Bankruptcy Judges' Panel

Friday, June 10, 2022

The Honorable Paul M. Black

Chief Judge, U.S. Bankruptcy Court for the Western District of Virginia

The Honorable Rebecca B. Connelly

Judge, U.S. Bankruptcy Court for the Western District of Virginia

Materials Outline:

I. Appeals from Judgments, Orders, and Decrees of the Bankruptcy Court

A. Appeals to the District Court

a. Pursuant to 28 U.S.C. § 158(a), district courts have jurisdiction to hear appeals

i. from final judgments, orders, and decrees;

ii. from interlocutory orders and decrees issued under 11 U.S.C. § 1121(d) increasing or reducing the exclusivity period for a Chapter 11 debtor to file a plan; and

iii. with leave of the court, from other interlocutory orders and decrees including those of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under 28 U.S.C. § 157.

B. Appeals to the Court of Appeals

a. 28 U.S.C. § 158(d)(1) gives the court of appeals jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered by the district court under section 158(a).

b. 28 U.S.C. § 1292 gives the court of appeals jurisdiction of appeals from interlocutory orders of the district court.

C. Final Orders vs. Interlocutory Orders

a. Final Orders

i. Orders in bankruptcy cases are immediately appealable "if they finally dispose of discrete disputes within the larger case." *Bullard v. Blue Hills Bank*, 135 S.Ct. 1686, 1689 (2015).

ii. "[T]he concept of finality in bankruptcy traditionally has been applied in a 'more pragmatic and less technical way' than in other situations." *Mort Ranta v. Gorman*, 721 F.3d 241, 246 (4th Cir. 2013) (quoting *McDow v. Dudley,* 662 F.3d 284, 287 (4th Cir. 2011)) (concluding that the bankruptcy court's denial of confirmation and the district court's affirmance are final orders for purposes of appeal).

iii. "The reason for this 'relaxed rule of appealability' is that bankruptcy proceedings are often protracted, involving multiple parties, claims, and procedures, and postponing review of discrete portions of the action until

after a plan of reorganization is approved could result in the waste of valuable time and scarce resources." *Id.* (quoting *McDow*, 662 F.3d at 287).

iv. The Fourth Circuit has also considered an appeal of a confirmation order that overruled the trustee's objection to a lien-stripping component of the confirmation order to be a final order that is appealable as of right under section 158(d). *Branigan v. Davis (In re Davis)*, 716 F.3d 331 (4th Cir. 2013).

v. An order denying the United States Trustee's motion to dismiss a Chapter 7 case for abuse under 11 U.S.C. § 707(b) is a final order. *McDow v. Dudley*, 662 F.3d 284 (4th Cir. 2011).

vi. An order denying a creditor's motion for relief from stay without prejudice has also been held to be a final, immediately appealable order. *See Harrington v. Mayer (In re Mayer)*, 28 F.4th 67 (9th Cir. 2022).

b. Interlocutory Orders

i. "Non-final orders or decrees are not appealable as a matter of right . . . ." *KPMG Peat Marwick, L.L.P. v. Estate of Nelco, Ltd., Inc.*, 250 B.R. 74, 78 (E.D. Va. 2000).

ii. "Whether or not to grant leave to appeal an interlocutory order is a discretionary call of the district court." *In re Jackson*, 190 B.R. 808, 810 (W.D. Va. 1995).

iii. "For an otherwise interlocutory bankruptcy court order to be reviewable on appeal, it must finally resolve an adversary proceeding, controversy, or entire bankruptcy proceeding on the merits and leave nothing for the court to do but execute its judgment." *Ayers v. U.S. Dep't of Def.*, 819 F. App'x 180, 181 (2020).

iv. An order imposing sanctions for violation of the automatic stay is not a final, appealable order where the assessment of damages is deferred until a later date. *In re War Eagle Constr. Co., Inc.*, 249 B.R. 686 (S.D. W. Va. 2000).

v. An order converting a chapter 11 case to a chapter 7 case is not a final order. *In re Fraidin*, 188 B.R. 529 (D. Md. 1995), *aff'd* 110 F.3d 59 (4th Cir. 1997).

D. Methods and Timing of Appeals

a. "Part VIII of the Federal Rules of Bankruptcy Procedure govern the procedure in the district court on appeal from a judgment, order, or decree of a bankruptcy court. These rules also govern certain procedures on appeal to a United States court of appeals under 28 U.S.C. § 158(d)." Fed. R. Bankr. P. 8001(a) ("General Scope").

b. General Rules for the Notice of Appeal

i. "A prerequisite to jurisdiction, however, is the timely filing of a notice of appeal." *In re Fifer*, No. 7:15-CV-00163, 2015 WL 3542798, at *1 (W.D. Va. June 4, 2015) (quoting *Smith v. Dairymen, Inc.,* 790 F.2d 1107, 1109 (4th Cir. 1986)); *see also Lowe's of Va., Inc. v. Thomas*, 60 B.R. 418, 420 (W.D. Va. 1986) ("The timely filing of a notice of appeal is a prerequisite to this court's jurisdiction to review a final judgment or order of the bankruptcy court.").

ii. Pursuant to Rule 8002, a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed. 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.

iii. If, however, a motion to amend or make additional findings under Rule 7052, to alter or amend the judgment or for a new trial under Rule 9023, or for relief under Rule 9024 is filed, the time to file an appeal runs from the entry of the order disposing of such motion. Fed. R. Bankr. P. 8002(b)(1).

iv. The bankruptcy court may also extend the time to file an appeal upon motion filed within the time prescribed by Rule 8002 or within 21 days after that time upon showing of excusable neglect. Fed. R. Bankr. P. 8002(d)(1).

1. Excusable neglect requires a two-step inquiry. The Court must ask if the delay was the result of neglect and if so, then determine if that neglect was excusable. Factors to weigh when determining whether

the neglect is excusable include: "1. Danger of prejudice to the non-movant; 2. Length of the delay; 3. Impact on judicial proceedings; 4. Reason for the delay, including whether it was within the reasonable control of the movant; and 5. Whether the movant acted in good faith." *Huennekens v. Marx* (*In re Springfield Contracting Corp.*), 156 B.R. 761, 766 (Bankr. E.D. Va. 1993).

v. The court may not extend the time if the judgment, order or decree appealed from grants relief from automatic stay, authorizes the sale or lease of property or the use of collateral under 11 U.S.C. § 363, authorizes the obtaining of credit, assumption or assignment of an executory contract or unexpired lease, approves a disclosure statement under 11 U.S.C. § 1125 or confirms a plan. Fed. R. Bankr. P. 8002(d)(2).

vi. However, pursuant to Rule 8002(d)(3), no extension may exceed 21 days after the time prescribed or 14 days after the order granting the motion to extend time is entered, whichever is later.

c. Appeal as of Right

i. Pursuant to Rule 8003, a notice of appeal must be timely filed with the bankruptcy clerk. The notice of appeal must conform substantially to Official Form B 417A, be accompanied by the judgment, order or decree being appealed, and be accompanied by the prescribed fee.

d. Appeal by Leave

i. Pursuant to Rule 8004, to appeal from an interlocutory order or decree under 28 U.S.C. § 158(a)(3), a party must timely file a notice of appeal and a motion for leave to appeal.

ii. The motion must include the facts necessary to understand the question presented, the question itself, the relief sought, and the reasons why leave to appeal should be granted, along with a copy of the interlocutory order and any related opinion and a proof of service unless served electronically using the court's transmission equipment.

e. Certifying a Direct Appeal to the Court of Appeals

i. Under Rule 8006, 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 the certification has been filed, a timely appeal has been taken and the notice of appeal has become effective.

ii. The certification must be filed with the clerk of the court where the matter is pending.

iii. A joint certification by all appellants and appellees must be made by using Official Form 424.

iv. Within 30 days after the date the certification becomes effective, a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk in accordance with Rule 6(c) of the Federal Rules of Appellate Procedure. Fed. R. Bankr. P. 8006(g).

v. Certification on the Court's Own Motion

    1. The court where the matter is pending may certify a direct review on request of parties or on its own motion. Fed. R. Bankr. P. 8006(e).
    2. This certification must be set forth in a separate document and be accompanied by an opinion or memorandum that contains the necessary information (i.e., the facts necessary to understand the question presented, the question itself, the relief sought, and the reasons why the direct appeal should be allowed).
    3. Within 14 days thereafter, a party may file a short supplemental statement regarding the merits of certification.

vi. Certification by the Court on Request

    1. A request by a party for certification must be filed within 60 days after the entry of the judgment, order or decree and contain the same information above, along with a copy of the judgment and any related opinion. Fed. R. Bankr. P. 8006(f)(1).
    2. A party may file a response to the request within 14 days after the request is served. 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 judgment, whichever occurs first. The request, cross-request and any response are submitted without oral argument unless the court orders otherwise.

f. Pursuant to 28 U.S.C. § 158(d)(2), the court of appeals has jurisdiction if the bankruptcy court or district court or all the appellants and appellees acting jointly certify that (i) the judgment, order or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance; (ii) the judgment, order or decree involves a question of law requiring resolution of conflicting decisions; or (iii) an immediate appeal from the judgment, order or decree may materially advance the progress of the case in which the appeal is taken; and if the court of appeals authorizes the direct appeal of the judgment, order or decree.

