

**Bankruptcy Judges' Panel<sup>1</sup>**

*Friday, June 16, 2023*

**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. Using Depositions in Court Proceedings Pursuant to Federal Rule of Civil Procedure 32**

**II. What Happens If Creditors Are Not Provided Timely Notice of a Case**

**III. Federal Rulemaking Process**

**IV. Recent Amendments to the Federal Rules of Bankruptcy Procedure**

**V. Pending Amendments to the Federal Rules of Bankruptcy Procedure**

**VI. Proposed Amendments to the Federal Rules of Bankruptcy Procedure**

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<sup>1</sup> The judges wish to thank Meggie Chen, Judge Connelly's term law clerk; Justin Jarrett, Judge Connelly's extern, a first-year student at Washington and Lee University School of Law; Elizabeth Carroll, Judge Black's career law clerk; and Caleb Chaplain, Judge Connelly's career law clerk, for their work on this material.

## **I. Using Depositions in Court Proceedings Pursuant to Federal Rule of Civil Procedure 32**

- A. Use of depositions at a hearing or trial is governed by Federal Rule of Civil Procedure 32.
  - a. Rule 32 is made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7032.
  - b. Further, Federal Rule of Bankruptcy Procedure 9014(c) makes Bankruptcy Rule 7032 (and thus Civil Rule 32) applicable to contested matters.
- B. Civil Rule 32(a)(1) establishes three elements that must be shown to use all or part of a deposition at a hearing or trial: “(A) the party was present or represented at the taking of the deposition or had reasonable notice of it; (B) it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and (C) the use is allowed by Rule 32(a)(2) through (8).” Fed. R. Civ. P. 32(a)(1).
  - a. “The party seeking to admit a deposition at trial must prove that the requirements of Rule 32(a) have been met.” *See Allgeier v. United States*, 909 F.2d 869, 876 (6th Cir. 1990).
  - b. “[I]n the absence of an agreement, deposition testimony must still be introduced pursuant to Rule 32.” *Earl v. Norfolk State Univ.*, No. 2:13-cv-00148, 2016 U.S. Dist. LEXIS 28932, at \*4 (E.D. Va. Mar. 7, 2016).
- C. A deposition may be used to contradict or impeach testimony offered by the deponent as a witness. Fed. R. Civ. P. 32(a)(2).
  - a. Rule 32(a)(2) also “permits a party to introduce, as a part of his substantive proof, the deposition of his adversary, and it is quite immaterial that the adversary is available to testify at the trial or has testified there” as “statements of a party which are inconsistent with his claim in litigation are substantively admissible against him.” *Lassiter v. U.S. Lines, Inc.*, 370 F. Supp. 427, 430 (E.D. Va. 1973).
- D. An adverse party may use the deposition of anyone who was the party’s officer, director, managing agent, or designee. Fed. R. Civ. P. 32(a)(3).
  - a. “[W]hile the corporation must make a good faith attempt to procure the presence of an officer, director, or managing agent, . . . there is no obligation to prepare the person for the deposition. However, whether prepared or not, the deposition can still be used against the corporation.” *Folwell v. Hernandez*, 210 F.R.D. 169, 173 (M.D.N.C. 2002).

- b. “When a person’s managing agency status is debatable, ‘courts in pretrial proceedings have resolved doubts under the standard in favor of the examining party.’” *E.I. DuPont de Nemours & Co. v. Kolon Indus., Inc.*, 268 F.R.D. 45, 49 (E.D. Va. 2010). Further, managing agent status is determined at the time of the deposition rather than when the activities disputed in the litigation occurred. *Id.*
- E. A party may use a deposition of a witness, whether or not a party, for any purpose if the court finds that (A) the witness is dead; (B) the witness is more than 100 miles from the location of hearing or trial or is outside of the United States (unless witness’s absence seems to have been procured by the party offering the deposition); (C) the witness cannot attend due to age, illness, infirmity, or imprisonment; (D) attendance could not be procured by subpoena; or (E) after motion and notice, exceptional circumstances demonstrate it is in the interest of justice to use a deposition. Fed. R. Civ. P. 32(a)(4).
  - a. As an example, in *Tatman v. Collins*, 938 F.2d 509, 511–12 (4th Cir. 1991), the deposition of a treating physician that was offered by the plaintiff was found to be admissible at trial because the witness was more than 100 miles from the courthouse where the trial was taking place (as opposed to the border of the district), notwithstanding the fact that the deposition was a discovery deposition rather than one taken for use at trial.
- F. A deposition cannot be used against a party who received less than 14 days’ notice of the deposition and promptly moved for a protective order, provided the motion was pending when the deposition was taken; nor can a deposition be used against a party who was served with notice and could not obtain an attorney to represent it at the deposition, despite diligent efforts. Fed. R. Civ. P. 32(a)(5).
- G. If only part of a deposition is offered into evidence, any party may introduce any other part that in fairness should be considered with the part introduced. Fed. R. Civ. P. 32(a)(6).
- H. A party substituted under Rule 25 does not impact the right to use a previously taken deposition. Fed. R. Civ. P. 32(a)(7).
- I. A deposition taken and filed (if required) in any federal- or state-court action may be used in a later action involving the same subject matter between the same parties to the same extent as if taken in the later action. Fed. R. Civ. P. 32(a)(8).

