cf*. Rule 105.

One of the primary means of safeguarding and regulating the use of illustrative aids is to require advance disclosure. Ordinary discovery procedures concentrate on the evidence that will be presented at trial, so illustrative aids are not usually subject to discovery. Their sudden appearance may not give sufficient opportunity for analysis by other parties, particularly if they are complex. The amendment therefore provides that illustrative aids prepared for use in court must be disclosed in advance in order to

allow a reasonable opportunity for objection—unless the court, for good cause, orders otherwise. The rule applies to aids prepared either before trial or during trial before actual use in the courtroom. But the timing of notice will be dependent on the nature of the illustrative aid. Notice as to an illustrative aid that has been prepared well in advance of trial will differ from the notice required with respect to a handwritten chart prepared in response to a development at trial. The trial court has discretion to determine when and how notice is provided.

Because an illustrative aid is not offered to prove a fact in dispute, and is used only in accompaniment with testimony or presentation by the proponent, the amendment provides that illustrative aids are not to go to the jury room unless all parties consent or the court, for good cause, orders otherwise. The Committee determined that allowing the jury to use the aid in deliberations, free of the constraint of accompaniment with witness testimony or party presentation, runs the risk that the jury may misinterpret the import, usefulness, and purpose of the illustrative aid. But the Committee concluded that trial courts should have some discretion to allow the jury to consider an illustrative aid during deliberations; that discretion is most likely to be exercised in complex cases, or in cases where the jury has requested to see the illustrative aid. If the court does exercise its discretion to allow the jury to review the illustrative aid during deliberations, the court must upon request instruct the jury that the illustrative aid is not evidence and cannot be considered as proof of any fact.

While an illustrative aid is not evidence, if it is used at trial it must be marked as an exhibit and made part of the record, unless that is impracticable under the circumstances.

**PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE[1]**

**Rule 613. Witness's Prior Statement**

* * * * *

**(b) Extrinsic Evidence of a Prior Inconsistent Statement.** Unless the court orders otherwise, ~~E~~extrinsic evidence of a witness's prior inconsistent statement ~~is admissible only if~~ may not be admitted until after the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it~~, or if justice so requires~~. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

**Committee Note**

Rule 613(b) has been amended to require that a witness receive an opportunity to explain or deny a prior inconsistent statement *prior* to the introduction of extrinsic evidence of the statement. This requirement of a prior

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

foundation is consistent with the common law approach to prior inconsistent statement impeachment. *See, e.g.*, *Wammock v. Celotex Corp.*, 793 F.2d 1518, 1521 (11th Cir. 1986) ("Traditionally, prior inconsistent statements of a witness could not be proved by extrinsic evidence unless and until the witness was first confronted with the impeaching statement."). The original rule imposed no timing preference or sequence, however, and permitted an impeaching party to introduce extrinsic evidence of a witness's prior inconsistent statement before giving the witness the necessary opportunity to explain or deny it. This flexible timing can create problems concerning the witness's availability to be recalled, and lead to disputes about which party bears responsibility for recalling the witness to afford the opportunity to explain or deny. Further, recalling a witness solely to afford the requisite opportunity to explain or deny a prior inconsistent statement may be inefficient. Finally, trial judges may find extrinsic evidence of a prior inconsistent statement unnecessary in some circumstances where a witness freely acknowledges the inconsistency when afforded an opportunity to explain or deny. Affording the witness an opportunity to explain or deny a prior inconsistent statement before introducing extrinsic evidence of the statement avoids these difficulties. The prior foundation requirement prevents unfair surprise; gives the target of the impeaching evidence a timely opportunity to explain or deny the alleged inconsistency; promotes judges' efforts to conduct trials in an orderly manner; and conserves judicial resources.

The amendment preserves the trial court's discretion to delay an opportunity to explain or deny until after the introduction of extrinsic evidence in appropriate cases, or to dispense with the requirement altogether. A trial judge may decide to delay or even forgo a witness's opportunity to explain or deny a prior inconsistent statement in certain

circumstances, such as when the failure to afford the prior opportunity was inadvertent and the witness may be afforded a subsequent opportunity, or when a prior opportunity was impossible because the witness's statement was not discovered until after the witness testified.

## PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE[1]

**Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay**

* * * * *

**(d) Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:

* * * * *

**(2)** ***An Opposing Party's Statement.*** The statement is offered against an opposing party and:

**(A)** was made by the party in an individual or representative capacity;

**(B)** is one the party manifested that it adopted or believed to be true;

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

**(C)** was made by a person whom the party authorized to make a statement on the subject;

**(D)** was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

**(E)** was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

If a party's claim or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or

the principal under this rule is also admissible against the party.