II. Default Judgment; Federal Rule of Civil Procedure 55

A. Federal Rule of Civil Procedure 55 governs the grounds and procedures for granting judgments by default and for setting aside such default judgments.

a. Federal Rule of Bankruptcy Procedure 7055 provides that Federal Rule of Civil Procedure 55 applies in adversary proceedings.

b. Rule 9014 likewise makes Civil Rule 55 applicable in contested matters.

B. Obtaining a default judgment in the bankruptcy court is a two-step process.

a. First, the party seeking default judgment must request the Clerk's entry of default on the docket.

i. Rule 55(a) requires the requesting party to show that the party against whom judgment is sought has failed to plead or otherwise defend.

1. This failure must be shown by "affidavit or otherwise." Fed. R. Civ. P. 55(a).

2. The burden is on the requesting party to show that the party against whom judgment is sought was served and that no answer or motion under Bankruptcy Rule 7012 has been timely filed. If either requirement is not shown, entry of default is improper.

3. The Instructions to Director's Form 2600 set forth facts that should "normally" be included in the affidavit: (i) Date of issuance of the summons; (ii) Statement of whether the court fixed a deadline for serving an answer or motion, or whether a time limit applies; (iii) Date of service of the complaint; (iv) Date of filing of an affidavit of service; (v) Statement that no answer or motion has been received within the time limit fixed by the court or by Fed. R. Bankr. P. 7012(a); (vi) Statement that the defendant is not in the military service, as required by 50 U.S.C. App. § 521. If the defendant is, or may be, in the military service, the defendant is afforded certain protections which must be addressed prior to the entry of a default; and (vii) Statement that the defendant is not an infant or incompetent person, as is required by Fed. R. Civ. P. 55(b)(1).

ii. The Clerk's function in entering default is simply to record the fact of default when shown; it is *not* a judicial determination of such fact.

iii. An entry of default is not an appealable order; however, the defendant instead may file a timely motion to set aside the default.

1. Rule 55(c) provides that "[t]he court may set aside an entry of default for good cause."
2. The defendant bears the burden that good cause exists to set aside the entry of default.
3. "Generally, good cause is shown where the defaulting party acts with reasonable promptness in seeking to set aside the default and presents a reasonable explanation or excuse for the default and a meritorious defense." *Senn v. Harrison Transp. Co., Inc.*, 826 F.2d 1060 (Table), 1987 WL 38480, at *1 (4th Cir. Aug. 14, 1987) (unpublished).

b. Second, the party seeking a default judgment must request the entry of a default judgment.

i. In some instances, the Clerk has the authority to enter a default judgment. *See* Fed. R. Civ. P. 55(b)(1) ("If the plaintiff's claim is for a sum certain or

a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.").

ii. In all other matters, the court will consider whether to enter the default judgment. *See* Fed. R. Civ. P. 55(b)(2).

1. The court may exercise its discretion in deciding whether to enter a default judgment. Stated differently, just because a party has failed to plead or otherwise defend does not mean that the entry of a default judgment is guaranteed. *See DIRECTV, Inc. v. Pernites*, 200 F. App'x 257, 258 (4th Cir. 2006) ("'[A] defendant's default does not in itself warrant the court in entering a default judgment. There must be a sufficient basis in the pleadings for the judgment entered.'" (quoting *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975))); *Johnson v. Dayton Mfg. Co.*, 140 F.3d 781 (8th Cir. 1998) ("Entry of default raises no protectible expectation that a default judgment will follow, and a party's belief in the integrity of the system must include, to be reasonable, knowledge that a system of integrity makes exceptions 'for good cause shown.'").
2. To assist in determining whether default judgment is appropriate, the court may decide to hold a hearing if it needs to "(A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter." Fed. R. Civ. P. 55(b)(2).

C. Rule 55(c) provides that "[t]he court . . . may set aside a final default judgment under Rule 60(b)." Fed. R. Civ. P. 55(c).

a. "Rule 60 allows a court to grant relief from a default judgment on any of six grounds: excusable neglect, newly discovered evidence, fraud, a void judgment, a satisfied or vacated judgment, and 'any other reason justifying relief from the

operation of the judgment.'" *Bank United v. Hamlett*, 286 B.R. 839, 842 (W.D. Va. 2002) (quoting Fed. R. Civ. P. 60(b)).

b. "In addition to satisfying one of the six requirements of Rule 60, the Fourth Circuit has held that a party seeking to set aside a default judgment must also show timeliness, a meritorious defense, and a lack of unfair prejudice to the plaintiff." *Id.* (citing *Werner v. Carbo*, 731 F.2d 204, 206–07 (4th Cir. 1984)).

c. The decision to set aside a default judgment is within the court's discretion. *See, e.g.*, *McLawhorn v. John W. Daniel Co., Inc.*, 924 F.2d 535, 538 (4th Cir. 1991).

i. However, this discretion is not limitless, should be exercised within the bounds of accepted legal principles, and should be made keeping in mind that there is a clear preference for judgments on the merits as opposed to judgments by default. *Bank United*, 286 B.R. at 842.

III. Pending Amendments to the Federal Rules of Bankruptcy Procedure

A. In August 2020, the Committee on Rules of Practice and Procedure for the Judicial Conference of the United States distributed a Preliminary Draft of Proposed Amendments to Bankruptcy Rules 3002(c)(6), 5005, 7004, and 8023, with written comments due by February 16, 2021. The proposed amendments will become effective on December 1, 2022, absent congressional action.

a. Rule 3002(c)(6). Time for Filing Proof of Claim. The proposed amendments allow the court to extend the time to file proofs of claim for both domestic and foreign creditors if "the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim."

i. The amendments remove subsection (c)(6)(B) in its entirety, the "(A)" subdivision designation, and the language "because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)." Rule 3002(c)(6) is amended to provide a single standard for granting motions for an extension of time to file a proof of claim, whether the creditor has a domestic address or a foreign address. That is, the simplified standard will apply to all creditors.

b. Rule 5005. Filing and Transmittal of Papers. The proposed changes will (i) allow papers to be transmitted to the U.S. Trustee by filing with the court's electronic

filing system; (ii) eliminate the requirement of proof of transmittal when made by that means; and (iii) eliminate the need to verify proof of transmittal if papers are sent to the U.S. Trustee in any other manner.

c. Rule 7004. Process; Service of Summons, Complaint. The proposed changes add new subdivision (i) to Rule 7004 clarifying that service can be made under Rule 7004(b)(3) or Rule 7004(h) by position or title rather than specific name and, if the recipient is named, that the name need not be correct if service is made to the proper address and position or title.

   i. The Committee Notes clarify that amended Rule 7004(i) is intended to reject those cases interpreting Rule 7004(b)(3) and Rule 7004(h) to require service on a named officer, managing or general agent or other agent, rather than use of their titles. Service to a corporation or partnership, unincorporated association or insured depository institution at its proper address directed to the attention of the "Chief Executive Officer," "President," "Officer for Receiving Service of Process," "Managing Agent," "General Agent," "Officer," or "Agent" (or other similar titles) is sufficient.

d. Rule 8023. Voluntary Dismissal. The proposed amendment is intended to conform Bankruptcy Rule 8023 to Appellate Rule 42(b) while the proposed amendments to Appellate Rule 42(b) remain pending. This amendment clarifies that a court order is required for any action other than a simple voluntary dismissal of an appeal.