## II. What Happens If Creditors Are Not Provided Timely Notice of a Case

### A. Creditors Are Entitled to Notice of the Filing of a Bankruptcy Case

- a. Pursuant to 11 U.S.C. § 342(a), creditors are entitled to notice of the filing of a bankruptcy case.
  - i. The legislative history of § 342 states this is a requirement of due process.  
3 COLLIER ON BANKRUPTCY ¶ 342.02 (16th ed. 2023).
- b. Federal Rule of Bankruptcy Procedure 2002(f)(1) requires the clerk of the court or some other person as the court directs to give all creditors, among others, notice by mail of the order for relief, except that under Rule 2002(l), the court may order notice by publication if it finds that notice by mail is impracticable or if it is desirable to supplement the notice.
- c. Pursuant to 11 U.S.C. § 521(a)(1), the debtor has a duty to file a list of creditors and, unless the court orders otherwise, a schedule of liabilities, among other required schedules, statements, and information; Federal Rule of Bankruptcy Procedure 1007 provides the requirements on the contents of and time limits for filing the list of creditors and schedules.
- d. The court only mails a notice to creditors that are listed; therefore, a debtor must ensure that all creditors are listed.

### B. Bankruptcy Consequences If Creditors Are Not Provided Timely Notice of a Case

- a. The debt may be excepted from discharge under 11 U.S.C. § 523(a)(3).
  - i. Pursuant to 11 U.S.C. § 523(a)(3), a discharge under 11 U.S.C. §§ 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) does not discharge an individual debtor from any debt neither listed nor scheduled under § 521(a)(1) in time to permit the creditor to whom such debt is owed to timely file a proof of claim and, if applicable, to timely request a determination of dischargeability of such debt under § 523(a)(2), (4), or (6).
  - ii. The exceptions to discharge pursuant to 11 U.S.C. § 523(a)(3) are subject to the creditor's lack of notice or actual knowledge of the case in time for such timely filing of a proof of claim and request for a determination of dischargeability of the debt (if applicable). 11 U.S.C. § 523(a)(3)(A) & (B).

- iii. Courts in the Fourth Circuit have found that ““in bankruptcy cases, notice served on a creditor’s counsel is presumed to satisfy both bankruptcy and due process notice requirements as to the creditor, so long as there is a nexus between the creditor’s retention of the attorney and the creditor’s claim against the debtor.”” *In re Parandeh*, No. 14-12578-BFK, 2015 Bankr. LEXIS 296, at \*9 (Bankr. E.D. Va. Jan. 28, 2015) (quoting *In re San Miguel Sandoval*, 327 B.R. 493, 508 (B.A.P. 1st Cir. 2005)).
- b. The creditor may have more time to file a proof of claim under Federal Rule of Bankruptcy Procedure 3002(c)(6).
  - i. Pursuant to Rule 3002(c), with exceptions, a creditor in a voluntary chapter 7 case, chapter 12 case, or chapter 13 case has 70 days from the petition date or the date of the order of conversion to a case under chapter 12 or 13 to timely file a proof of claim; the corresponding timeline for a creditor in an involuntary chapter 7 case is 90 days.
  - ii. Pursuant to Rule 3003(c)(3), in a chapter 9 or chapter 11 case, the court shall fix and for cause shown may extend the time within which proofs of claim may be filed.
  - iii. Pursuant to Rule 3002(c)(6), if the court finds that the notice was insufficient under the circumstances to give a creditor a reasonable time to file a proof of claim, on motion filed by the 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.

C. Discharge of Unsecured Debts in a No-Asset Chapter 7 Case

- a. Pursuant to 11 U.S.C. § 727(b), a discharge under § 727(a) “discharges the debtor from all debts that arose before the date of the order for relief . . . whether or not a proof of claim based on any such debt . . . is filed[,]” except as provided in § 523.
- b. This Court has held that “[b]ecause of the language of sections 523 and 727, . . . a debt may be discharged in a no-asset chapter 7 case, even if it was not listed, if the debt is not within an exception found in section 523.” *In re Rollison*, 579 B.R. 67, 71 (Bankr. W.D. Va. 2018) (citing *Judd v. Wolfe*, 78 F.3d 110, 111, 114–15 (3d Cir. 1996)).

- i. For a similar holding in the Fourth Circuit, see also *In re Alexander*, 300 B.R. 650, 656 (Bankr. E.D. Va. 2003) (holding that “in a chapter 7 no-asset case” “scheduled and unscheduled debt is discharged pursuant to §§ 727(b) and 523(a)(3) when the court enters the discharge order unless a debt is excepted from discharge under § 523(a)(2), (4) or (6)”).
- c. The rationale behind these decisions is that “[i]n a no-asset case, unscheduled creditors suffer no prejudice from their omission because ‘the time for filing a claim has not, and never will, expire unless some exempt assets are discovered . . . .’” *In re Alexander*, 300 B.R. at 656 (quoting *Judd*, 78 F.3d at 114)).