## Committee Note

The rule has been amended to provide that when a party stands in the shoes of a declarant or the declarant's principal, hearsay statements made by the declarant or principal are admissible against the party. For example, if an estate is bringing a claim for damages suffered by the decedent, any hearsay statement that would have been admitted against the decedent as a party-opponent under this rule is equally admissible against the estate. Other relationships that would support this attribution include assignor/assignee and debtor/trustee when the trustee is pursuing the debtor's claims. The rule is justified because if the party is standing in the shoes of the declarant or the principal, the party should not be placed in a better position as to the admissibility of hearsay than the declarant or the principal would have been. A party that derives its interest from a declarant or principal is ordinarily subject to all the substantive limitations applicable to them, so it follows that the party should be bound by the same evidence rules as well.

Reference to the declarant's principal is necessary because the statement may have been made by the agent of the person or entity whose rights or obligations have been succeeded to by the party against whom the statement is offered.

The rationale of attribution does not apply, and so the hearsay statement would not be admissible, if the declarant makes the statement after the rights or obligations have been transferred, by contract or operation of law, to the party against whom the statement is offered.

## PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE[1]

**Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant Is Unavailable as a Witness**

* * * * *

**(b) The Exceptions.** * * *

**(3)** ***Statement Against Interest.*** A statement that:

**(A)** a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

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

**(B)** if offered in a criminal case as one that tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly indicate its trustworthiness~~, if offered in a criminal case as one that tends to expose the declarant to criminal liability~~ after considering the totality of circumstances under which it was made and evidence, if any, corroborating it.

**Committee Note**

Rule 804(b)(3)(B) has been amended to require that in assessing whether a statement is supported by corroborating circumstances that clearly indicate its trustworthiness, the court must consider not only the totality of the circumstances under which the statement was made, but also any evidence corroborating or contradicting it. While most courts have considered corroborating evidence, some courts have refused to do so. The rule now provides for a uniform approach, and recognizes that the existence or absence of corroboration is relevant to, but not dispositive of, whether a statement that tends to expose the declarant to

criminal liability should be admissible under this exception when offered in a criminal case. A court evaluating the admissibility of a third-party confession to a crime, for example, must consider not only circumstances such as the timing and spontaneity of the statement and the third-party declarant's likely motivations in making it. It must also consider corroborating information, if any, supporting the statement, such as evidence placing the third party in the vicinity of the crime. Courts must also consider evidence that contradicts the declarant's account.

The amendment is consistent with the 2019 amendment to Rule 807 that requires courts to consider corroborating evidence in the trustworthiness inquiry under that provision. It is also supported by the legislative history of the corroborating circumstances requirement in Rule 804(b)(3). *See* 1974 House Judiciary Committee Report on Rule 804(b)(3) (adding "unless corroborating circumstances clearly indicate the trustworthiness of the statement" language and noting that this standard would change the result in cases like *Donnelly v. United States*, 228 U.S. 243 (1912), that excluded a third-party confession exculpating the defendant despite the existence of independent evidence demonstrating the accuracy of the statement).

**PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE**[1]

**Rule 1006. Summaries to Prove Content**

**(a) Summaries of Voluminous Materials Admissible as Evidence.** The ~~proponent~~ court may admit as evidence ~~use~~ a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court, whether or not they have been introduced into evidence.

**(b) Procedures.** The proponent must make the underlying originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

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

**(c) Illustrative Aids Not Covered**. A summary, chart, or calculation that functions only as an illustrative aid is governed by Rule 611(d).

**Committee Note**

Rule 1006 has been amended to correct misperceptions about the operation of the Rule by some courts. Some courts have mistakenly held that a Rule 1006 summary is "not evidence" and that it must be accompanied by limiting instructions cautioning against its substantive use. But the purpose of Rule 1006 is to permit alternative proof of the content of writings, recordings, or photographs too voluminous to be conveniently examined in court. To serve their intended purpose, therefore, Rule 1006 summaries must be admitted as substantive evidence and the rule has been amended to clarify that a party may offer a Rule 1006 summary "as evidence." The court may not instruct the jury that a summary admitted under this rule is not to be considered as evidence.

Rule 1006 has also been amended to clarify that a properly supported summary may be admitted into evidence whether or not the underlying voluminous materials reflected in the summary have been admitted. Some courts have mistakenly held that the underlying voluminous writings or recordings themselves must be admitted into evidence before a Rule 1006 summary may be used. Because Rule 1006 allows alternate proof of materials too voluminous to be conveniently examined during trial proceedings, admission of the underlying voluminous materials is not required and the amendment so states. Conversely, there are courts that deny resort to a properly

supported Rule 1006 summary because the underlying writings or recordings – or a portion of them – *have been* admitted into evidence. Summaries that are otherwise admissible under Rule 1006 are not rendered inadmissible because the underlying documents have been admitted, in whole or in part, into evidence. In most cases, a Rule 1006 chart may be the only evidence the trier of fact will examine concerning a voluminous set of documents. In some instances, the summary may be admitted in addition to the underlying documents.