B. SBRA-related Rules. In August 2020, the Committee on Rules of Practice and Procedure for the Judicial Conference of the United States distributed a Preliminary Draft of Proposed Amendments to the Bankruptcy Rules for Request for Comment, with written comments due by February 16, 2021. These proposed amendments include thirteen Bankruptcy Rules and ten Official Forms that were previously issued on an interim basis in response to the Small Business Reorganization Act of 2019 ("SBRA").

   a. Effective February 19, 2020, this Court adopted the Interim Rules approved by the Advisory Committee on Bankruptcy Rules to implement the substantive and procedural changes made to the Bankruptcy Code by the SBRA, until the Federal Rules of Bankruptcy Procedure and Official Forms could be revised in accordance

with the Rules Enabling Act. The Interim Rules form the basis of the pending amendments and new rule to go into effect on December 1, 2022.

b. Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits. The proposed amendment excludes an individual debtor under subchapter V from the requirements of Rule 1007(b)(5) to file the statement of current monthly income. In addition, subdivision (h) is amended to terminate the duty to file supplemental schedules under Rule 1007 upon confirmation of a subchapter V plan, unless the plan is confirmed under section 1191(b).

c. Rule 1020. Chapter 11 Reorganization Case for Small Business Debtors. Subdivision (a) will require a small business debtor to state in its petition whether it elects to proceed under subchapter V. Subsection (c) is deleted because the existence or level of activity of a creditors' committee is no longer a criterion to be a "small business debtor" under the definition contained in section 101(51D).

d. Rule 2009. Trustees for Estates When Joint Administration Ordered. Subdivision (a) and (b) are amended to exclude subchapter V cases from their application; however, subdivision (c)(2) is amended to make it applicable to subchapter V cases.

e. Rule 2012. Substitution of Trustee or Successor Trustee; Accounting. Subdivision (a) is amended to provide that the trustee is substituted for a debtor in possession in a subchapter V case in which the debtor is removed as debtor in possession under section 1185.

f. Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status. Subdivision (b) is amended to prescribe the duties of a debtor in possession, the trustee, and the debtor in a subchapter V case.

a. Rule 3010. Small Dividends and Payments in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13. The title and subdivision (b) of Rule 3010 is amended to make the rule applicable to subchapter V cases.

b. Rule 3011. Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13. The title of Rule 3011 is amended to reflect that section 347(a) is applicable to subchapter V cases.

c. Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case. Rule 3014 is amended to provide

that the court will set a deadline for making the section 1111(b) election, because there generally will not be a disclosure statement in a subchapter V case.

d. Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case. The amendment to subdivision (b) reflects that section 1125 does not apply to subchapter V cases (unless the court orders otherwise). Subdivision (d) is amended to clarify that use of an Official Form for the plan of reorganization and the disclosure statement (when required) is an available option in a subchapter V case.

e. Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11. The title and subdivision (a) of Rule 3017.1 are amended to cover subchapter V cases in which the court has ordered that section 1125 applies.

f. New Rule 3017.2. Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement. This new rule addresses the court's ability in a subchapter V case in which there is no disclosure statement to set certain dates, including *inter alia* the date by which holders of claims may accept or reject the plan and the date for the hearing on confirmation.

g. Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case. Amendments to subdivision (a) of Rule 3018 reflect the authority of the court to set times under Rules 3017.1 and 3017.2 in both small business cases and cases under subchapter V.

h. Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case. New subsection (c) is added to Rule 3019 to clarify that requests under section 1193(b) or (c) to modify the plan after confirmation in a subchapter V case are procedurally governed by Rule 9014 and that the provisions of Rule 3019(b) apply.

C. For redline versions of the bankruptcy rule amendments which may go into effect on December 1, 2022, see Attachment A.

IV. Pending Amendments to the Federal Rules of Procedure Related to Appeals

A. In August 2021, the Committee on Rules of Practice and Procedure for the Judicial Conference of the United States distributed a Preliminary Draft of Proposed Amendments

to Appellate Rule 4 and Bankruptcy Rule 8003, among others, with written comments due by February 16, 2022. No comments were received regarding these rule amendments; thus the proposed amendments most likely will become effective on December 1, 2023, absent other action.

a. Federal Rule of Appellate Procedure 4. Rule 4(a)(4)(A)(vi) currently provides that, if a motion under Rule 60 of the Federal Rules of Civil Procedure is filed within 28 days after the judgment is entered, the time to file an appeal runs for all parties from the time of the entry of the order disposing of the Rule 60 motion. The proposed amendment to Rule 4 replaces the phrase "no later than 28 days after the judgment is entered" in Rule 4(a)(4)(A)(vi) with the phrase "within the time allowed for filing a motion under Rule 59." The purpose of the amendment is to ensure that the appellate procedural rules function properly if Emergency Civil Rule 6(b)(2) ever goes into effect.

    i. Emergency Civil Rule 6(b)(2) authorizes district courts to grant extensions that they are otherwise prohibited from granting. Rule 6(b)(2), however, would only be operative if the Judicial Conference of the United States were to declare a "Civil Rules emergency" under Civil Rule 87. The amendment to Rule 4(a)(4)(A)(vi) is thus needed as the currently imposed 28-day requirement would not correspond to the extended time (if granted) to file other resetting motions.

b. Federal Rule of Bankruptcy Procedure 8003. Amendments to Federal Rule of Bankruptcy Procedure 8003(a) have been proposed to conform with recent amendments (effective December 1, 2021) to Federal Rule of Appellate Procedure 3. The amendments to Appellate Rule 3 clarify that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from revieing all orders that merged into the judgment or appealable order. To conform with Appellate Rule 3, there are five primary proposed amendments to Bankruptcy Rule 8003.

    i. Subdivision (a)(3)(B) would be amended to clarify that the notice of appeal must be accompanied by "the judgment—or the appealable order or decree—from which the appeal is taken." This rewording seeks to avoid

the misconception that it is necessary to identify each and every order of the bankruptcy court that an appellant may wish to challenge on appeal; that is, because of the merger principle, it is appropriate to attach only the judgment or appealable order or decree from which the appeal as of right is taken.

ii. Subdivision (a)(4) would be amended to address the merger principle. Simply stated, the rule amendment provides that an appeal from a final judgment or appealable order or decree permits review of all rulings that led up to the judgment, order, or decree.

iii. Subdivision (a)(5) would be added to reduce the unintended loss of appellate rights when a party (instead of appealing immediately) files a motion in the bankruptcy court (e.g., those motions listed in Bankruptcy Rule 8002(b)(1)).

iv. Subdivision (a)(6) would be added to allow appellants to identify only part of a judgment or appealable order or decree by noting such limitation in the notice of appeal.

v. Finally, subdivision (a)(7) would be added to provide that "an appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into that judgment or appealable order or decree." In such situations, the court is to act as if the notice had properly identified the judgment or appealable order or decree.

B. For redline versions of the Proposed Amendments to Appellate Rule 4 and Bankruptcy Rule 8003, see Attachment B.

V. Adjustment of Certain Dollar Amounts Applicable to Bankruptcy Cases and Pending Changes to Bankruptcy Forms

A. On April 1, 2022, adjustments to the dollar amounts stated in various provisions of the Bankruptcy Code and one provision of Title 28 of the U.S. Code will become effective and apply to cases filed on or after April 1, 2022. These changes are codified in 11 U.S.C. § 104 which provides that every three years certain dollar amounts are adjusted to reflect changes in the Consumer Price Index for All Urban Consumers.

a. The adjusted dollar amounts will affect the eligibility to file a case under chapters 12 and 13, the definition of a small business debtor, the maximum values of certain property that a debtor may claim as exempt, the maximum amounts of certain claims entitled to priority, the calculation of the means test for chapter 7 debtors, the duration of certain chapter 13 plans, the minimum aggregate value of claims needed to commence an involuntary bankruptcy case, the minimum value for certain preference actions, the value of consumer debts for luxury goods and services presumed to be dischargeable, and where the trustee may commence certain proceedings.

b. For a listing of the specific Code sections affected and the adjusted dollar amounts in those sections, see Attachment C.

c. The Official Forms, Director's Forms and instructions that will be revised are:

   i. Official Form 106C, Schedule C: The Property You Claim as Exempt
   ii. Official Form 107, Statement of Financial Affairs for Individuals Filing for Bankruptcy
   iii. Official Form 122A-2, Chapter 7 Means Test Calculation
   iv. Official Form 122C-2, Chapter 13 Calculation of Your Disposable Income
   v. Official Form 201, Voluntary Petition for Individuals Filing for Bankruptcy
   vi. Official Form 207, Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy
   vii. Official Form 410, Proof of Claim
   viii. Director's Form 2000, Required Lists, Schedules, Statements and Fees
   ix. Director's Form 2830, Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q)
   x. Instructions for Individual Debtors
   xi. Instructions for Non-Individual Debtors
   xii. Instructions for Director's Form 2500E, Summons to Debtor in Involuntary Case.