### **III. Federal Rulemaking Process**

- A. The Rules Enabling Act, 28 U.S.C. §§ 2071–2077, authorizes the Supreme Court to prescribe general rules of practice and procedure and rules of evidence for the federal courts.
- B. Pursuant to Section 2073 of the Rules Enabling Act, the Judicial Conference has established procedures to govern the work of the Standing Committee and its advisory rules committees.
  - a. The Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules evaluate suggestions for rules amendments. They determine whether to take action on the suggestion or take no action on the suggestion.
  - b. If an advisory committee finds it appropriate to take action on a suggestion, it will seek permission from the Standing Committee to publish a draft of the proposed amendment (or new rule). The publication is for the purpose of public comment. The public comment period is from mid-August through mid-February.
  - c. The advisory committees review all the comments received during the public comment period. Based on the comments, the advisory committees decide if the proposed amendment should be adopted, rejected, or further revised, and submits that recommendation to the Standing Committee.
  - d. The Standing Committee reviews the recommendation of the advisory committees and, if satisfied, it recommends those amendments to the Judicial Conference, which in turn recommends those amendments to the Supreme Court.

- e. The Supreme Court then reviews and decides whether to officially promulgate the amendments before May 1 each year.
- f. If the Supreme Court officially promulgates the revisions, the amendments will take effect no earlier than December 1, unless Congress enacts legislation to reject, modify, or defer the pending amendments.

#### C. How to Suggest a Change to the Federal Rules

- a. Suggestions and recommendations on the rules must be submitted to the Secretary of the Committee on Rules of Practice and Procedure (the Standing Committee) in Washington D.C. Submission may be made to the Secretary by email at RulesCommittee\_Secretary@ao.uscourts.gov or by mail to H. Thomas Byron III, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, One Columbus Circle, NE, Room 7-300, Washington, DC 20544.
- b. Suggestions will be assigned an agenda number, acknowledged, and forwarded to the appropriate advisory committee for consideration.

#### D. How to Comment on Pending Proposals

- a. Submitting a comment on the pending proposals helps the various committees and participants determine the need for, or the effects of, the proposed amendments to the rules.
- b. Anyone may submit a comment! All comments will be made part of the official record and are available to the public.
  - i. The Rules Committee Staff will docket appropriate comments and forward to the relevant advisory committee.
- c. Comments and supporting files must be submitted electronically using the regulations.gov portal.
  - i. The links to each portal open for comment are available at: <https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>.

### **IV. Recent 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 became effective on December 1, 2022.

- a. Rule 3002(c)(6). Time for Filing Proof of Claim. The 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 removed 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) now provides 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 changes (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 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 for Receiving Service of Process’ (or



other similar titles) is sufficient.” Fed. R. Bankr. P. 7004 advisory committee’s note to 2022 amendments.

- d. Rule 8023. Voluntary Dismissal. The amendment is intended to conform Bankruptcy Rule 8023 to Appellate Rule 42(b). This amendment clarifies that a court order is required for any action other than a simple voluntary dismissal of an appeal, including approving a settlement and vacating an action by the bankruptcy court.
- B. SBRA-related Rules. The Interim Rules to implement the substantive and procedural changes made to the Bankruptcy Code by the SBRA also went into effect on December 1, 2022.
- a. Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits. The 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).
  - b. Rule 1020. Chapter 11 Reorganization Case for Small Business Debtors. Subdivision (a) now requires 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).
  - c. Rule 2009. Trustees for Estates When Joint Administration Ordered. Subdivisions (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.
  - d. 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.
  - e. 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 went into effect on December 1, 2022, see Attachment A.

## **V. Pending Amendments to the Federal Rules of Bankruptcy Procedure**

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 Bankruptcy Rules 3002.1,<sup>2</sup> 3011, and 8003, as well as new Rule 9038. Written comments to these proposed amendments were due February 16, 2022. The proposed amendments will become effective on December 1, 2023.

- a. Rule 3011. Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer’s Debt Adjustment, and Chapter 13 Individual’s Debt Adjustment Cases. The proposed changes will require the clerk to provide searchable access (as by providing a link to the U.S. Bankruptcy Unclaimed Funds Locator) on the court’s website to unclaimed funds deposited pursuant to § 347(a).
- b. Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal. There are many revisions to this rule; a few of the significant changes include the following:
  - i. Amended subdivision (a) conforms with recent amendments made to Federal Rule of Appellate Procedure 3(c), which clarify 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.
  - ii. Subdivision (a)(3)(B) is revised to clarify that it is unnecessary to identify each and every order of the bankruptcy court that the appellant may wish to challenge on appeal.
  - iii. Subdivision (a)(4) is amended to call attention to the merger principle, which the Committee Note describes as the principle that “an appeal from

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<sup>2</sup> The published amendments to Rule 3002.1 were significant. They revised the end of case procedure and added a mid-case notice procedure. Based on the extensive comments to the proposed rule amendments, the advisory committee has not recommended adoption of the proposed amendments at this time. The proposed amendments are still under consideration.

a final judgment or appealable order or decree permits review of all rulings that led up to the judgment, order, or decree.”

- c. New Rule 9038. Bankruptcy Rules Emergency. The new rule allows extensions of time limits in the Bankruptcy Rules to be granted if the Judicial Conference declared a Bankruptcy Rules emergency. The draft of the rule was an effort by a special Emergency Rule Subcommittee. According to the Committee Note, “[t]he continuing operation of the bankruptcy courts during the COVID-19 pandemic showed that the existing rules are flexible enough to accommodate remote proceedings, service by mail, and electronic transmission of documents.” The new rule was devised after it was determined that greater flexibility than that contained in Rule 9006(b) may be needed.
  - i. Similar emergency rule provisions have also been added to the Civil, Criminal, and Appellate Rules.