A summary admissible under Rule 1006 must also pass the balancing test of Rule 403. For example, if the summary does not accurately reflect the underlying voluminous evidence, or if it is argumentative, its probative value may be substantially outweighed by the risk of unfair prejudice or confusion.

Although Rule 1006 refers to materials too voluminous to be examined "in court" and permits the trial judge to order production of underlying materials "in court," the rule applies to virtual proceedings just as it does to proceedings conducted in person in a courtroom.

The amendment draws a distinction between summaries of voluminous, admissible information offered to prove a fact, and summaries of evidence offered solely to assist the trier of fact in understanding the evidence. The former are subject to the strictures of Rule 1006. The latter are illustrative aids, which are now regulated by Rule 611(d).

## § 440 Procedures for Committees on Rules of Practice and Procedure

This section contains the "Procedures for the Judicial Conference's Committee on Rules of Practice and Procedure and Its Advisory Rules Committees," last amended in September 2011. JCUS-SEP 2011, p. 35.

### § 440.10 Overview

The Rules Enabling Act, 28 U.S.C. §§ 2071–2077, authorizes the Supreme Court to prescribe general rules of practice and procedure and rules of evidence for the federal courts. Under the Act, the Judicial Conference must appoint a standing committee, and may appoint advisory committees to recommend new and amended rules. Section 2073 requires the Judicial Conference to publish the procedures that govern the work of the Committee on Rules of Practice and Procedure (the "Standing Committee") and its advisory committees on the Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure and on the Evidence Rules. *See* 28 U.S.C. § 2073(a)(1). These procedures do not limit the rules committees' authority. Failure to comply with them does not invalidate any rules committee action. *Cf.* 28 U.S.C. § 2073(e).

### § 440.20 Advisory Committees

#### § 440.20.10 Functions

Each advisory committee must engage in "a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use" in its field, taking into consideration suggestions and recommendations received from any source, new statutes and court decisions affecting the rules, and legal commentary. *See* 28 U.S.C. § 331.

#### § 440.20.20 Suggestions and Recommendations

Suggestions and recommendations on the rules are submitted to the Secretary of the Standing Committee at the Administrative Office of the United States Courts, Washington, D.C. The Secretary will acknowledge the suggestions or recommendations and refer them to the appropriate advisory committee. If the Standing Committee takes formal action on them, that action will be reflected in the Standing Committee's minutes, which are posted on the judiciary's rulemaking website.

#### § 440.20.30 Drafting Rule Changes

(a) Meetings

Each advisory committee meets at the times and places that the chair designates. Advisory committee meetings must be open to the public, except when the committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the reason. Each meeting must be preceded by notice of the time and place, published in the *Federal Register* and on the judiciary's rulemaking website, sufficiently in advance to permit interested persons to attend.

(b) Preparing Draft Changes

The reporter assigned to each advisory committee should prepare for the committee, under the direction of the committee or its chair, draft rule changes, committee notes explaining their purpose, and copies or summaries of written recommendations and suggestions received by the committee.

(c) Considering Draft Changes

The advisory committee studies the rules' operation and effect. It meets to consider proposed new and amended rules (together with committee notes), whether changes should be made, and whether they should be submitted to the Standing Committee with a recommendation to approve for publication. The submission must be accompanied by a written report explaining the advisory committee's action and its evaluation of competing considerations.

## § 440.20.40 Publication and Public Hearings

(a) Publication

Before any proposed rule change is published, the Standing Committee must approve publication. The Secretary then arranges for printing and circulating the proposed change to the bench, bar, and public. Publication should be as wide as possible. The proposed change must be published in the *Federal Register* and on the judiciary's rulemaking website. The Secretary must:

(1) notify members of Congress, federal judges, and the chief justice of each state's highest court of the proposed change, with a link to the judiciary's rulemaking website; and

(2) provide copies of the proposed change to legal-publishing firms with a request to timely include it in publications.

(b) Public Comment Period

A public comment period on the proposed change must extend for at least six months after notice is published in the *Federal Register*, unless a shorter period is approved under paragraph (d) of this section.

(c) Hearings

The advisory committee must conduct public hearings on the proposed change unless eliminating them is approved under paragraph (d) of this section or not enough witnesses ask to testify at a particular hearing. The hearings are held at the times and places that the advisory committee's chair determines. Notice of the times and places must be published in the *Federal Register* and on the judiciary's rulemaking website. The hearings must be transcribed. Whenever possible, a transcript should be produced by a qualified court reporter.