VI. Local Rule Amendments and Standing Orders

A. On June 9, 2021, the Court added Local Rule 7041-1, which relates to the voluntary dismissal of certain adversary proceedings. The Rule, in part, provides that a plaintiff

wishing to voluntarily dismiss a complaint (or count within a complaint) objecting to the debtor's discharge must give at least 21 days' written notice of a hearing on the proposed voluntary dismissal to the United States Trustee, the trustee and all creditors or parties in interest. The Rule includes information as to what information must be included in the notice. *See* Attachment D.

B. On July 20, 2021, Local Rule 2015-2 was amended relating to the filing of post confirmation reports in chapter 11 cases, excluding subchapter V and small business cases. The amendment clarifies that the quarterly report must be filed following the effective date of the confirmed plan. *See* Attachment E.

C. On July 20, 2021, amendments were made to Local Rule 4002-1 relating to the debtor's responsibility to provide the case trustee and any creditor, who makes a timely request, with copies of payment advices. The case will be dismissed on the trustee's certification of noncompliance upon the debtor's failure to provide such payment advices. However, upon certification by the trustee that the debtor failed to provide prepetition tax information, a notice of hearing will be issued to the debtor and the debtor's counsel to show cause why the case should not be dismissed. *See* Attachment F.

D. On January 25, 2022, the Court entered Standing Order No. 22-001 regarding the fees for debtor's counsel in Chapter 13 cases and the adoption of amended guidelines for fee applications in Chapter 13 cases. This Order is applicable to Chapter 13 cases filed on or after February 15, 2022, and for work performed in cases pending on that date. *See* Attachment G.

ATTACHMENT A

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

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

* * * * *

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

* * * * *

(5) An individual debtor in a chapter 11 case (unless under subchapter V) shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form.

* * * * *

(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the

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

information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. ~~The~~ This duty to file a supplemental schedule ~~in accordance with this subdivision~~ continues even after the case is closed, except for property acquired after an order is entered: ~~notwithstanding the closing of the case, except that the schedule need not be filed in a chapter 11, chapter 12, or chapter 13 case with respect to property acquired after entry of the order~~

(1) confirming a chapter 11 plan (other than one confirmed under § 1191(b)); or

(2) discharging the debtor in a chapter 12 case, ~~or~~ a chapter 13 case, or a case under subchapter V of chapter 11 in which the plan is confirmed under § 1191(b).

* * * * *

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. As amended, subdivision (b)(5) of the rule includes an exception for subchapter V cases. Because Code § 1129(a)(15) is inapplicable to such cases, there is no need for an individual debtor in a subchapter V case to file a statement of current monthly income.

Subdivision (h) is amended to provide that the duty to file a supplemental schedule under the rule terminates upon confirmation of the plan in a subchapter V case, unless the plan is confirmed under § 1191(b), in which case it terminates upon discharge as provided in § 1192.

Rule 1020. ~~Small Business~~ Chapter 11 Reorganization Case for Small Business Debtors

(a) SMALL BUSINESS DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply. ~~Except as provided in subdivision (c), the~~ The status of the case as a small business case or a case under subchapter V of chapter 11 shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.

(b) OBJECTING TO DESIGNATION. ~~Except as provided in subdivision (c), the~~ The United States trustee or a party in interest may file an objection to the debtor's

statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.

~~(c) APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS. If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case shall proceed as a small business case only if, and from the time when, the court enters an order determining that the committee has not been sufficiently active and representative to provide effective oversight of the debtor and that the debtor satisfies all the other requirements for being a small business. A request for a determination under this subdivision may be filed by the United States trustee or a party in interest only within a reasonable time after the failure of the committee to be sufficiently active and representative. The debtor may file a request for a~~

~~determination at any time as to whether the committee has been sufficiently active and representative.~~

(~~d~~c) PROCEDURE FOR OBJECTION OR DETERMINATION. Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; the creditors included on the list filed under Rule 1007(d) or, if ~~any~~ a committee has been appointed under § 1102(a)(3), the committee or its authorized agent~~, or, if no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d)~~; and any other entity as the court directs.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019 (SBRA), Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The title and subdivision (a) of the rule are amended to include that option and to require a small business debtor to state in its voluntary petition, or in a statement filed within 14 days after the order for relief is

entered in an involuntary case, whether it elects to proceed under subchapter V. The rule does not address whether the court, on a case-by-case basis, may allow a debtor to make an election to proceed under subchapter V after the times specified in subdivision (a) or, if it can, under what conditions.

Former subdivision (c) of the rule is deleted because the existence or level of activity of a creditors' committee is no longer a criterion for small-business-debtor status. The SBRA eliminated that portion of the definition of "small business debtor" in § 101(51D) of the Code.

Former subdivision (d) is redesignated as subdivision (c), and the list of entities to be served is revised to reflect that in most small business and subchapter V cases there will not be a committee of creditors.

Rule 2009. Trustees for Estates When Joint Administration Ordered

(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

* * * * *

(2) *Chapter 11 Reorganization Cases*. If the appointment of a trustee is ordered or is required by the Code, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

* * * * *

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. In a case under that subchapter, § 1183 of the Code requires the United States trustee to appoint a trustee, so there will be no election. Accordingly, subdivisions (a) and (b) of the rule are amended to except cases under subchapter V from their coverage. Subdivision (c)(2), which addresses the appointment of trustees in jointly administered chapter 11 cases, is amended to make it applicable to cases under subchapter V.

Rule 2012. Substitution of Trustee or Successor Trustee; Accounting

(a) TRUSTEE. If a trustee is appointed in a chapter 11 case (other than under subchapter V), or the debtor is removed as debtor in possession in a chapter 12 case or in a case under subchapter V of chapter 11, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.

* * * * *

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (a) of the rule is amended to include any case under that subchapter in which the debtor is removed as debtor in possession under § 1185 of the Code.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall:

(1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case (other than under subchapter V), file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed;

(2) keep a record of receipts and the disposition of money and property received;

(3) file the reports and summaries required by § 704(a)(8) of the Code, which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of

employees and the place where these amounts are deposited;

(4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case;

(5) in a chapter 11 reorganization case (other than under subchapter V), on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C.

§ 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and

(6) in a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than 21 days after the last day of the calendar month following the month covered by the report. The

obligation to file reports under this subparagraph terminates on the effective date of the plan, or conversion or dismissal of the case.

(b) TRUSTEE, DEBTOR IN POSSESSION, AND DEBTOR IN A CASE UNDER SUBCHAPTER V OF CHAPTER 11. In a case under subchapter V of chapter 11, the debtor in possession shall perform the duties prescribed in (a)(2)–(4) and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the debtor's property within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (b). The debtor shall perform the duties prescribed in (a)(6).

(~~b~~c) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)–(4) of subdivision (a) of this

rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this ~~paragraph~~ subdivision (c).

(~~e~~d) CHAPTER 13 TRUSTEE AND DEBTOR.

(1) *Business Cases*. In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

(2) *Nonbusiness Cases*. In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.

(~~d~~e) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 14 days after the date when the representative becomes aware of the subsequent information.

(~~e~~f) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of

every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (b) is amended to prescribe the duties of a debtor in possession, trustee, and debtor in a subchapter V case. Those cases are excepted from subdivision (a) because, unlike other chapter 11 cases, there will generally be both a trustee and a debtor in possession. Subdivision (b) also reflects that § 1187 of the Code prescribes reporting duties for the debtor in a subchapter V case.

Former subdivisions (b), (c), (d), and (e) are redesignated (c), (d), (e), and (f) respectively.

Rule 3002. Filing Proof of Claim or Interest

* * * * *

(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. But in all these cases, the following exceptions apply:

* * * * *

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

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

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

* * * * *

Committee Note

Rule 3002(c)(6) is amended to provide a single standard for granting motions for an extension of time to file a proof of claim, whether the creditor has a domestic address or a foreign address. If the notice to such creditor was "insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim," the court may grant an extension.

Rule 3010. Small Dividends and Payments in Cases Under Chapter 7 ~~Liquidation~~, Subchapter V of Chapter 11, Chapter 12 ~~Family Farmer's Debt Adjustment~~, and Chapter 13 ~~Individual's Debt Adjustment Cases~~

* * * * *

(b) CASES UNDER SUBCHAPTER V OF CHAPTER 11, CHAPTER 12, AND CHAPTER 13 ~~CASES~~. In a case under subchapter V of chapter 11, chapter 12, or chapter 13, ~~case~~ no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. To avoid the undue cost and inconvenience

of distributing small payments, the title and subdivision (b) are amended to include subchapter V cases.

Rule 3011. Unclaimed Funds in Cases Under Chapter 7 ~~Liquidation~~, Subchapter V of Chapter 11, Chapter 12 ~~Family Farmer's Debt Adjustment~~, and Chapter 13 ~~Individual's Debt Adjustment Cases~~

The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The rule is amended to include such cases because § 347(a) of the Code applies to them.

Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. In a case under subchapter V of chapter 11 in which § 1125 of the Code does not apply, the election may be made not later than a date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Because there generally will not be a disclosure statement in a subchapter V case, *see* § 1181(b) of the Code, the rule is amended to provide a deadline for making an election under § 1111(b) in such cases that is set by the court.

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement, if required under § 1125 of the Code, or evidence showing compliance with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated, and Rule 3017.1 shall apply as if the plan is a disclosure statement.

* * * * *

(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a small

business case or a case under subchapter V of chapter 11, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (b) of the rule is amended to reflect that under § 1181(b) of the Code, § 1125 does not apply to subchapter V cases (and thus a disclosure statement is not required) unless the court for cause orders otherwise. Subdivision (d) is amended to include subchapter V cases as ones in which Official Forms are available for a reorganization plan and, when required, a disclosure statement.

Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11

(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. In a small business case or in a case under subchapter V of chapter 11 in which the court has ordered that § 1125 applies, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the hearing on confirmation.

* * * * *

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The title and subdivision (a) of the rule are amended to cover such cases when the court orders that § 1125 of the Code applies.

Rule 3017.2. Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement

In a case under subchapter V of chapter 11 in which § 1125 does not apply, the court shall:

(a) fix a time within which the holders of claims and interests may accept or reject the plan;

(b) fix a date on which an equity security holder or creditor whose claim is based on a security must be the holder of record of the security in order to be eligible to accept or reject the plan;

(c) fix a date for the hearing on confirmation; and

(d) fix a date for transmitting the plan, notice of the time within which the holders of claims and interests may accept or reject it, and notice of the date for the hearing on confirmation.

Committee Note

The rule is added in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No.

116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Because there generally will not be a disclosure statement in a subchapter V case, *see* § 1181(b) of the Code, the rule is added to authorize the court in such a case to act at a time other than when a disclosure statement is approved to set certain times and dates.

Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017, 3017.1, or 3017.2. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court, under Rule 3017.2, or fixed for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and

hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

* * * * *

Committee Note

Subdivision (a) of the rule is amended to take account of the court's authority to set times under Rules 3017.1 and 3017.2 in small business cases and cases under subchapter V of chapter 11.

Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

* * * * *

(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification shall be filed and served on the

debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.

(c) MODIFICATION OF PLAN AFTER CONFIRMATION IN A SUBCHAPTER V CASE. In a case under subchapter V of chapter 11, a request to modify the plan under § 1193(b) or (c) of the Code is governed by Rule 9014, and the provisions of this Rule 3019(b) apply.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (c) is added to the rule to govern requests to modify a plan after confirmation in such cases under § 1193(b) or (c) of the Code.

Rule 5005. Filing and Transmittal of Papers

* * * * *

(b) TRANSMITTAL TO THE UNITED STATES TRUSTEE.

(1) The complaints, notices, motions, applications, objections and other papers required to be transmitted to the United States trustee ~~by these rules shall be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending~~ may be sent by filing with the court's electronic-filing system in accordance with Rule 9036, unless a court order or local rule provides otherwise.

(2) The entity, other than the clerk, transmitting a paper to the United States trustee other than through the court's electronic-filing system shall promptly file as proof of such transmittal a

~~verified~~ statement identifying the paper and stating the manner by which and the date on which it was transmitted to the United States trustee.

(3) Nothing in these rules shall require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.

Committee Note

Subdivision (b)(1) is amended to authorize the clerk or parties to transmit papers to the United States trustee by electronic means in accordance with Rule 9036, regardless of whether the United States trustee is a registered user with the court's electronic-filing system. Subdivision (b)(2) is amended to recognize that parties meeting transmittal obligations to the United States trustee using the court's electronic-filing system need not file a statement evidencing transmittal under Rule 5005(b)(2). The amendment to subdivision (b)(2) also eliminates the requirement that statements evidencing transmittal filed under Rule 5005(b)(2) be verified.

Rule 7004. Process; Service of Summons, Complaint

* * * * *

(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

New Rule 7004(i) is intended to reject those cases interpreting Rule 7004(b)(3) and Rule 7004(h) to require service on a named officer, managing or general agent or other agent, rather than use of their titles. Service to a corporation or partnership, unincorporated association or insured depository institution at its proper address directed to the attention of the "Chief Executive Officer," "President," "Officer for Receiving Service of Process," "Managing Agent," "General Agent," "Officer," or "Agent for Receiving Service of Process" (or other similar titles) is sufficient.

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.

(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 under Rule 8023(a) or (b) beyond the 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.

Committee Note

The amendment is intended to conform the rule to the revised version of Appellate Rule 42(b) on which it was

modelled. It clarifies that the fees that must be paid are court fees, not attorney's fees. The rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration. *See*, *e.g.*, Fed. R. Bankr. P. 9019 (requiring court approval of compromise or settlement). The amendment clarifies that any order beyond mere dismissal—including approving a settlement, vacating or remanding—requires a court order.

ATTACHMENT B

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

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

* * * * *

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

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—

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

and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed ~~no later than 28 days after the judgment is entered~~within the time allowed for filing a motion under Rule 59.

* * * * *

Committee Note

The amendment is designed to make Rule 4 operate smoothly with Emergency Civil Rule 6(b)(2) if that emergency Civil Rule is ever in effect, while not making any change to the operation of Rule 4 at any other time. It does this by replacing the phrase "no later than 28 days after the judgment is entered" in Rule 4(a)(4)(A)(vi) with the phrase "within the time allowed for filing a motion under Rule 59."

Certain post-judgment motions—for example, a renewed motion for judgment as a matter of law under Civil Rule 50(b) and a motion for a new trial under Civil Rule 59—may be made in the district court shortly after judgment is entered. Recognizing that it makes sense to await the district court's decision on these motions before pursuing an appeal, Rule 4(a)(4)(A) resets the time to appeal

from the judgment so that it does not run until entry of an order disposing of the last such motion.

Rule 4 gives this resetting effect only to motions that are filed within the time allowed by the Civil Rules. For most of these motions, the Civil Rules require that the motion be filed within 28 days of the judgment. See Civil Rules 50(b) and (d), 52(b), 59(b), (d), and (e). The time requirements for a Civil Rule 60(b) motion, however, are notably different. It must be filed "within a reasonable time," and for certain Civil Rule 60(b) motions, no more than a year after judgment. For this reason, Rule 4 does not give resetting effect to all Civil Rule 60(b) motions that are filed within the time allowed by the Civil Rules, but only to those Civil Rule 60(b) motions that are filed within 28 days of the entry of judgment. That is why most of the motions listed in Rule 4(a)(4)(A) are governed simply by the general requirement that they be filed within the time allowed by the Civil Rules, but Rule 4(a)(4)(A)(vi) adds the requirement that a Civil Rule 60(b) motion has resetting effect only if "filed no later than 28 days after the judgment is entered."

Significantly, Civil Rule 6(b)(2) prohibits the district court from extending the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b). That means that when Rule 4 requires that a motion be filed within the time allowed by the Civil Rules, the time allowed by those Rules for motions under Rules 50(b) and (d), 52(b), 59(b), (d), and (e) will be 28 days—matching the 28-day requirement in Rule 4(a)(4)(A)(vi) applicable to Rule 60(b) motions.

However, Emergency Civil Rule 6(b)(2)—which would be operative only if the Judicial Conference of the United States were to declare a Civil Rules emergency under Civil Rule 87—authorizes district courts to grant extensions that they are otherwise prohibited from granting. If that

emergency Civil Rule is in effect, district courts may grant extensions to file motions under Civil Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b). For all these motions except Civil Rule 60(b) motions, Rule 4 works seamlessly. Rule 4 requires only that those motions be filed "within the time allowed by" the Civil Rules, and a motion filed within a properly granted extension is filed "within the time allowed by" those rules. An emergency Civil Rule is no less a Civil Rule simply because it is operative only in a Civil Rules emergency.

Without amendment, Rule 4 would not work seamlessly with the Emergency Civil Rule for Rule 60(b) motions because the 28-day requirement in Rule 4(a)(4)(A)(vi) would not correspond to the extended time to file other resetting motions. For this reason, the amendment replaces the phrase "if the motion is filed no later than 28 days after the judgment is entered" with the phrase "within the time allowed for filing a motion under Rule 59."

At all times that no Civil Rules emergency has been declared, the amended Rule 4 functions exactly as it did prior to the amendment. A Civil Rule 60(b) motion has resetting effect only if it is filed within the time allowed for filing a motion under Civil Rule 59—which is 28 days.