B. For redline versions of the bankruptcy rule amendments and new rule which may go into effect on December 1, 2023, see Attachment B.

## **VI. Proposed Amendments to the Federal Rules of Bankruptcy Procedure**

- A. In August 2022, the Committee on Rules of Practice and Procedure for the Judicial Conference of the United States published Proposed Amendments to Bankruptcy Rules 1007, 4004, 5009, 7001, and 9006, as well as new Rule 8023.1, with written comments due by February 16, 2023. The proposed amendments will become effective on December 1, 2024.
  - a. Rule 7001. Scope of Rules of Part VII. The amendment to Rule 7001(1) creates an exception for “a proceeding by an individual debtor to recover tangible personal property under § 542(a)” to the general rule that “a proceeding to recover money or property” is an adversary proceeding.
    - i. This amendment is in response to the Supreme Court’s decision in *City of Chicago v. Fulton*, 141 S. Ct. 585 (2021) (holding that creditor’s continued retention of estate property that it acquired prior to bankruptcy does not violate the automatic stay under § 362(a)(3)).
  - b. Rule 1007(b)(7). Lists, Schedules, Statements, and Other Documents; Time Limits. The amendments to Rule 1007(b)(7) would eliminate the requirement that

the debtor file a statement on Official Form 423 and make filing of the certificate of debtor education provided by the approved provider of the course the exclusive means of establishing satisfaction of the requirement for discharge that a debtor has taken a postpetition course in personal financial management.

i. Conforming amendments to Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3), and 9006(c)(2). The six other rules that referred to a “statement” required by Rule 1007(b)(7) would also be amended to refer to a “certificate.”

c. New Rule 8023.1. This new bankruptcy rule is modeled on Federal Rule of Appellate Procedure 43. The new rule will govern substitution of parties upon death or for any other reason in appeals to the district court or bankruptcy appellate panel from a judgment, order or decree of a bankruptcy court.

B. For redline versions of the bankruptcy rule amendments and new rule which may go into effect on December 1, 2024, see Attachment C.

# ATTACHMENT A

## PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>

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

3 \* \* \* \* \*

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

6 \* \* \* \* \*

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

11 \* \* \* \* \*

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

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<sup>1</sup> New material is underlined; matter to be omitted is lined through.

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

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

33                   (2)     discharging the debtor in a chapter 12  
34                   case, or a chapter 13 case, or a case under subchapter  
35                   V of chapter 11 in which the plan is confirmed under  
36                   § 1191(b).

37   \* \* \* \* \*

**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.



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

3 (a) SMALL BUSINESS DEBTOR

4 DESIGNATION. In a voluntary chapter 11 case, the debtor  
5 shall state in the petition whether the debtor is a small  
6 business debtor and, if so, whether the debtor elects to have  
7 subchapter V of chapter 11 apply. In an involuntary chapter  
8 11 case, the debtor shall file within 14 days after entry of the  
9 order for relief a statement as to whether the debtor is a small  
10 business debtor and, if so, whether the debtor elects to have  
11 subchapter V of chapter 11 apply. ~~Except as provided in~~  
12 ~~subdivision (e), the~~ The status of the case as a small business  
13 case or a case under subchapter V of chapter 11 shall be in  
14 accordance with the debtor's statement under this  
15 subdivision, unless and until the court enters an order finding  
16 that the debtor's statement is incorrect.

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

20 statement under subdivision (a) no later than 30 days after  
21 the conclusion of the meeting of creditors held under  
22 § 341(a) of the Code, or within 30 days after any amendment  
23 to the statement, whichever is later.

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

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

39 (d~~c~~) PROCEDURE FOR OBJECTION OR  
40 DETERMINATION. Any objection or request for a  
41 determination under this rule shall be governed by Rule 9014  
42 and served on: the debtor; the debtor’s attorney; the United  
43 States trustee; the trustee; the creditors included on the list  
44 filed under Rule 1007(d) or, if any a committee has been  
45 appointed under § 1102(a)(3), the committee or its  
46 authorized agent, ~~or, if no committee of unsecured creditors~~  
47 ~~has been appointed under § 1102, the creditors included on~~  
48 ~~the list filed under Rule 1007(d);~~ and any other entity as the  
49 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.

1 **Rule 2009. Trustees for Estates When Joint**  
2 **Administration Ordered**

3 (a) ELECTION OF SINGLE TRUSTEE FOR  
4 ESTATES BEING JOINTLY ADMINISTERED. If the  
5 court orders a joint administration of two or more estates  
6 under Rule 1015(b), creditors may elect a single trustee for  
7 the estates being jointly administered, unless the case is  
8 under subchapter V of chapter 7 or subchapter V of chapter  
9 11 of the Code.

10 (b) RIGHT OF CREDITORS TO ELECT  
11 SEPARATE TRUSTEE. Notwithstanding entry of an order  
12 for joint administration under Rule 1015(b), the creditors of  
13 any debtor may elect a separate trustee for the estate of the  
14 debtor as provided in § 702 of the Code, unless the case is  
15 under subchapter V of chapter 7 or subchapter V of chapter  
16 11 of the Code.

