

language that a court “should” grant summary judgment when the record shows that the movant is entitled to judgment as a matter of law, recognizing limited discretion to deny summary judgment in such circumstances.

IV. Proposed Amendments to the Federal Rules of Criminal Procedure:

The proposed amendments to **Rules 5, 12.3, and 21** implement the Crime Victims’ Rights Act, 18 U.S.C. § 3771.

Amended **Rule 5** requires the court to consider the right of the victim to be protected from the defendant in deciding whether, and under what conditions, to release or detain the defendant.

The proposed **Rule 12.3** amendment provides that a victim’s address and telephone number should not automatically be provided to the defense when a public authority defense is raised. If a defendant establishes a need for this information, the court may order its disclosure or fashion an alternative procedure that provides the defendant with the information necessary to prepare a defense and also protects the victim’s interests.

Rule 21 is amended to require the court to consider the convenience of victims – in addition to the convenience of the parties and witnesses and the interest of justice – in determining whether to transfer all or part of the proceeding to another district for trial.

Amended **Rule 15** authorizes a deposition of a witness outside the United States without the defendant’s physical presence in very limited circumstances: where there is a substantial likelihood that the witness’s attendance at trial cannot be secured and it would be impossible to transport the defendant to the witness’s location for the deposition.

The proposed amendment to **Rule 32.1** codifies case law requiring a person, who is seeking release in a proceeding to revoke or modify probation or supervised release, to show by clear and convincing evidence that the person will not flee or pose a danger to any other person in the community.

V. Proposed Amendment to the Federal Rules of Evidence:

The proposed amendment to **Rule 804** extends the corroborating circumstances requirement to all declarations against penal interest offered in criminal cases.

Public hearings are scheduled to be held on the amendments to

- Appellate Rules in Washington, D.C., on January 30, 2009, and in New Orleans, Louisiana, on February 11, 2009;
- Bankruptcy Rules in New York, New York, on January 23, 2009, and in San Francisco, California, on February 6, 2009;
- Civil Rules in Washington, D.C., on November 17, 2008, in San Antonio, Texas, on January 14, 2009, and in San Francisco, California, on February 2, 2009;
- Criminal Rules in Los Angeles, California, on January 16, 2009, and in Dallas, Texas, on February 9, 2009; and
- Evidence Rules in San Antonio, Texas, on January 13, 2009, and in Atlanta, Georgia, on January 26, 2009.

Those wishing to testify should contact in writing the Secretary at the address on the next page at least 30 days before the hearing.

Written comments on the proposed rule amendments sent by mail should be addressed to:

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

Comments on the proposed rule amendments may also be sent electronically to Rules_Comments@ao.uscourts.gov.

In accordance with established procedures, all comments submitted on the proposed amendments are available for public inspection.

The text of the proposed rule amendments and the accompanying Committee Notes can be found on the United States Courts website at www.uscourts.gov/rules. For further information, copies of this brochure or the Request for Comment pamphlets, or other materials, contact:

John K. Rabiej, Chief
Rules Committee Support Office
Administrative Office of U. S. Courts
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544
(202) 502-1820



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Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544



Preliminary Draft of Proposed Amendments to the Federal Rules of Practice and Procedure

SUBMITTED FOR PUBLIC COMMENT

Comments Due by February 17, 2009

Administrative Office of the U. S. Courts

James C. Duff, Director

A SUMMARY FOR BENCH AND BAR
(AUGUST 2008)

Request for Comment on Proposed Amendments to the Federal Rules of Practice and Procedure

The Judicial Conference's Advisory Committees on Appellate Rules, Bankruptcy Rules, Civil Rules, Criminal Rules, and Evidence Rules are seeking public comment on proposed rules amendments. The Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee) has not approved these proposals, and they have not been presented to the Judicial Conference or the Supreme Court. They are published for a six-month period of public comment from the bench and bar.

The full text of the proposed rules amendments and explanatory Committee Notes are set out in the Request for Comment pamphlets, which are posted at <www.uscourts.gov/rules> and are available on request from the Secretary to the Standing Committee. The following synopses highlight significant aspects of the proposed Appellate, Bankruptcy, Civil, Criminal, and Evidence Rule amendments.

The rules committees welcome all comments, whether favorable, adverse, or otherwise. We do not want to limit the public to agreeing or disagreeing; we also want alternative suggestions. Comments on these proposals will be considered carefully by the respective rules committees, which consist of experienced trial and appellate lawyers, scholars, and judges.

Written comments or comments sent electronically must be received by the Secretary to the Standing Committee **no later than February 17, 2009**. Comments may be sent electronically to <Rules_Comments@ao.uscourts.gov>. Comments may be sent by conventional mail to the Secretary at the address provided at the end of this brochure.

In addition to written comments, public hearings are also scheduled to provide opportunities to appear and comment on the proposals. Requests to appear at a public hearing must be received by the Secretary to the Standing Committee no later than 30 days before the scheduled hearing date. The dates and places of the public hearings are provided at the end of this brochure.