When a Civil Rules emergency has been declared, however, if a district court grants an extension of time to file a Civil Rule 59 motion and a party files a Civil Rule 60(b) motion, that Civil Rule 60(b) motion has resetting effect so long as it is filed within the extended time set for filing a Civil Rule 59 motion. The Civil Rule 60(b) motion has this resetting effect even if no Civil Rule 59 motion is filed.

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

Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal

(a) FILING THE NOTICE OF APPEAL.

* * * * *

(3) *Contents.* The notice of appeal must:

(A) conform substantially to the appropriate Official Form;

(B) be accompanied by the judgment~~,~~ —or the appealable order~~,~~ or decree~~,~~ —from which the appeal is taken ~~or the part of it, being appealed~~; and

(C) be accompanied by the prescribed fee.

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

(4) *Merger.* The notice of appeal encompasses all orders that, for purposes of appeal, merge into the identified judgment or appealable order or decree. It is not necessary to identify those orders in the notice of appeal.

(5) *Final Judgment.* The notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Rule 7058, if the notice identifies:

(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 8002(b)(1).

(6) *Limited Appeal.* An appellant may identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, specific identifications do not limit the scope of the notice of appeal.

(7) *Impermissible Ground for Dismissal.* An appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into that judgment or appealable order or decree.

~~(4)~~ (8) *Additional Copies.* * * * * *

Committee Note

Subdivision (a) is amended to conform to recent amendments to Fed. R. App. P. 3(c), which clarified that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment or appealable order or decree. These amendments reflect that a notice of appeal is supposed to be a simple document that provides notice that a party is appealing and invokes the jurisdiction of the appellate court. It therefore must state who is appealing, what is being appealed, and to what court the appeal is being taken. It is the role of the briefs, not the notice of appeal, to focus the issues on appeal.

Subdivision (a)(3)(B) is amended in an effort to avoid the misconception that it is necessary or appropriate to identify each and every order of the bankruptcy court that the appellant may wish to challenge on appeal. It requires the attachment of "the judgment—or the appealable order or decree—from which the appeal is taken"—and the phrase "or part thereof" is deleted. In most cases, because of the merger principle, it is appropriate to identify and attach only the judgment or the appealable order or decree from which the appeal as of right is taken.

Subdivision (a)(4) now calls attention to the merger principle. The general merger rule can be stated simply: an appeal from a final judgment or appealable order or decree permits review of all rulings that led up to the judgment, order, or decree. Because this general rule is subject to some exceptions and complications, the amendment does not attempt to codify the merger principle but instead leaves its details to case law. The amendment does not change the principle established in *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202-03 (1988), that "a decision on the merits

is a 'final decision' . . . whether or not there remains for adjudication a request for attorney's fees attributable to the case."

Sometimes a party who is aggrieved by a final judgment will make a motion in the bankruptcy court instead of immediately filing a notice of appeal. Rule 8002(b)(1) permits a party who makes certain motions to await disposition of those motions before appealing. But some courts treat a notice of appeal that identifies only the order disposing of such a motion as limited to that order, rather than bringing the final judgment before the appellate court for review. To reduce the unintended loss of appellate rights in this situation, subdivision (a)(5) is added. This amendment does not alter the requirement of Rule 8002(b)(3) (requiring a notice of appeal or an amended notice of appeal if a party intends to challenge an order disposing of certain motions).

Subdivision (a)(6) is added to enable deliberate limitations of the notice of appeal. It allows an appellant to identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, however, specific identifications do not limit the scope of the notice of appeal.

On occasion, a party may file a notice of appeal after a judgment or appealable order or decree but identify only a previously nonappealable order that merged into that judgment or appealable order or decree. To deal with this situation, subdivision (a)(7) is added to provide that an appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into the

judgment, order, or decree from which the appeal is taken. In this situation, a court should act as if the notice had properly identified the judgment or appealable order or decree. In determining whether a notice of appeal was filed after the entry of judgment, Rule 8002(a)(2) and (b)(2) apply.

ATTACHMENT C

Affected Sections of Title 28 U.S.C. and the Bankruptcy Code	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount[1]
28 U.S.C.		
Section 1409(b) - a trustee may commence a proceeding arising in or related to a case to recover		
(1) - money judgment of or property worth less than	$1,375	$1,525
(2) - a consumer debt less than	$20,450	$22,700
(3) - a non-consumer debt against a non-insider less than	$25,000	$27,750
11 U.S.C.		
Section 101(3) - definition of assisted person	$204,425	$226,850
Section 101(18) - definition of family farmer	$10,000,000 (each time it appears)	$11,097,350 (each time it appears)
Section 101(19A) - definition of family fisherman	$2,044,225 (each time it appears)	$2,268,550 (each time it appears)
Section 101(51D) - definition of small business debtor	$2,725,625 (each time it appears)	$3,024,725 (each time it appears)
Section 109(e) - debt limits for individual filing bankruptcy under chapter 13	$419,275 (each time it appears) $1,257,850 (each time it appears)	$465,275 (each time it appears) $1,395,875 (each time it appears)
Section 303(b) - minimum aggregate claims needed for the commencement of an involuntary chapter 7 or 11 petition	$16,750 (each time it appears)	$18,600 (each time it appears)
Section 507(a) - priority expenses and claims		
(1) - in paragraph (4)	$13,650	$15,150
(2) - in paragraph (5)(B)(i)	$13,650	$15,150
(3) - in paragraph (6)	$6,725	$7,475
(4) - in paragraph (7)	$3,025	$3,350

[1] The New (Adjusted) Dollar Amounts reflect a 10.97347880254584 percent increase, rounded to the nearest $25.

Section 522(d) - value of property exemptions allowed to the debtor		
(1) - in paragraph (1)	$25,150	$27,900
(2) - in paragraph (2)	$4,000	$4,450
(3) - in paragraph (3)	$625 $13,400	$700 $14,875
(4) - in paragraph (4)	$1,700	$1,875
(5) - in paragraph (5)	$1,325 $12,575	$1,475 $13,950
(6) - in paragraph (6)	$2,525	$2,800
(7) - in paragraph (8)	$13,400	$14,875
(8) - in paragraph (11)(D)	$25,150	$27,900
Section 522(f)(3) - exception to lien avoidance under certain state laws	$6,825	$7,575
Section 522(f)(4) - items excluded from definition of household goods for lien avoidance purposes	$725 (each time it appears)	$800 (each time it appears)
Section 522(n) - maximum aggregate value of assets in individual retirement accounts exempted	$1,362,800	$1,512,350
Section 522(p) – state homestead exemption, limit for interest acquired ≤ 1215 days before filing	$170,350	$189,050
Section 522(q) – state homestead exemption, limit under particular circumstances	$170,350	$189,050
Section 523(a)(2)(C) - exceptions to discharge – presumption of nondischargeability		
(1) - in paragraph (i)(I) - consumer debts for luxury goods or services incurred ≤ 90 days before filing owed to a single creditor in the aggregate	$725	$800
(2) - in paragraph (i)(II) – certain cash advances obtained ≤ 70 days before filing, in the aggregate	$1,000	$1,100
Section 541(b)- certain property of the estate exclusion limits	$6,825 (each time it appears)	$7,575 (each time it appears)

Section 547(c)(9) – minimum preference avoidance value in cases with primarily non-consumer debts	$6,825	$7,575
Section 707(b) - dismissal of a chapter 7 case or conversion to chapter 11 or 13 (means test)		
(1) - in paragraph (2)(A)(i)(I)	$8,175	$9,075
(2) - in paragraph (2)(A)(i)(II)	$13,650	$15,150
(3) - in paragraph (2)(A)(ii)(IV)	$2,050	$2,275
(4) - in paragraph (2)(B)(iv)(I)	$8,175	$9,075
(5) - in paragraph (2)(B)(iv)(II)	$13,650	$15,150
(6) - in paragraph (5)(B)	$1,375	$1,525
(7) - in paragraph (6)(C)	$750	$825
(8) - in paragraph (7)(A)(iii)	$750	$825
Section 1322(d) - length of chapter 13 plan, current monthly income, 4+ household	$750 (each time it appears)	$825 (each time it appears)
Section 1325(b) - confirmation of chapter 13 plan, current monthly income, 4+ household	$750 (each time it appears)	$825 (each time it appears)
Section 1326(b)(3) - payments to former chapter 7 trustee	$25	$25

ATTACHMENT D

Local Rule 7041-1

Dismissal of Adversary Proceedings

A plaintiff proposing to voluntarily dismiss a complaint (or count within a complaint) objecting to the debtor's discharge must give at least 21 days' written notice of a hearing on the proposed voluntary dismissal to the United States trustee, the trustee, and all creditors or parties in interest. The notice shall fully and clearly state any consideration paid or promised to be paid by the debtor to the plaintiff in connection with such dismissal and the deadline to object to the dismissal. If no timely objections are filed, it is within the judge's discretion to hold or cancel the hearing.