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

19 \* \* \* \* \*

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

25                                   \* \* \* \* \*

**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.

1 **Rule 2012. Substitution of Trustee or Successor**  
2 **Trustee; Accounting**

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

9 \* \* \* \* \*

**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.

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

3 (a) TRUSTEE OR DEBTOR IN POSSESSION.

4 A trustee or debtor in possession shall:

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

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

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



19 employees and the place where these amounts are  
20 deposited;

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

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

37 § 1930(a)(6), file and transmit to the United States  
38 trustee a statement of any disbursements made  
39 during that quarter and of any fees payable under 28  
40 U.S.C. § 1930(a)(6) for that quarter; and

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

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

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

69 (bc) CHAPTER 12 TRUSTEE AND DEBTOR  
70 IN POSSESSION. In a chapter 12 family farmer’s debt  
71 adjustment case, the debtor in possession shall perform the  
72 duties prescribed in clauses (2)–(4) of subdivision (a) of this

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

79 (e) CHAPTER 13 TRUSTEE AND  
80 DEBTOR.

81 (1) *Business Cases*. In a chapter  
82 13 individual's debt adjustment case, when  
83 the debtor is engaged in business, the debtor  
84 shall perform the duties prescribed by clauses  
85 (2)–(4) of subdivision (a) of this rule and, if  
86 the court directs, shall file and transmit to the  
87 United States trustee a complete inventory of  
88 the property of the debtor within the time  
89 fixed by the court.

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

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

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

- 107 every report or summary mailed or published pursuant to this  
108 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.

1 **Rule 3002. Filing Proof of Claim or Interest**

2 \* \* \* \* \*

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

12 \* \* \* \* \*

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

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

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

30                   \* \* \* \* \*

**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.



1 **Rule 3010. Small Dividends and Payments in Cases**  
2 **Under Chapter 7 Liquidation, Subchapter**  
3 **V of Chapter 11, Chapter 12 Family**  
4 **Farmer's Debt Adjustment, and Chapter**  
5 **13 Individual's Debt Adjustment Cases**

6 \* \* \* \* \*

7 (b) CASES UNDER SUBCHAPTER V OF  
8 CHAPTER 11, CHAPTER 12, AND CHAPTER 13  
9 CASES. In a case under subchapter V of chapter 11, chapter  
10 12, or chapter 13, ~~case~~ no payment in an amount less than  
11 \$15 shall be distributed by the trustee to any creditor unless  
12 authorized by local rule or order of the court. Funds not  
13 distributed because of this subdivision shall accumulate and  
14 shall be paid whenever the accumulation aggregates \$15.  
15 Any funds remaining shall be distributed with the final  
16 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.

1 **Rule 3011. Unclaimed Funds in Cases Under Chapter**  
2 **7 Liquidation, Subchapter V of Chapter**  
3 **11, Chapter 12 Family Farmer’s Debt**  
4 **Adjustment, and Chapter 13 Individual’s**  
5 **Debt Adjustment Cases**

6 The trustee shall file a list of all known names and  
7 addresses of the entities and the amounts which they are  
8 entitled to be paid from remaining property of the estate that  
9 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.

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

4 An election of application of § 1111(b)(2) of the  
5 Code by a class of secured creditors in a chapter 9 or 11 case  
6 may be made at any time prior to the conclusion of the  
7 hearing on the disclosure statement or within such later time  
8 as the court may fix. If the disclosure statement is  
9 conditionally approved pursuant to Rule 3017.1, and a final  
10 hearing on the disclosure statement is not held, the election  
11 of application of § 1111(b)(2) may be made not later than the  
12 date fixed pursuant to Rule 3017.1(a)(2) or another date the  
13 court may fix. In a case under subchapter V of chapter 11 in  
14 which § 1125 of the Code does not apply, the election may  
15 be made not later than a date the court may fix. The election  
16 shall be in writing and signed unless made at the hearing on  
17 the disclosure statement. The election, if made by the  
18 majorities required by § 1111(b)(1)(A)(i), shall be binding  
19 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.

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

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

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

17 \* \* \* \* \*

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

20 business case or a case under subchapter V of chapter 11, the  
21 court may approve a disclosure statement and may confirm  
22 a plan that conform substantially to the appropriate Official  
23 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.

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

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

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

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

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



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

21 \* \* \* \* \*

**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.

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

4 In a case under subchapter V of chapter 11 in which  
5 § 1125 does not apply, the court shall:

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

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

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

14 (d) fix a date for transmitting the plan,  
15 notice of the time within which the holders of claims  
16 and interests may accept or reject it, and notice of the  
17 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.

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

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

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

23 \* \* \* \* \*

**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.

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

4 \* \* \* \* \*

5 (b) MODIFICATION OF PLAN AFTER  
6 CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If  
7 the debtor is an individual, a request to modify the plan under  
8 § 1127(e) of the Code is governed by Rule 9014. The request  
9 shall identify the proponent and shall be filed together with  
10 the proposed modification. The clerk, or some other person  
11 as the court may direct, shall give the debtor, the trustee, and  
12 all creditors not less than 21 days' notice by mail of the time  
13 fixed to file objections and, if an objection is filed, the  
14 hearing to consider the proposed modification, unless the  
15 court orders otherwise with respect to creditors who are not  
16 affected by the proposed modification. A copy of the notice  
17 shall be transmitted to the United States trustee, together  
18 with a copy of the proposed modification. Any objection to  
19 the proposed modification shall be filed and served on the

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

23 (c) MODIFICATION OF PLAN AFTER  
24 CONFIRMATION IN A SUBCHAPTER V CASE. In a  
25 case under subchapter V of chapter 11, a request to modify  
26 the plan under § 1193(b) or (c) of the Code is governed by  
27 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.