After the public comment period, the proposed amendments will be reconsidered in light of the comments received. Amendments require approval by the relevant advisory committee, the Standing Committee, the Judicial Conference, and the Supreme Court, after which they are sent to Congress. Approved amendments will take effect on December 1, 2010, unless Congress affirmatively acts to defer or reject them.

I. Proposed Amendments to the Federal Rules of Appellate Procedure:

The proposed amendment to **Rule 1** defines "state" to include the "District of Columbia and any United States commonwealth or territory."

Rule 29 is amended to conform to the proposed amendment to Rule 1, substituting the term "state" for the rule's current reference to "State, Territory, Commonwealth, or the District of Columbia." The rule is also amended to parallel recent changes to Supreme Court Rule 37.6, which establish disclosure requirements for amicus briefs.

Appellate Form 4 is amended to avoid asking for certain personal information. The amendment is consistent with privacy protections provided under the E-Government Act of 2002 and Appellate Rule 25(a)(5).

II. Proposed Amendments to the Federal Rules of Bankruptcy Procedure:

New **Rule 1004.2** requires that the entity filing a chapter 15 petition state on the petition the country of the debtor's main interests and list each country in which a case involving the debtor is pending.

The proposed amendment to **Rule 1007** shortens the time for a debtor to file a list of creditors after an order for relief is entered in an involuntary case. The amended rule also extends the time for individual debtors in a chapter 7 case to file the statement of completion of a personal financial management course.

Rule 1014 is amended to apply the rule's venue provisions to chapter 15 cases involving foreign proceedings.

Rule 1015 is amended to apply the rule's consolidation and joint administration provisions to

chapter 15 cases involving foreign proceedings.

Amended **Rule 1018** includes proceedings contesting chapter 15 petitions for recognition of foreign proceedings among those subject to enumerated rules in Part VII of the Bankruptcy Rules. The amendment also clarifies the rule's application to contests over involuntary petitions and not to matters that are merely related to a contested involuntary petition.

The proposed amendment to **Rule 1019** provides a new time period to object to a claim of exemption when a case is converted to chapter 7 from chapter 11, 12, or 13, unless the conversion occurs more than one year after the first order confirming a plan (even if later modified) or unless the case was previously pending under chapter 7 and the objection period had expired in the original chapter 7 case.

Amended **Rule 4004** sets a new deadline for filing an objection to a debtor's discharge on the ground that the debtor had earlier received a discharge. The amended rule also prevents the entry of a discharge in chapter 11 and 13 cases until the debtor files a statement of completion of a personal financial management course.

Rule 5009 is amended to require the clerk to provide notice to individual debtors in chapter 7 and 13 cases that their case may be closed without the entry of a discharge if they fail to file a timely statement that they have completed a personal financial management course. The amended rule also requires a foreign representative in a chapter 15 case to file and give notice of the filing of a final report in the case.

Proposed new **Rule 5012** establishes the procedure in a chapter 15 case for obtaining the approval of an agreement about communications in, and the coordination of the proceedings with, cases involving the debtor pending in other countries.

Under the proposed amendment to **Rule 7001**, a party may, in a motion only and not in a complaint, object to a discharge on the ground that the debtor had recently been granted a discharge in an earlier case.

The **Rule 9001** amendment adds § 1502 to the list of definitional provisions in the Code that apply to the Bankruptcy Rules.

III. Proposed Amendments to the Federal Rules of Civil Procedure:

Rule 26 is amended to address two distinct topics. The first deals with expert witnesses who are not required to prepare a detailed report under Rule 26(b)(2)(B). Under the proposed amendment to Rule 26(a)(2), the party (not the expert witness) must disclose the subject matter of the expected expert testimony and a summary of the expected facts and opinions. The second topic applies the work-product protections of Rule 26(b)(3)(A) and (B) to limit discovery of drafts of expert disclosure statements or reports and, with three exceptions, of communications between expert witnesses and counsel regardless of form (oral, written, electronic, or otherwise). The exceptions are for those parts of the attorney-expert communications regarding compensation, identifying facts or data considered by the expert in forming the opinions, and identifying assumptions relied on by the expert in forming the opinions.

Rule 56 is revised to improve the procedures for presenting and deciding summary judgment motions and to make the procedures more consistent with those already used in many courts. The changes are procedural only and do not affect the standard for granting summary judgment. The proposed rule requires that unless the court orders a different procedure in a case, a party moving for summary judgment must submit a statement of facts that it asserts are not in genuine dispute and entitle it to summary judgment. The statement must list the asserted undisputed material facts in separate, numbered paragraphs, with citations to the record. The party opposing the motion must file a response to the statement that addresses each fact by accepting, disputing, or accepting it in part and disputing it in part, either generally or for purposes of the motion only. The statement and response are separate from the briefs. Other proposed changes include addressing the consequences of failing to respond or responding in a way that does not conform to the rule and recognizing the well-established practice of granting summary judgment on part or all of a claim or defense.

Comment is especially sought on whether to retain the current language carrying forward the present **Rule 56**