ATTACHMENT E

LOCAL RULE 2015-2

Debtor in Possession Duties – Post Confirmation Requirements

Other than under subchapter V or in a small business case, upon the effective date of a Chapter 11 plan confirmed by the Court, the debtor will be required to file a quarterly operating report with the Office of the United States Trustee, on a form prescribed by that office, until the case is closed. A duplicate of this report is to be filed with the Court to satisfy the requirements of Bankruptcy Rule 2015.

ATTACHMENT F

LOCAL RULE 4002-1

Duties of the debtor

A. Providing Payment Advices:

1. Trustee: Copies of all payment advices or other evidence of payment, received within sixty (60) days before the date of the filing of the petition by the debtor(s) from any employer of the debtor(s), shall not be filed with the Court, unless otherwise ordered, but with the case trustee.

2. Interested Creditors: The debtor(s) shall also provide copies of payment advices to any creditor who timely requests copies of the payment advices or other evidence of payment, at least seven (7) days prior to the meeting of creditors conducted pursuant to 11 U.S.C. § 341. To be considered timely, a creditor's request must be received at least fourteen (14) days before the first date set for the meeting of creditors or any adjourned or continued meeting of creditors.

3. Noncompliance: The case trustee's certification of non-compliance by the debtor(s) with Local Rule 4002-1(A)(1) to submit payment advices as required by § 521(a)(1)(B)(iv) will be sufficient for dismissal of the case pursuant to 11 U.S.C. § 521(i).

B. Failure to Provide Prepetition Tax Information:

1. Trustee: Upon certification by the trustee that the debtor failed to comply with § 521(e)(2)(A)(i), the Clerk shall issue a notice to show cause to the debtor and debtor's attorney why the case should not be dismissed.

2. Creditor: If the debtor failed to comply with § 521(e)(2)(A)(ii), upon motion by a creditor and after service of the motion by the creditor on the debtor and debtor's attorney, and a hearing, the Court will determine whether to dismiss the case. Any motion to dismiss filed by a creditor must state with particularity that the creditor timely requested a copy of the tax return under FRBP 4002 (b)(4).

ATTACHMENT G

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA

In re:

Compensation of Debtor's Counsel in Chapter 13 Cases; Guidelines and Procedures for Chapter 13 Fee Applications	))))	Standing Order No. 22-001

ORDER ON FEES FOR DEBTOR'S COUNSEL IN CHAPTER 13 CASES; ADOPTION OF AMENDED GUIDELINES FOR FEE APPLICATIONS IN CHAPTER 13 CASES FILED ON OR AFTER FEBRUARY 15, 2022

The Court has determined that adoption of the procedures and guidelines specified in this Order will facilitate and provide for uniformity in the consideration of compensation for debtor's counsel in Chapter 13 cases.

NOW, IT IS THEREFORE ORDERED that:

1. Standing Order 15-1 entered on June 26, 2015, shall not apply to cases filed on or after February 15, 2022.

2. This Standing Order and the Amended Guidelines for Fee Applications in Chapter 13 Cases shall be effective February 15, 2022 as follows:

A. All cases filed on or after February 15, 2022 may elect to charge the presumptive base fees as set forth below and in Amended Exhibit 1.

B. All cases pending or filed on or after February 15, 2022 are subject to this Order for all non-base fees as set forth in the "Amended Guidelines," attached as Exhibit 1 to this Order.

3. NOTWITHSTANDING THE PROVISIONS OF THIS STANDING ORDER, NOTHING PRECLUDES ANY PARTY, INCLUDING THE UNITED STATES TRUSTEE, FROM OBJECTING IN WHOLE OR IN PART TO THE AMOUNT OF THE FEE REQUESTED WHETHER IT BE THE PRESUMPTIVE FEE AMOUNT OR THE ACTUAL FEES REQUESTED. FURTHERMORE, THIS STANDING ORDER DOES NOT AUTHORIZE THE FEE TO BE PAID UPON ANY REQUEST, RATHER ONLY AFTER COURT APPROVAL.

4. If the initial fee charged to a debtor for routine, expected services in a non-business consumer Chapter 13 case filed on or after February 15, 2022 does not exceed $4,750.00, a formal application for approval and payment of the unpaid amount through the Chapter 13 plan may not be required if (a) the total fee and the unpaid portion is clearly set forth in the Chapter 13 plan, (b) the fee is consistent with the disclosure of compensation filed under Federal Rule of Bankruptcy

Procedure 2016, and (c) the total pre-confirmation fee does not exceed the reasonable value of actual services. Said amount shall include all routine costs in the case including, but not limited to, copying, postage, and communication fees; it shall not include any filing fees or actual costs paid to outside entities not owned or related to counsel for the debtor for credit reports, credit counseling and debtor education courses.

5. If the initial fee charged to a debtor for routine, expected services in a **business-related** Chapter 13 case filed on or after February 15, 2022 does not exceed $5,750.00, a formal application for approval and payment of the unpaid amount through the Chapter 13 plan may not be required if (a) the total fee and the unpaid portion is clearly set forth in the Chapter 13 plan, (b) the fee is consistent with the disclosure of compensation filed under Federal Rule of Bankruptcy Procedure 2016, and (c) the total pre-confirmation fee does not exceed the reasonable value of actual services. Said amount shall include all routine costs in the case including, but not limited to, copying, postage, and communication fees; it shall not include any filing fees or actual costs paid to outside entities not owned or related to counsel for the debtor for credit reports, credit counseling and debtor education courses.

A case will qualify for the presumptive business-related base if one of the following criteria is met:

A. The debtor qualifies as a business debtor under 11 U.S.C. § 1304; or

B. The debtor clearly demonstrates, through the plan and schedules, a substantial business impact on the case based on prior business activities and/or future business activities.

The Court requires any counsel claiming a base fee for a business-related Chapter 13 to:

A. Analyze the viability of the current business operation and its future projections. This includes but is not limited to analyzing average monthly historical receipts for the last two years and analyzing receipt projections for the life of the plan, along with the historical business expenses and those projected as necessary for the future.

B. Prepare a projected profit and loss statement which summarizes the business operation for the next twelve months and otherwise complies with the requirement of paragraph 8a on Schedule I. This statement will be filed together with Schedule I.

C. Provide to the Trustee, and to any authorized party who so requests, a copy of documents used in the analysis.

6. Allowable charges for lien searches: Notwithstanding the provisions of paragraphs 4 and 5, given the large geographical nature of the Western District of Virginia, counsel shall be allowed to claim actual and reasonable costs for lien searches, even if performed by counsel for the debtor. If such cost is claimed, it cannot exceed what a third party would have charged unless the attorney provides appropriate evidence to support the higher fee.

7. The Chapter 13 plan and Rule 2016(b) statement will be treated as the application

required by Rule 2016(a) and the order confirming the plan will be treated as an order approving compensation. If counsel seeks approval of fees exceeding the presumptive amount, then the fee application must clearly and conspicuously itemize all time expended and costs paid or to be paid. If counsel seeks a fee up to the presumptive amount, the actual reimbursable costs paid by the debtor must be itemized either within the body of the Disclosure of Compensation of Attorney For Debtor (Form B 2030) or within an attachment to the form.

Any objection to allowance and payment of compensation in the amount stated in the Chapter 13 plan must be filed no later than the last day for filing objections to confirmation of the plan. If no objection is filed, the Court may approve the fee and confirm the plan without holding a hearing.

8. Presumptive Services to be provided under presumptive fees of paragraphs 4 and 5:

A. The initial fee charged in the case shall cover, at a minimum, all services that would reasonably be expected in order to obtain confirmation of a plan, and, ultimately, a discharge, including:

i. conferences to review the debtor's financial circumstances, including analysis of business profit and losses and business assets in a business-related Chapter 13;

ii. preparation and filing of the petition and all required schedules, lists, and statements;

iii. preparation and filing of a plan and any amendments thereto in order to obtain confirmation;

iv. telephone calls and correspondence with the debtor, Chapter 13 trustee, and creditors throughout the life of the case;

v. representation at the meeting(s) of creditors;

vi. appearance, if required, at the confirmation hearing(s);

vii. review of the claims register, filing and other services related to uncontested objections to claims;

viii. filing by the attorney, during the period allowed by Fed. R. Bankr. P. 3004, of any claims not timely filed by the creditor which are necessary to achieve the primary objectives of the debtor's plan (e.g., secured claims and priority claims being paid by the Trustee and non-dischargeable unsecured claims);

ix. resolution of issues raised in the Chapter 13 Trustee's initial or supplemental report, objection(s) to confirmation, and/or motion(s) to dismiss, as well as any supplements to such items;

x. assistance to the debtor in filing any certifications required to obtain a discharge after plan payments are completed;

xi. motions for relief from the automatic stay filed pre-confirmation and resolved without an evidentiary hearing; and

xii. motions to extend the stay if applicable.