1 **Rule 5005. Filing and Transmittal of Papers**

2 \* \* \* \* \*

3 (b) TRANSMITTAL TO THE UNITED  
4 STATES TRUSTEE.

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

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



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

22 (3) Nothing in these rules shall require  
23 the clerk to transmit any paper to the United States  
24 trustee if the United States trustee requests in writing  
25 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.

1 **Rule 7004. Process; Service of Summons, Complaint**

2 \* \* \* \* \*

3 (i) SERVICE OF PROCESS BY TITLE. This  
 4 subdivision (i) applies to service on a domestic or foreign  
 5 corporation or partnership or other unincorporated  
 6 association under Rule 7004(b)(3) or on an officer of an  
 7 insured depository institution under Rule 7004(h). The  
 8 defendant’s officer or agent need not be correctly named in  
 9 the address – or even be named – if the envelope is addressed  
 10 to the defendant’s proper address and directed to the  
 11 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.

1 **Rule 8023. Voluntary Dismissal**

2 (a) STIPULATED DISMISSAL. The clerk of  
3 the district court or BAP must dismiss an appeal if the parties  
4 file a signed dismissal agreement specifying how costs are  
5 to be paid and pay any court fees that are due.

6 (b) APPELLANT’S MOTION TO DISMISS.  
7 An appeal may be dismissed on the appellant’s motion on  
8 terms agreed to by the parties or fixed by the district court or  
9 BAP.

10 (c) OTHER RELIEF. A court order is required  
11 for any relief under Rule 8023(a) or (b) beyond the dismissal  
12 of an appeal—including approving a settlement, vacating an  
13 action of the bankruptcy court, or remanding the case to it.

14 (d) COURT APPROVAL. This rule does not  
15 alter the legal requirements governing court approval of a  
16 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 BANKRUPTCY PROCEDURE<sup>1</sup>

1 **Rule 3011. Unclaimed Funds in Cases Under Chapter**  
2 **7, Subchapter V of Chapter 11, Chapter**  
3 **12, and Chapter 13<sup>2</sup>**

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

8 (b) On the court's website, the clerk must  
9 provide searchable access to information about funds  
10 deposited under § 347(a). The court may, for cause, limit  
11 access to information about funds in a specific case.

### Committee Note

Rule 3011 is amended to require the clerk to provide searchable access (as by providing a link to the U.S. Bankruptcy Unclaimed Funds Locator) on the court's website to information about unclaimed funds deposited pursuant to § 347(a). The court may limit access to

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<sup>1</sup> New material is underlined.

<sup>2</sup> The title of Rule 3011 reflects amendments currently proposed to take effect on December 1, 2022, barring any contrary action by Congress.

information about such funds in a specific case for cause, including, for example, if such access risks disclosing the identity of claimants whose privacy should be protected, or if the information about the unclaimed funds is so old as to be unreliable.

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>**

- 1 **Rule 8003. Appeal as of Right—How Taken;**  
2 **Docketing the Appeal**
- 3 (a) FILING THE NOTICE OF APPEAL.
- 4 \* \* \* \* \*
- 5 (3) *Contents.* The notice of appeal  
6 must:
- 7 (A) conform substantially  
8 to the appropriate Official Form;
- 9 (B) be accompanied by  
10 the judgment,—or the appealable  
11 order, or decree,—from which the  
12 appeal is taken ~~or the part of it, being~~  
13 ~~appealed~~; and
- 14 (C) be accompanied by  
15 the prescribed fee.

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<sup>1</sup> New material is underlined; matter to be omitted is lined through.

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

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

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

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



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

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

48                    ~~(4)-(8)~~ *Additional Copies. \* \* \**

49                    \* \* \* \* \*

### 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, Rules 8002(a)(2) and (b)(2) apply.

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>**

1 **Rule 9006. Computing and Extending Time; Time for**  
2 **Motion Papers**

3 (a) COMPUTING TIME. The following rules  
4 apply in computing any time period specified in these rules,  
5 in the Federal Rules of Civil Procedure, in any local rule or  
6 court order, or in any statute that does not specify a method  
7 of computing time.

8 \* \* \* \* \*

9 (6) “*Legal Holiday*” *Defined*. “Legal  
10 holiday” means:

11 (A) the day set aside by statute for  
12 observing New Year’s Day, Martin Luther  
13 King Jr.’s Birthday, Washington’s Birthday,  
14 Memorial Day, Juneteenth National  
15 Independence Day, Independence Day,

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<sup>1</sup> New material is underlined.

16 Labor Day, Columbus Day, Veterans' Day,  
17 Thanksgiving Day, or Christmas Day;

18 (B) any day declared a holiday by  
19 the President or Congress; and

20 (C) for periods that are measured  
21 after an event, any other day declared a  
22 holiday by the state where the district court is  
23 located. (In this rule, "state" includes the  
24 District of Columbia and any United States  
25 commonwealth or territory.)