(d) Expedited Procedures

The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained. The Standing Committee may also eliminate public notice and comment for a technical or conforming amendment if the Committee determines that they are unnecessary. When an exception is made, the chair must advise the Judicial Conference and provide the reasons.

**§ 440.20.50 Procedures After the Comment Period**

(a) Summary of Comments

When the public comment period ends, the reporter must prepare a summary of the written comments received and of the testimony presented at public hearings. If the number of comments is very large, the reporter may summarize and aggregate similar individual comments, identifying the source of each one.

(b) Advisory Committee Review; Republication

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

(c) Submission to the Standing Committee

The advisory committee submits to the Standing Committee the proposed change and committee note that it recommends for approval. Each submission must:

(1) be accompanied by a separate report of the comments received;

(2) explain the changes made after the original publication; and

(3) include an explanation of competing considerations examined by the advisory committee.

**§ 440.20.60 Preparing Minutes and Maintaining Records**

(a) Minutes of Meetings

The advisory committee's chair arranges for preparing the minutes of the committee meetings.

(b) Records

The advisory committee's records consist of:

- written suggestions received from the public;
- written comments received from the public on drafts of proposed rules;
- the committee's responses to public suggestions and comments;
- other correspondence with the public about proposed rule changes;
- electronic recordings and transcripts of public hearings (when prepared);
- the reporter's summaries of public comments and of testimony from public hearings;
- agenda books and materials prepared for committee meetings;
- minutes of committee meetings;
- approved drafts of rule changes; and
- reports to the Standing Committee.

(c) Public Access to Records

The records must be posted on the judiciary's rulemaking website, except for general public correspondence about proposed rule changes and electronic recordings of hearings when transcripts are prepared. This correspondence and archived records are maintained by the AO and are available for public inspection. Minutes of a closed meeting may be made available to the public but with any deletions necessary to avoid frustrating the purpose of closing the meeting under § 440.20.30(a).

## § 440.30 Standing Committee

### § 440.30.10 Functions

The Standing Committee's functions include:

(a) coordinating the work of the advisory committees;

(b) suggesting proposals for them to study;

(c) considering proposals they recommend for publication for public comment; and

(d) for proposed rule changes that have completed that process, deciding whether to accept or modify the proposals and transmit them with its own recommendation to the Judicial Conference, recommit them to the advisory committee for further study and consideration, or reject them.

### § 440.30.20 Procedures

(a) Meetings

The Standing Committee meets at the times and places that the chair designates. Committee meetings must be open to the public, except when the Committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the

reason. Each meeting must be preceded by notice of the time and place, published in the *Federal Register* and on the judiciary's rulemaking website, sufficiently in advance to permit interested persons to attend.

(b) Attendance by the Advisory Committee Chairs and Reporters

The advisory committees' chairs and reporters should attend the Standing Committee meetings to present their committees' proposed rule changes and committee notes, to inform the Standing Committee about ongoing work, and to participate in the discussions.

(c) Action on Proposed Rule Changes or Committee Notes

The Standing Committee may accept, reject, or modify a proposed change or committee note, or may return the proposal to the advisory committee with instructions or recommendations.

(d) Transmission to the Judicial Conference

The Standing Committee must transmit to the Judicial Conference the proposed rule changes and committee notes that it approves, together with the advisory committee report. The Standing Committee's report includes its own recommendations and explains any changes that it made.

**§ 440.30.30 Preparing Minutes and Maintaining Records**

(a) Minutes of Meetings

The Secretary prepares minutes of Standing Committee meetings.

(b) Records

The Standing Committee's records consist of:

- the minutes of Standing Committee and advisory committee meetings;
- agenda books and materials prepared for Standing Committee meetings;
- reports to the Judicial Conference; and
- official correspondence about rule changes, including correspondence with advisory committee chairs.

(c) Public Access to Records

The records must be posted on the judiciary's rulemaking website, except for official correspondence about rule changes. This correspondence and archived records are maintained by the AO and are available for public inspection. Minutes of a closed meeting may be made available to the public but with any deletions necessary to avoid frustrating the purpose of closing the meeting under § 440.30.20(a).

*Last revised (Transmittal 01-026) May 27, 2022*

# RULES COMMITTEES — CHAIRS AND REPORTERS

## Committee on Rules of Practice and Procedure
## (Standing Committee)

**Chair**

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

**Reporter**

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

**Secretary to the Standing Committee**

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

## Advisory Committee on Appellate Rules

**Chair**

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

**Reporter**

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

## Advisory Committee on Bankruptcy Rules

**Chair**

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

**Reporter**

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

**Associate Reporter**

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

## Advisory Committee on Civil Rules

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

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| | **Associate Reporter** |
| | Professor Nancy J. King<br>Vanderbilt University Law School<br>Nashville, TN |

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| Chair | Reporter |
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