B. The initial fee shall normally cover routine motions and objections pre-confirmation, excluding separate adversarial proceedings, as well as plan modifications needed to address such issues and matters such as classification of claims, valuations of collateral, interest rates on secured claims, arrearage amounts, pre-confirmation defaults, and amounts to be paid by the debtor.

C. If counsel elects to charge the presumptive fee referenced in paragraphs 4 or 5, then there shall be a presumption that counsel will limit post-confirmation fees to the presumptive amounts set forth in Guideline 2.e. unless good cause is shown.

9. Any application for an initial fee in excess of $4,750.00 for a consumer case or $5,750.00 for a business-related case or for supplemental fees, regardless of the amount, must conform to Rule 2016(a) and the Guidelines adopted by the Court. The Guidelines include both procedural requirements as well as policy statements.

10. Unless authorized by further order of the Court, the attorney shall not send a bill directly to the debtor following the filing of the petition.

11. Should a case be dismissed prior to confirmation, the debtor's attorney may seek fees up to the lesser of the funds on hand held by the Trustee or the presumptive amount without the need for a formal fee application. The request should be made by separate motion set for hearing upon notice to the debtor and Trustee with an opportunity to object. The motion may be granted by the Court without notice if the debtor and Trustee endorse the order.

12. Nothing in this Order shall be construed to limit or restrict future guidelines as to flat fees for additional services as determined to be appropriate in this district.

Entered this 25th day of January, 2022.

Paul M. Black, Chief Judge

Rebecca B. Connelly, Judge

Exhibit 1

AMENDED GUIDELINES FOR FEE APPLICATIONS IN CHAPTER 13 CASES FILED ON OR AFTER FEBRUARY 15, 2022

1. Purpose

The Amended Guidelines for Fee Applications in Chapter 13 Cases Filed on or after February 15, 2022 ("Amended Guidelines") have been adopted by the Court to specify the format and procedures for submission of fee applications by attorneys representing the debtor in a Chapter 13 case and to set forth the policies and standards that will normally be followed by the Court in evaluating such applications. Compliance by applicants with the procedural requirements is mandatory, but applicants may apply for a fee at variance with the policy statement provided the application clearly identifies any such variance.

2. Procedural Requirements

a. NOTWITHSTANDING THE PROVISIONS OF THIS STANDING ORDER AND GUIDELINES, NOTHING PRECLUDES ANY PARTY, INCLUDING THE UNITED STATES TRUSTEE, FROM OBJECTING IN WHOLE OR IN PART TO THE AMOUNT OF THE FEE REQUESTED WHETHER IT BE THE PRESUMPTIVE FEE AMOUNT OR THE ACTUAL FEES REQUESTED. FURTHERMORE, THIS STANDING ORDER AND THESE GUIDELINES DO NOT AUTHORIZE THE FEE TO BE PAID UPON ANY REQUEST, RATHER ONLY AFTER COURT APPROVAL.

b. Initial fee applications for amounts in excess of $4,750.00 for consumer cases and $5,750.00 for business-related cases, and **all** supplemental fee applications in excess of the amount set forth in 2.e., must be supported by detailed, contemporaneous time and expense records **from the beginning of the case** showing, for each discrete activity, the date, time expended, identity of the attorney or paralegal providing the service, and amount requested. If a prior fee application has included time records from the beginning of the case, a subsequent application need include only time and expense records covering the period subsequent to the earlier application provided the current application identifies (by date and docket entry number) the earlier application.

c. For the purpose of these Guidelines, a "contemporaneous" time or expense record is one made at or near the time of the activity being recorded or the expense being incurred, but in any event no later than the next business day. Any time entry that has been reconstructed because contemporaneous records were not made, or, if made, are not available, must be clearly identified, and an explanation provided for the absence of a contemporaneous record.

d. Every application for compensation, whether initial or supplemental, shall state the period covered by the application. Time entries should be shown to the nearest tenth of an hour (*i.e.*, the nearest 6 minutes), and travel time should be shown separately from any court appearance or other out-of-office activity to which it relates. Preparation of fee agreements and hearing time regarding fee agreements shall be billed at 75% of the normal hourly rate; billing for travel time for any matter shall not be permitted unless good cause is shown.

e. An exception to the requirement for contemporaneous time and expense records is allowed where the requested application is solely for one or more of the following post-confirmation services, and the amount requested does not exceed the amount shown:

Description	**Amount**
Defense of post-confirmation Motion for Relief from the Automatic Stay resolved without evidentiary hearing	$420.00
Defense of post-confirmation Trustee's Motion to Dismiss for payment default	$350.00
Post-confirmation modified Plan	$480.00
Motion to Approve Sale Motion to Approve Refinance Motion to Incur Debt Motion to Approve Loan Modification	$480.00
Motion to Suspend Payments	$300.00
Adversary Proceeding (uncontested) including motion for default judgment	$750.00
Motion to Avoid Lien (uncontested)	$360.00

Filing of any of these documents in tandem, i.e., as a response to an affirmative pleading and as an affirmative motion, or vice versa, will not permit the party to receive both fees; the party will be entitled to the fee for only one of the matters, unless good cause is shown to justify the application for multiple fees. By way of example, a response to a motion to dismiss followed closely in time by a modified plan would not permit the party to claim a total fee of $830.00, rather the party would be entitled to $480.00 at the most.

If the attorney's fee request does not reduce the amounts required to be paid to unsecured creditors to an amount less than that required by 11 U.S.C. §§ 1325(a)(4) or 1325(b), attorney's fees may be paid through the Plan and from the unsecured pool and/or reduce the noticed dividend to unsecured creditors if said request is the first post-confirmation request for attorney's fees. Unless good cause is shown, subsequent requests for attorney's fees must result in an

increase in the Plan funding to pay the fees through case administration.

f. For each attorney or paralegal providing services, the application shall state the person's name, status (attorney or paralegal), years admitted to practice (if an attorney), hourly rate, total hours, and requested compensation.

g. The application shall affirmatively state the amount, if any, of posted time and charges written off in the exercise of billing discretion.

h. An attorney requesting compensation by application in accordance with these Guidelines shall file with the Clerk an application in compliance with these Guidelines. A sample form application is available on the Court's Internet web site http://www.vawb.uscourts.gov and can be accessed by clicking the "Forms" button on the Court's Internet home page.

i. Unless otherwise provided differently in the Plan or confirmation order, attorney's fees provided in the Plan will be disbursed after payment of adequate protection payments and/or secured creditors' payments in equal monthly amounts pursuant to 11 U.S.C. § 1325(a)(5)(iii) and on a pro rata basis together with domestic support obligation claims, if any.

j. For the purposes of this Standing Order, contested shall mean a matter that results in the attorney's attendance at a hearing where an issue or issues have been placed into dispute, the opposing party appears, evidence is submitted and the matter is argued to the Court.

k. To the extent possible, the parties should seek to combine orders resolving a matter together with the order granting the fee. For instance, debtor's attorneys may include requests for fees in responsive or affirmative pleadings and the order resolving the matter may include disposition of the matter and request for attorney's fees. If an order combines these matters, the order's heading should specify the matter that is addressed as well as the disposition of the fee request. Alternatively, debtor's attorneys may include their fee request for a post-confirmation amended plan within the amended plan. If this process is not practicable, a fee request may be filed and noticed in accordance with the provisions of 11 U.S.C. § 102(1) and an order may be entered after the expiration of any applicable response deadline.

l. Service of any fee request, whether contained in a responsive or affirmative pleading or filed as an independent request, must be noticed to all scheduled creditors prior to the expiration of the government bar date. Following the expiration of the government bar date, the fee request need only be noticed to the holders of allowed claims.

3. Policy Statement

The Court will not approve charges for time expended for work that is secretarial or

administrative in nature (*e.g.*, sending facsimile transmissions, making copies, taking telephone messages, processing emails or notices from the Court and the like) even if performed by an attorney or paralegal.