26 \* \* \* \* \*

**Committee Note**

The amendment adds "Juneteenth National Independence Day" to the list of legal holidays. See Juneteenth National Independence Day Act, P.L. 117-17 (2021) (amending 5 U.S.C. § 6103(a)).

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>**

1 **Rule 9038. Bankruptcy Rules Emergency**

2 (a) CONDITIONS FOR AN EMERGENCY.

3 The Judicial Conference of the United States may declare a  
4 Bankruptcy Rules emergency if it determines that  
5 extraordinary circumstances relating to public health or  
6 safety, or affecting physical or electronic access to a  
7 bankruptcy court, substantially impair the court's ability to  
8 perform its functions in compliance with these rules.

9 (b) DECLARING AN EMERGENCY.

10 (1) Content. The declaration must:

11 (A) designate the bankruptcy  
12 court or courts affected;

13 (B) state any restrictions on the  
14 authority granted in (c); and

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<sup>1</sup> New material is underlined.

15 (C) be limited to a stated period of  
16 no more than 90 days.

17 (2) Early Termination. The Judicial  
18 Conference may terminate a declaration for one or  
19 more bankruptcy courts before the termination date.

20 (3) Additional Declarations. The  
21 Judicial Conference may issue additional  
22 declarations under this rule.

23 (c) TOLLING AND EXTENDING TIME  
24 LIMITS.

25 (1) In an Entire District or Division.  
26 When an emergency is in effect for a bankruptcy  
27 court, the chief bankruptcy judge may, for all cases  
28 and proceedings in the district or in a division:

29 (A) order the extension or tolling  
30 of a Bankruptcy Rule, local rule, or order that  
31 requires or allows a court, a clerk, a party in  
32 interest, or the United States trustee, by a



33 specified deadline, to commence a  
34 proceeding, file or send a document, hold or  
35 conclude a hearing, or take any other action,  
36 despite any other Bankruptcy Rule, local  
37 rule, or order; or

38 (B) order that, when a Bankruptcy  
39 Rule, local rule, or order requires that an  
40 action be taken “promptly,” “forthwith,”  
41 “immediately,” or “without delay,” it be  
42 taken as soon as is practicable or by a date set  
43 by the court in a specific case or proceeding.

44 (2) *In a Specific Case or Proceeding.*

45 When an emergency is in effect for a bankruptcy  
46 court, a presiding judge may take the action  
47 described in (1) in a specific case or proceeding.

48 (3) *When an Extension or Tolling Ends.*

49 A period extended or tolled under (1) or (2)  
50 terminates on the later of:

51 (A) the last day of the time period  
52 as extended or tolled or 30 days after the  
53 emergency declaration terminates, whichever  
54 is earlier; or

55 (B) the last day of the time period  
56 originally required, imposed, or allowed by  
57 the relevant Bankruptcy Rule, local rule, or  
58 order that was extended or tolled.

59 (4) Further Extensions or Shortenings.

60 A presiding judge may lengthen or shorten an  
61 extension or tolling in a specific case or proceeding.  
62 The judge may do so only for good cause after notice  
63 and a hearing and only on the judge's own motion or  
64 on motion of a party in interest or the United States  
65 trustee.

66 (5) Exception. A time period imposed by  
67 statute may not be extended or tolled.

### **Committee Note**

The rule is new. It provides authority to extend or toll the time limits in these rules during times of major emergencies affecting the bankruptcy courts. The continuing operation of the bankruptcy courts during the COVID-19 pandemic showed that the existing rules are flexible enough to accommodate remote proceedings, service by mail, and electronic transmission of documents. Nevertheless, it appeared that greater flexibility than Rule 9006(b) provides might be needed to allow the extension of certain time periods in specific cases or any extension on a district-wide basis in response to an emergency.

Emergency rule provisions have also been added to the Civil, Criminal, and Appellate Rules. Along with the Bankruptcy Rule, these rules have been made as uniform as possible. But each set of rules serves distinctive purposes, shaped by different origins, traditions, functions, and needs. Different provisions were compelled by these different purposes.

Subdivision (a) specifies the limited circumstances under which the authority conferred by this rule may be exercised. The Judicial Conference of the United States has the exclusive authority to declare a Bankruptcy Rules emergency, and it may do so only under extraordinary circumstances. Those circumstances must relate to public health or safety or affect physical or electronic access to a bankruptcy court. And, importantly, the court's ability to operate in compliance with the Bankruptcy Rules must be substantially impaired.

Under subdivision (b)(1), a Bankruptcy Rules emergency declaration must specify the bankruptcy courts to which it applies because, instead of being nationwide, an emergency might be limited to one area of the country or even to a particular state. The declaration must also specify

a termination date that is no later than 90 days from the declaration's issuance. Under subdivisions (b)(2) and (b)(3), however, that time period may be extended by the issuance of additional declarations or reduced by early termination if circumstances change. The declaration must also specify any limitations placed on the authority granted in subdivision (c) to modify time periods.

Subdivisions (c)(1) and (c)(2) grant the authority, during declared Bankruptcy Rules emergencies, to extend or toll deadlines to the chief bankruptcy judge of a district on a district- or division-wide basis or to the presiding judge in specific cases. Unless limited by the emergency declaration, this authority extends to all time periods in the rules that are not also imposed by statute. It also applies to directives to take quick action, such as rule provisions that require action to be taken “promptly,” “forthwith,” “immediately,” or “without delay.”

Subdivision (c)(3), which addresses the termination of extensions and tolling, provides a “soft landing” upon the termination of a Bankruptcy Rules emergency. It looks to three possible dates for a time period to expire. An extended or tolled time period will terminate either 30 days after the rules-emergency declaration terminates or when the original time period would have expired, whichever is later—unless the extension or tolling itself expires sooner than 30 days after the declaration's termination. In that case, the extended expiration date will apply.

Subdivision (c)(4) allows fine tuning in individual cases of extensions of time or tollings that have been granted.

Subdivision (c)(5) excepts from the authority to extend time periods any time provision imposed by statute. The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, does not authorize the Bankruptcy Rules to supersede conflicting

laws. Accordingly, a time limit in a rule that is a restatement of a deadline imposed by statute or an incorporation by reference of such a deadline may not be extended under this rule. However, if a statute merely incorporates by reference a time period imposed by a rule, that period may be extended.

# ATTACHMENT C

## PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>

1 **Rule 1007. Lists, Schedules, Statements, and Other**  
2 **Documents; Time to File<sup>2</sup>**

3 \* \* \* \* \*

4 (b) SCHEDULES, STATEMENTS, AND  
5 OTHER DOCUMENTS.

6 \* \* \* \* \*

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

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<sup>1</sup> New material is underlined in red; matter to be omitted is lined through.

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

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

18 \* \* \* \* \*

19 (c) TIME TO FILE.

20 \* \* \* \* \*

21 (4) *Financial-Management Course.*

22 Unless the court extends the time to file, an  
23 individual debtor must file the ~~statement~~  
24 certificate required by (b)(7) as follows:

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

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

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

32 \* \* \* \* \*

**Committee Note**

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

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





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

16 \* \* \* \* \*

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

22 \* \* \* \* \*

#### Committee Note

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

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>**

1 **Rule 5009. Closing a Chapter 7, 12, 13, or 15 Case;**  
2 **Declaring Liens Satisfied<sup>2</sup>**

3 \* \* \* \* \*

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

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<sup>1</sup> New material is underlined in red; matter to be omitted is lined through.

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

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

16 \* \* \* \* \*

**Committee Note**

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



### Committee Note

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

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>**

1     **Rule 8023.1.<sup>2</sup> Substitution of Parties**

2             (a) DEATH OF A PARTY.

3                     (1) After a Notice of Appeal Is

4             Filed. If a party dies after a notice of appeal

5             has been filed or while a proceeding is

6             pending on appeal in the district court or

7             BAP, the decedent’s personal representative

8             may be substituted as a party on motion filed

9             with that court’s clerk by the representative

10            or by any party. A party’s motion must be

11            served on the representative in accordance

12            with Rule 8011. If the decedent has no

13            representative, any party may suggest the

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<sup>1</sup> New material is underlined in red.

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

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

16 (2) Before a Notice of Appeal Is  
17 Filed—Potential Appellant. If a party entitled  
18 to appeal dies before filing a notice of appeal,  
19 the decedent’s personal representative—or, if  
20 there is no personal representative, the  
21 decedent’s attorney of record—may file a  
22 notice of appeal within the time prescribed by  
23 these rules. After the notice of appeal is filed,  
24 substitution must be in accordance with Rule  
25 8023.1(a)(1).

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



32 occurred. After the notice of appeal is filed,  
33 substitution must be in accordance with Rule  
34 8023.1(a)(1).

35 (b) SUBSTITUTION FOR A REASON OTHER  
36 THAN DEATH. If a party needs to be substituted for any  
37 reason other than death, the procedure prescribed in Rule  
38 8023.1(a) applies.

39 (c) PUBLIC OFFICER: IDENTIFICATION;  
40 SUBSTITUTION.

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

48 (2) Automatic Substitution of an  
49 Officerholder. When a public officer who is a

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

#### **Committee Note**

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

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>**

1 **Rule 9006. Computing and Extending Time;**  
2 **Motions<sup>2</sup>**

3 \* \* \* \* \*

4 (b) EXTENDING TIME.

5 \* \* \* \* \*

6 (3) *Extensions Governed by Other Rules.*

7 The court may extend the time to:

8 \* \* \* \* \*

9 (B) file the ~~statement~~certificate

10 required by Rule 1007(b)(7), and the

11 schedules and statements in a small business

12 case under § 1116(3)—but only as permitted

13 by Rule 1007(c).

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<sup>1</sup> New material is underlined in red; matter to be omitted is lined through.

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

14 (c) REDUCING TIME LIMITS.

15 \* \* \* \* \*

16 (2) *When Not Permitted.* The court may  
17 not reduce the time to act under Rule 2002(a)(7),  
18 2003(a), 3002(c), 3014, 3015, 4001(b)(2) or (c)(2),  
19 4003(a), 4004(a), 4007(c), 4008(a), 8002, or  
20 9033(b). Also, the court may not, under Rule  
21 1007(c), reduce the time to file the ~~statement~~  
22 certificate required by Rule 1007(b)(7).

**Committee Note**

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